

Present:
Mr. Justice Nozrul Islam Chowdhury
And.
Mr. Justice K. M. Kamrul Kader

First Appeal No. 118 of 2011

M/S. Talukder Chemicals Limited,
represented by its Managing Director,
Mozzamel Haque Talukder alias H.M. Talukder
..... Plaintiff-appellants

-Versus-

Government of Bangladesh and others
..... Defendant-respondents.

Mr. T. H. Khan, Senior Advocate with
Mr. Md. Jalal Uddin and
Mr. Mahmudul Alam Bhuiyan, Advocates
.....for the appellants

Mr. S. S. Sarker, Advocate
.....for the respondents

Heard on: 07.3.12, 08.3.12, 14.3.12 and 12.04.2012

Judgment on: 03.05.2012

K. M. Kamrul Kader, J:

This appeal at the instance of the plaintiffs is directed against the judgment and decree dated 20.03.2011 passed by the learned Joint District Judge, 2nd Court, Narayangonj, in Title Suit No. 64 of 2009, dismissing the suit.

Facts in a nutshell given rise to this appeal, are that, the appellants as plaintiffs instituted the Title Suit No. 64 of 2009 before the learned Joint District Judge, 2nd Court, Narayangonj impleading the respondents as defendants seeking a decree for declaration of Title for an area of 1.75 acres of land situated at 5 (five) separate plots. The plaintiffs claim an area of 53 decimals of land in C. S. plot No. 167, S. A. Plot No. 167, C. S. Khatian No. 388 in S. A. Khatian No. 372 under Tarabo Mouza. The land originally owned and possessed by Ayamon Nessa Bibi and her name was

recorded correctly in the C. S. khatian. Thereafter, she transferred the said land to her 3 (three) brothers namely Sheikh Mozaffor, Sheikh Majom and Sheikh Kolomdi, vide a registered saff-kabala deed No. 2884 dated 18.01.1914 and delivered possession thereon. Thereafter, Sheikh Majom and Sheikh Kolomddi got the said land, vide an amicable partition amongst 3 (three) brothers. Thereafter, Sheikh Kolomdi died leaving behind his only son Kolom Miah as his sole heir and Sheikh Majom died leaving behind his two sons namely Jobed Ali and Toyeb Ali as his heirs and they inherited the same. Kolom Miah got an area of 18 decimals of land in C.S. plot No. 167 vide an amicable partition and Jobed Ali and Toyeb Ali got the rest of the property in their *shaham*. Thereafter, Kolom Miah transferred an area of 18 decimals of land in the C.S. plot No. 167 to Tayeb Ali vide a registered deed saff-kabala being No. 4192 dated 21.9.1959 and delivered possession thereon. Thereafter, Toyeb Ali transferred an area of 43 decimals along with accreted land in C.S. plot No.167 to the plaintiff No. 2 M/S Maheub Company, vide 2 (two) registered saff-kabala deeds being No. 26270 and 26205, both dated 22.07.1980 and delivered possession thereon. Jaded Ali also sold an area of 20 decimals along with accreted land to the plaintiff No. 2, M/S. Maheub Company, vide a registered saff-kabala deed No. 26206 dated 22.7.1980 and delivered possession thereon. The plaintiff No. 2 owned and possessed an area of 53 acres of land in C.S. plot No. 167 and accreted land an area of 13 decimals of land in total area of 66 decimals of land in the said suit plot and he mutated his name on 18.04.1985 vide a mutation case being No. 1354 of 1981-82 and paid rent regularly to the Government. He possessed the suit

land by constructing a Mill within the knowledge of everyone concern. The plaintiff claimed an area of 53 decimals of land in C.S. plot No. 167.

