

In the Supreme Court of Bangladesh
High Court Division
(Civil Appellate Jurisdiction)

First Appeal No. 345 of 2012

In the matter of:

Shah Cement Industries Ltd., being
represented by its Managing
Director Abul Kashem and others.

..... Defendant-Appellants.

Vs.

Md. Golam Mostafa and others.

..... Respondents.

Mr. Probir Neogi with

Mr. Shishir Kanti Mazumder with

Mr. Md. Nuro Nabi, Advocates

...For the Defendant-

Appellants.

Mr. Mohammad Hossain, Advocate

....For the respondent No. 1.

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Biswajit Debnath

Heard on 01.08.2023, 06.08.2023
and 08.08.2023.

Judgment on: 13.08.2023.

SHEIKH HASSAN ARIF, J

1. This appeal, at the instance of defendant Nos. 1, 2, 3(Ka) to 3(Uma), is directed against judgment and decree dated 30.05.2012 (decree signed on 07.06.2012) passed by the First Court of Joint District Judge, Munshiganj in Title Suit No. 33 of 2002, decreeing the suit in favour of plaintiffs and, thereby, declaring title and separate shaham in respect of the suit land.

2. **Background Facts:**

2.1 Facts, relevant for disposal of the appeal, in short, are that the respondent No.1 and four others, as plaintiffs, filed the aforesaid Title Suit No. 33 of 2002 before the First Court of Joint District Judge, Munshiganj against the respondents [defendant Nos. 1, 2, 3(Ka) to 3(Uma)] and others seeking declaration of title and separate shaham in respect of 256.73 decimal land separately mentioned in 3rd (third) schedule to the plaint.

2.2 The case of the plaintiffs is as follows:

- (a) That the 3.81 acres land mentioned under Schedule 1 in 5 plots, namely, Petti Survey Plot Nos. 127, 128, 187, 188 and 189, originally belonged to one Manik Haji, son of late Shajahan Halder. Accordingly, his name was recorded correctly in the Petti Jarip Khatian No. 30 and was finally published. On his death, his four sons and three daughters, namely, Afajuddin Halder, Goni Halder, Jainuddin Halder, Ibrahim Halder, Kartikjan, Mominjan and Abirjan acquired such property by inheritance according to their shorih entitlements. That after the death of Abirjan, her share devolved on her two daughters,

namely, Haria and Rokon Bibi, and four brothers, namely, Afajuddin Halder, Goni Halder, Joinuddin Halder and Ibrahim Halder. That, accordingly, Goni Halder became owner of 72.15 decimal land by way of inheritance from his father and sister, and died leaving two sons and one daughter, namely, Samsu Halder, Moti Halder and Ambia Khatun (plaintiff No. 5). Accordingly, each sons of Goni Halder became owner of 28.86 decimal land and only daughter (plaintiff No.5) Ambia Khatun got 14.43 decimal land. That while the said Ambia Khatun (plaintiff No.5) was in possession of her portion of land as owner, she executed a registered power of attorney containing extensive power on 25.02.2001, thereby, appointing one Ekabbar Halder as her attorney and, accordingly, the said daughter (defendant No.5) has been represented in the suit through the said attorney.

- (b) That as stated before, while Samsu Halder, son of Goni Halder, became owner of 28.86 decimal land, he died leaving two sons, namely, Abul Kashem Halder and Yanus Halder, and, accordingly, each son got 14.47 decimal land by way of inheritance.

Again, Afajuddin Halder, while became owner of 72.15 decimal land, died leaving one son, Helal Uddin, and four daughters, namely, Rebia, Maleka, Haleton and Jharna. Accordingly, the said son became owner of 24.05 decimal land and each daughter became owner of 12.02 decimal land. That, as aforesaid, while Rebia became owner of 12.02 decimal land, she died leaving her daughter, Safia, and one brother, Helal Uddin, and three sisters, namely, Maleka, Haleton and Jharna. Accordingly, her daughter got 6.01 decimal land, brother got 2.40 decimal land and each of the sisters got 1.20 decimal land by way of inheritance. That, as stated above, Helal Uddin became owner in possession of 26.46 decimal land by way of inheritance. That while the said Helal Uddin Halder, Motiur Rahman Halder, Kashem Halder, Yeanus Halder and Rukon Bibi became owner of their respective share of the property by way of inheritance, they appointed one Afseruddin and Anower Hossain as their attornies in respect of the said land by executing two registered power of attorney Nos. 3071 and 3072 on 10.07.2000. In the meantime, Rukon Bibi executed

power of attorney on 24.01.2000, thereby, appointing one Anwer Hossain Dewan, son of Ali Miah Dewan, as her attorney to do various acts including sale of the property. That the said attorneys, namely, Afseruddin Dewan and Anonwer Hossain Dewan sold the said property on behalf of the said owners to plaintiff Nos. 1 and 2 in respect of 99 decimal land vide registered deed dated 30.01.2001 and, accordingly, gave possession on the northern side of the land.

- (c) That, as aforesaid, the said Kartikjan, daughter of Manik Hazi, while became owner in possession in respect of 34.63 decimal land, died leaving one son and two daughters, namely, Maran, Rohiton and Dayemi, and, accordingly, the said son got 17.31 decimal land and each daughter got 8.65 decimal land. That, thereafter, Maran Dewan, while remained owner by way of inheritance from her mother in respect of 17.31 decimal land, died leaving one wife, Holeton, three sons and one daughter, namely, Abul Dewan, Motaleb Dewan, Mobarak Dewan and Hareja Khatun. Accordingly, the said wife got 2.16 decimal land, each son got 4.32 decimal land and daughter

Hazera Khatun got 2.16 decimal land. That while Rohiton became owner from her mother by way of inheritance in respect of 8.65 decimal land, she died leaving one son Fazlu Mollah, and, in the same way, Daime, daughter of Kartikjan, while became owner in possession in respect of 8.65 decimal land, died leaving one son Altu Mizi. Accordingly, the said son Fazlu Mollah and Altu Mizi got their respective shares from their mother.

- (d) That, as stated above, Mominjan, daughter of Manik Hazi, while became owner in possession in respect of 34.63 decimal land, died leaving four sons and one daughter, namely, Sona Mia, Ali Mia, Jalil, Sobhan and Habia Begum. Accordingly, each of the said sons inherited 7.9 decimal land. That while Sona Mian became owner from her mother by way of inheritance in respect of 7.69 decimal land, he died leaving one son, Sultan. Accordingly, Sultan became owner in possession of the said property by way of inheritance. That, as stated above, the heirs of Maran Dewan and Daemi sold 42.50 decimal land in favour of plaintiff No.1 by executing registered sale deed dated 30.01.2001. That, in the same way, son

of Mominjan, namely, Ali Mia, died leaving behind two sons and three daughters, namely, Chan Mia, Lal Mia, Sajni Begum, Monoara Begum and Kolmi Begum and, accordingly, each son got 1.09 decimal land on the northern side of the land. That the son of Mominjan, namely, Abdul Jalil, while became owner in possession in respect of 7.69 decimal land by way of inheritance, died leaving one son and two daughters, namely, Saidur Rahman, Akherun Nessa and Jarina Khatun. Accordingly, the said son got 3.84 decimal land and each daughter got 1.92 decimal land. That the son of Mominjan, namely, Sobhan, while became owner by way of inheritance in respect of 7.69 decimal land, he died leaving one son and two daughters, namely, Shamsul Haque, Jarina Begum and Sona Banu. Accordingly, the said son got 3.84 decimal land and each daughter got 1.92 decimal land.

- (e) That, as stated above, the aforesaid heirs of Ali Mia, Jalil Mia and Sobhan sold 26 decimal land in favour of plaintiff No.1 by executing registered sale deed dated 20.08.2001 and handed over possession towards northern side. That, accordingly, plaintiff

No.1 became owner of 49.50 decimal land, 42.50 decimal land and 26 decimal land by aforesaid purchase vide registered deed dated 30.01.2001, 13.08.2001 and 20.08.2001. In the same way, plaintiff No.2 became owner of 49.50 decimal land by way of purchase vide aforementioned registered purchase deed dated 30.01.2001. That plaintiff No.5, in the manner stated above, became owner of 14.53 decimal land. Thereby, plaintiff No.1 became owner of 118.00 decimal land, plaintiff No.2 became owner of 49.50 decimal land and plaintiff No.5 became owner of 14.43 decimal land, in total 181.93 decimal land, in schedule 1 property and, accordingly, they remained in possession.