C. S. tenant Golami Sheikh owned and possessed an area of 39 decimals of land, in C.S. plot No. 166, C.S. khatian No. 206 under Mouza Tarabo. He died leaving behind his only son Sodu as his heir. Sodu transferred an area of 19 decimals of land to his daughter Batasi Bibi and son-in-law Abdul Aziz vide a registered *heba-bil-awaj* deed being No. 2084 dated 29.02.1980 and delivered possession thereon. Thereafter, Batasi Bibi and Abdul Aziz transferred the said 19 decimals of land to the plaintiff No. 1 M/S Talukder Chemicals Ltd. vide 2 (two) registered saff-kabala deed being No. 15636 dated 29.04.1980 and 15741 dated 29.04.1980 and delivered possession thereon. Sodu died leaving behind his two sons namely Taher Ali and Sultan Miah, they inherited rest of 20 decimals of land in said plot and their name was recorded correctly in S.A. khatian No. 203. They transferred the said property to this plaintiff No. 1 M/S Talikder Chemicals Ltd. vide a registered saff-kabala deed being No. 15334 dated 26.4.1980 and delivered possession thereon. The plaintiffs mutated their name and paid rent regularly to the Government paid rent of the C.S. plot No. 166 till 2008.

C.S. tenants Kamal Uddin Sheikh, Sodu Sheikh, Kadir Sheikh, Hamid Sheikh and Mohammad Sheikh owned and possessed an area of 22 decimals of land in C.S. plot No. 172. Thereafter, Kamal Uddin Sheikh alone got 22 decimals of land in C.S. plot No. 172 vide an amicable partition, he died leaving behind his only son Md. Gadu as his heir. Thereafter, Gadu transferred this suit schedule land covering an area of 22 decimals in C.S. plot No. 172 vide a registered saff-kabala deed being No.

15248 dated 25.4.1980 to the plaintiff No. 1 M/S. Talukder Chemicals Ltd. and delivered possession thereon. The plaintiff No 1 mutated his name and paid rent regularly to the government.

C.S. tenant Golami Sheikh owned and possessed an area of 31 decimals of land in C.S. plot No. 173, C. S. Khatian No. 168. Golami Sheikh died leaving behind his only son namely Sodu @ Sadaruddin as his heir. Sodu @ Sadaruddin died leaving behind his two sons namely Taher Ali and Sultan as his heirs. During the last S.A. operation, an area of 31 decimals of land in C.S. plot No. 173 was recorded correctly in the name of Taher Ali and Sultan in S.A. Khatian No. 137. Thereafter, Taher Ali and Sultan transferred an area of 31 decimals of land in C.S. plot No. 173 vide two registered saff-kabala deeds being No. 15380 dated 26.4.1980 and the deed No. 15403 dated 28.4.1980 to the plaintiff No. 1 and delivered possession thereon.

The C.S. tenant Munshi Sauth owned and possessed an area of 30 decimals of land in C. S. plot No. 171, C. S. khatian No. 366. He died leaving behind his two sons namely Naymuddin and Nur Boks as his heirs. Subsequently, Naymuddin died leaving behind his only son Ajmot Ali as his heir and Nur Boks died leaving behind his two sons namely Mohammad Ali and Dudu Miah as his heirs. Ajmot Ali son of Naymuddin transferred an area of 10 decimals of land in C.S. plot No. 171 to Mohammad Ali son of Nur Boks vide a registered saff-kabala deed being No. 641 dated 24.02.1956 and delivered possession thereon. Dudu Miah son of Nur Boks sold out 10 decimals of land to his brother Mohammad Ali vide a registered saff-kabala deed being No. 6454 dated 09.10.1956 and delivered the possession thereon. Thereafter, Mohammad Ali transferred an

area of 60 decimals of land including accreted land in C. S. plot No. 171 vide 2 (two) registered saff-kabala deeds being No. 14214 and deed No. 14297, both dated 17.4.1980 to the plaintiff No. 1 and delivered possession thereon. The plaintiff No. 1 mutated his name and paid rent regularly to the government. The plaintiffs obtained electricity and gas connection and installed a Mill thereon and the said mill is running for the last 30 years within the knowledge of all concern. On the 15th of January, 2009 the plaintiffs went to the local *Tohsil* office to pay rent and came to know that the suit land was recorded as government khas land and they refused to take rent from the plaintiffs. The plaintiffs after obtaining the R. S. *Porchas* of the said suit schedule land came to know that the suit schedule land was wrongly recorded as government khas land. The suit land is a private land according to the C.S. and S.A. record and in the R.S. record it was wrongly recorded in the name of the government as khas land, which creates cloud in the title of the plaintiffs and the cause of action arose on 15.1.2009, as such, they filed this instant suit against the government and prayed for a decree that the plaintiffs are the sole owner of the suit schedule properties and the suit land is not government khas land.