- (f) That 1.24 acre land mentioned in schedule-2 in six entire plots under Petti Plot Nos. 114, 115, 116, 202, 203 and 204 originally belonged to one Altu Mia, son of Gafur Ali. Accordingly, Petti Khatian No.18 was recorded in his name and finally published. That Altu Mia, while remained owner in possession of the said land, sold the entire land on the northern side in favour of one Hossain Ali, son of Shahed Ali, and,

accordingly, handed over possession on the northern side. Thus, Hossain Ali's name was recorded in R.S Khatian No. 422 as owner in possession and he died leaving four sons and two daughters, namely, Joynal Halder, Ali Akbar Halder, Ainal Halder, Alauddin, Fazitonna (plaintiff No.4) and Kamola Bibi (plaintiff No.3). Accordingly, each son became owner of 24.80 decimal land and each daughter became owner of 12.40 decimal land. That, the said plaintiff Nos.3 and 4 executed a power of attorney dated 13.03.2000, thereby, appointing one Md. Shah Alam and, accordingly, they are represented in the suit by the said attorney. That the plaintiffs came to know that defendant No.1 purchased some land from four sons of Hossain Halder and remained as co-sharer with the plaintiffs.

- (g) That 2.33 acre land under three entire plots, as mentioned in shedule-3 to the plaint, namely, Petti and S.A Plot No. 88, 90, 91, 92, 216, 210, 218, 219, originally belonged to one Ahmed, son of Vengu. Accordingly, Petti Khatian No. 6 was recorded and published in his name finally. That the said Ahmed died leaving two sons and two daughters, namely,

Ead Ali, Akram Ali, Amina Khatun and Jomiron Nessa. Accordingly, each son got 77.66 decimal land and each daughter got 38.83 decimal land by way of inheritance and remained in possession. That, as stated above, while Amina Khatun was in possession as owner of 38.83 decimal land, she died leaving one son, Md. Oliullah Miah, and, accordingly, the said son became owner in possession of the said 38.83 decimal land. That the said Oliullah and Somirunnesa, while remained in possession as owner of their respective shares, sold 50 decimal land in three plots in favour of plaintiff Nos.1 and 2 by executing registered sale deed dated 28.5.2001 and, accordingly, handed over possession towards northern side. That the said property in schedule No. 3 was mentioned in the sale deed as property under R.S 23, R.S. 110 and R.S. $\frac{155}{105}$. That the said property under schedule-3, although belonged to the predecessors of plaintiff Nos. 1 and 2, their names were mistakenly not recorded in S.A and R.S khatian concerned and the same was recorded illegally in a single name of their two full brothers, namely, Yead

Ali, and Akram Ali, in equal shares which was illegal and beyond authority. That because of such wrong recording, the title of the plaintiff Nos. 1 and 2 has not been disturbed in any way as there was no legal reason for that. That the said two brothers fraudulently recorded their names in equal shares in respect of the said property.

- (h) That, as stated above, the plaintiff No.1 became owner in possession of 1.43 acre land in schedule Nos.1 and 3 to the plaint by way of aforesaid purchases and inheritance. On the other hand, plaintiff No.2 became owner in possession of 74.50 decimal land in schedule 1 and schedule 3 property by way of purchase. In addition, plaintiff Nos.3 and 4 became owner in possession of 24.80 decimal land by way of inheritance in schedule 2 property and plaintiff No.5 became owner in possession by way of inheritance in respect of 14.43 decimal land in shedule-1 property.
- (i) That the remaining portion of the properties, not claimed by the plaintiffs, were owned by some other co-sharers including the defendants and the said

properties always remained as ajmali property and no partition was done among the heirs given that the predecessors of plaintiffs and defendants had never partitioned the said property. On the other hand, defendant No.1 having purchased some properties out of the properties mentioned in schedule 1-3 by so called purchase deeds, but claiming excess land in their favour, and they are engaged in grabbing the said excess property illegally by encroaching upon the lands of the plaintiffs as well as by constructing building therein. The plaintiffs requested them and other defendants to partition property mutually by way of solenama, but they refused to do so.

- (j) Finally, the plaintiffs requested them to do partition on 22.03.2002, but they refused. This being so, the plaintiffs have been compelled to file the said suit seeking declaration of their title in respect of schedule 1-3 properties and shaham in respect of total 256.73 decimal land under schedule 1-3 properties.

2.3 The suit was contested by the defendant Nos. 1, 2, 3(Ka) to 3(Uma), defendant Nos. 3(Kha) and 13-15 by

filing separate written statements. However, only defendant No. 3(Kha) contested the suit along with defendant Nos. 1 and 2 and other contesting defendants through executing power of attorney. Accordingly, the case of other defendants need not be considered by us in deposit of this appeal.

2.4 The case of contesting defendant Nos. 1, 2 and 3(Ka) to 3(Uma), as revealed from their written statements, is as follows:

- (i) That the properties mentioned under schedule-1 to the plaint originally belonged to Manik Haji and, accordingly, C.S, S.A. and R.S. khatian were finally published in his name. That Manik Hazi transferred the said land in favour of his two sons, namely, Ibrahim Halder and Chunnu Halder, by way of oral gift. That while Ibrahim Halder became owner in possession of his share through such oral gift, he died leaving one son, Mofazzal Halder, and three daughters including Amena and Asia. Accordingly, the said son and daughters became owner in possession of the said land left by Ibrahim Halder. That on the

death of Chunnu Halder, his portion devolved on his two sons, namely, Kalu Mia Halder and Jahed Ali Halder. Accordingly, the said two sons became owner in respect of schedule-1 property to the extent of $\frac{1}{4}$. That while Mofazzal Halder and Kalu Mia Halder remained in possession as owners of the said land more than 12 years, they executed a power of attorney dated 04.06.2000 in favour of Md. Monjur Rahman and, thereafter, they sold the said property through the said attorney holder, namely, 1.40 acre land of schedule 1 property, in favour of defendant Nos. 2 and 3. That in the said power of attorney and sale deed, the said Kalu Mia Halder was shown as the only son of Chunnu Halder out of mistake, and Mofazzal Halder and Kalu Mia Halder were shown as the owners of the entire property of schedule-1.

(ii) That the said Jahed Ali died leaving his wife Shamsunnahar and two sons, namely, Sahabuddin and Dudu Mia, and one daughter, Rasheda Begum. Accordingly, the said sons and

daughter became owners in possession of the share of Jahed Ali. That the said Asia, while in possession as owner by way of inheritance in respect of $\frac{1}{10}$ land of schedule 1 property, died leaving two sons, namely, Siddik and Alauddin. Accordingly, the said two sons became owner in possession of share left by Asia. That while Amena was owner in possession of $\frac{1}{10}$ share left by her father Ibrahim Halder, she died leaving behind three sons, namely, Senu Dewan, Md. Monir Dewan and Khorshed Dewan, as well as one daughter named Halima. Accordingly, the said sons and daughter became owners in possession of the share left by Amina. That the said heirs of Jahed Ali, Amina and Asia transferred 60 decimal land in favour of defendant Nos. 2 and 3 and handed over possession by executing deed. However, in the said deed, it was stated that original owner, Manik Haji, died leaving four sons, namely, Chunnu Mia Halder, Ibrahim Halder, Afajuddin

and Abul Goni Halder, but since Manik Haji, during his life time, transferred the said property by way of oral gift in favour of his two sons, namely, Manik Halder and Chunnu Mia Halder, he died intestate. Since Manik Haji transferred entire property in favour of his two sons, namely Ibrahim Halder and Chunnu Halder, by way of oral gift, the other sons of Manik Haji, namely Afajuddin Halder and Goni Halder, did not acquire any property on the death of Manik Haji.

(iii) That in respect of schedule-2 properties, the case of the contesting-defendants is that the said property originally belonged to Altu Mia @ Alfu Mia and, accordingly, C.S. and Petti khatian concerned were recorded in his name finally and that Altu Mia sold the said property in favour of one Hossain Halder and handed over possession. Accordingly, 1.2 acre land under schedule-2 was recorded in the name of the said Hossain Halder in R.S. Khatian No. 422. That, admittedly, Hossain Halder died leaving four sons and two daughters. That the children of Hossain Halder amicably partitioned the said

property among themselves and, accordingly, sold the said property along with other properties and appointed one Mrs. Rokeya Rahman as attorney in respect of the said property and other properties by executing registered power of attorney dated 06.08.1997. That, thereafter, the said attorney on behalf of the heirs of Hossain Halder, sold the said property in favour of defendant Nos. 2 and 3 and handed over possession.

(iv) That the properties mentioned in schedule 3 originally belonged to the admitted owner Ahammod and C.S/ Petti Khatian No. 6 was prepared finally in his name. That Ahammod died leaving his two sons, namely, Yeadon Ali, and Akrom Ali and, accordingly, their names were finally recorded correctly in S.A Khatian No. 387 and other concerned record of rights. That the said Ahammod did not have any daughters named Amena and Somirunnesa. Accordingly, the statement in the plaint as regards two sons and two daughters of Ahammod is a false story. That the said Yead Ali, while remained owner in

respect of his share in schedule-3 property, died leaving one son, Abdul Hoque Madbor, and four daughters, namely, Monoara Begum, Morium Begum, Khadiza Begum and Firoja Begum. That the said Monoara Begum died leaving her husband, Shahabuddin, son Abu Tayed, and two daughters, namely, Shahnaj Begum and Parvin. Accordingly, the said heirs became owner of the properties left by the said Monoara Begum.

- (v) That while said Akram Ali remained owner in possession in respect of his share in schedule-3 property, he died leaving his wife Firoja Khatun and four sons, namely, Abdus Sattar, Abdul Awal, Abdul Kadir and Abdul Aziz. Accordingly, the said heirs became owner in possession of the share left by Akram Ali. That the said heirs and subsequent heirs of the original owner Ahmammod sold entire land in schedule-3 by executing registered saf-kabala dated 15.05.1997 in favour of defendant No.1 establishment (Shah Cement), wherein defendant No.1 established the biggest cement industry in the sub-continent and, accordingly,

producing and marketing the said cements. That the said defendant-1 mutated the said property in its favour vide Mutation Case No. 357/ 2001-2002 (Exhibit-2) and mutation in respect of some other property is still under process and, accordingly, they have been paying land rents in respect of the mutated properties and that the said properties have been mortgaged to the bank. That the plaintiffs or their predecessors never became owner of the property and they created some false deeds and, accordingly, claiming title and shaham in respect of the said property. Therefore, the case of the plaintiffs is liable to be dismissed.

2.5 Upon above contesting pleadings of the contesting parties, the Court below framed five issues, namely:

- (a) Whether the suit is maintainable?
- (b) Whether the suit suffers from defect of parties?
- (c) Whether the plaintiffs have their title and possession in the suit land?
- (d) Whether the plaintiffs are entitled to get decree of separate shaham as prayed for?
- (e) What other reliefs the plaintiffs are entitled to?

2.6 To prove their case, the plaintiffs produced seven witnesses (P.Ws.1-7), including some of the plaintiffs and produced various registered title/purchase deeds and power of attorneys which were marked as (Exhibit-1-19). As against this, the contesting defendants produced four witnesses (D.W.1-D.W.4) and produced some documents, which were marked as Exhibit-K-9. Thereupon, the Court below, after hearing the parties, decreed the suit in favour of the plaintiffs vide impugned judgment and decree dated 30.05.2012 (decree signed on 07.06.2012), thereby, declaring title in favour of the plaintiff in respect of 256.73 decimal land mentioned in schedules 1, 2 and 3 and gave separate shaham in favour of the plaintiffs in respect of the said land. Accordingly, the Court directed the defendants to make amicable partition in respect of the said share of the plaintiffs within 30 (thirty) days, failing which the plaintiffs would get the said shaham through the Court. Being aggrieved by this judgment and decree, the defendants Nos. 1, 2, 3(Ka) to 3(Uma) have preferred this appeal.

2.7 The appeal is contested by the plaintiff-respondent No.1 through learned advocate Mr. Mohammod Hossain.

3. **Submissions:**

3.1 Mr. Probir Neogi, learned senior counsel, appearing along with Mr. Shishir Kanti Mazumder, learned advocate, on behalf of the appellants, has made the following submissions:

(a) That the contesting defendants tried to prove the said oral gift of Manik Haji in favour of his two sons. However, if it is found that the said oral gift is not proved, the defendants are entitled to get shaham in respect of the said two sons on the strength of whose title the defendants are claiming title and shaham in the schedule-1 properties.

(b) That although there is no dispute in respect of the claim of the plaintiffs in respect of schedule 2 property, the defendants have serious claim in respect of certain portion of land in schedule-3 property on the strength of their title obtained from two sons of the admitted owner Ahammod. Therefore, according to him, if it is found that

Ahammod died leaving two sons and two other daughters, the defendants may get less share, but they cannot be denied any share of the property left by Ahammod as they have established their purchase from two admitted sons of Ahammod.

3.2 As against above submissions, Mr. Mohammad Hossain, learned advocate appearing for the plaintiff-respondent No.1, has made the following submissions:

- I. That original owners in three sets of properties are admitted in this case, namely, Manik Haji as the original owner of schedule-1 property, Hossain Halder of schedule-2 property and Ahammod Ali of schedule-3 property. He submits that even the evidences produced by the defendants clearly show that Manik Haji died leaving four sons and the names of the said four sons are mentioned therein. Therefore, according to him, their very case that Manik Haji had two sons and, accordingly, Manik Haji had gifted his entire property in favour of the said sons falls apart;
- II. Further referring to the depositions of D.Ws., learned advocate submits that none of the said witnesses could depose as to the time and manner

of such oral gift or that they failed to produce any witness to such oral gift of Manik Haji in favour of his said two sons. Therefore, the Court below has rightly held that the defendants have miserably failed to prove the said oral gift by Manik Haji, the very original basis of their title. Learned advocate submits that when the defendants failed to prove the very original basis of their title, the subsequent registered power of attorney or registered deed or mutation etc. will not give them any title in their favour.

III. By referring to the plaintiffs' witnesses, namely P.W.1- P.W. 7, along with the exhibits 1-19 as produced by the plaintiffs, he submits that the plaintiffs have proved their case as pleaded in the plaint by producing registered documents one after another and established their chain of title from Manik Haji via heirs of Manik Haji.

IV. In respect of schedule-2 property, he submits that the plaintiffs have proved their title and shaham in schedule-2 property which is not contested by the defendants. In respect of schedule-3 as well,

learned advocate submits that the plaintiffs have proved that the admitted owner Ahammod had two other daughters. Therefore, the chain of title of the plaintiffs in respect of schdule-3 also could not be shaken by the defendants in any way. This being so, according to him, this appellate Court does not have any cogent reason to interfere into the impugned judgment and decree passed by the Court below.

4. **Deliberations, Findings and Orders of the Court:**

- 4.1 Only point for determination in this appeal is whether or not the impugned judgment and decree can sustain in law and fact.
- 4.2 To address the submissions of the learned advocates, we have examined the registered documents produced by the plaintiffs, namely, Exhibits-1-19, and contents thereof. It appears therefrom that the chain of title, as pleaded by the plaintiffs in the plaint, have been established by them through those registered documents, which have presumptive value. Not only that, the plaintiffs have also established that the admitted owner of schedule-1 property, namely, Manik Haji, had four sons and three daughters. Even in their

written statements, the defendants admitted that in one of their title deeds, the deed writer wrote four sons of Manik Haji. On the other hand, the defendants failed to prove that Manik Haji had only two sons. Not only that, the very witness produced by defendants, namely, D.W.4, even deposed that he did not have any idea whether admitted owner of schedule-1 property, Md. Manik Haji, had four sons and three daughters. He even could not mention the date of the said oral gift. We have also not found anything in the written statement of the defendants as to the nature of the said oral gift or the manner in which the said oral gift was made. Therefore, the case of the defendants in respect of the said oral gift has entirely collapsed at the beginning.

4.3 On the other hand, in respect of property mentioned in schedule-3, it appears that the defendants again failed to prove that admitted owner Ahammod Ali had only two sons, particularly when the plaintiffs produced an evidence to prove that the said Ahammod Ali had two sons and two daughters. This being so, it appears that

while the plaintiffs have consistently proved their case by producing cogent evidences one after another, the defendants have somehow came up before the Court below with a very clumsy case raising huge doubt in respect of their title in the said properties. In respect of Schedule-2 property, since defendants did not seek any separate shaham, we need not discuss the same any further.

4.4 In so far as the case of plaintiffs is concerned in respect of their title in the properties mentioned in the said three schedules to the plaint, we are of the view that the trial Court has rightly decreed the suit in their favour and, accordingly, granted separate shaham. This being so, we do not find any case to interfere with the impugned judgment and decree and as such the appeal should fail.

4.5 In the result, the appeal is dismissed. The ad-interim order, if any, thus stands recalled and vacated.

Send on the lower Court records.

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(Sheikh Hassan Arif, J)

I agree.

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(Biswajit Debnath, J)