The defendant Nos. 1-4 entered appearance by filing a written statement denying the material allegations and claims brought in the plaint and contended, inter alia, that the suit is not maintainable in its present form, there is no cause of action and the suit is barred by law. During the last R.S. operation, an area of 0.87 acres of land in S. A. plot Nos. 167, 166, 172, 173 and 171, under S.A. khatian No. 372, 135, 137 and 350 were recorded as R. S. plot No. 792, 793, 801 and 797, under the No. 1 khas khatian in the name of the government. This land was diluviated in the

river Sheetalakkha. During the last R.S. operation, the Revenue Officials after surveying the suit schedule R.S. plot No. 792, 793, 801 and 797, recorded the said land in the name of the government under R.S. khatian No. 1, without any objection from any corner and the same was finally published by the concern authority, according to the provision of 144 of the State Acquisition and Tenancy Act. The government owned and possessed the suit schedule land, as such, no objection was filed at the time of revisional survey in S.A. plot No. 166, 167, 172, 173 and 171 and the same was recorded as R.S. Khatian No. 1. The plaintiffs tried to grab the government property by creating some false and fabricated documents and filed this suit against the defendants. The government owned and possessed the suit schedule land. The plaintiffs or his predecessors never owned and possessed the suit schedule land, as such; the suit is liable to be dismissed.

At the commencement of the trial 6 (six) issues were framed by the trial court including 2 (two) issues as to the effect that whether the plaintiffs have got any right, title, interest and possession in the suit land or not and to the effect that whether the suit schedule land is government khas land or not.

In the suit the plaintiffs examined 5 (five) witnesses and adduced documentary evidence in support of their case while defendants examined 1 (one) witness and adduced documentary evidence in support of their case and upon conclusion of the trial the learned Joint District Judge, 2nd Court, Narayangonj dismissed the suit of the plaintiff.

Having been aggrieved by the aforesaid judgment and decree dated 20.03.2011 passed in Title Suit No. 64 of 2009 the plaintiffs as appellants preferred this instant appeal.

Learned Senior Advocate Mr. T.H. Khan appearing for the appellant submits at the outset that the learned Joint District Judge, found that the plaintiffs failed to prove their case by adducing reliable oral and documentary evidence, the trial Court misconstrued the case and misread the documentary evidence of the case and upon non consideration of materials on record, arrived at a wrong finding and dismissed the suit, which caused miscarriage of justice. The learned senior advocate further submits that the trial court failed to consider that the plaintiffs filed this suit for declaration of title for an area of 1.75 acres of land in 5 (five) separate plots under different khatians. The court below discussed 1 (one) plot only, which is plot No. 167 under C.S. khatian No. 388 out of 5 (five) suit schedule plots. The trial court did not discuss anything regarding the rest of the 4 plots of the schedule and he also failed to consider the documentary evidence as well as the oral evidence adduced by the witnesses, as such, the findings of the trial court in the impugned judgment are not tenable in the eye of law. The finding of the learned Joint District Judge that the plaintiffs failed to prove their right, title and interest in the disputed land mentioned in the C.S. Khatian No. 388 and C.S. Plot No. 167, is contrary to evidence as such not sustainable in law. The trial court's finding with regard to the exhibit-‘ੳ-ੳ’ that Aymunnessa Bibi did not get any right and title in the suit plot No. 167 and she was not in possession of the suit land is erroneous. The trial court's findings with regard to the exhibit-‘ੳ-ੳ’, the deed No. 2884 dated 18.1.1914 that Sheikh Mozammel, Kolom Uddin and Mozaffor did not get any right and title over the suit land, consequently the plaintiffs did not get any right and title over the suit land is also based on misreading

of the documentary evidence as such not sustainable in law. The learned Joint District Judge utterly failed to consider other documents adduced by the plaintiffs, such as the *Heba-bil-awaj* deed No. 2084 dated 29.4.1940 and the deed No. 15636 dated 29.4.1980, S.A. khatian No. 203, mutation case and rent receipts of the plaintiffs with regard to the C.S. plot No. 166 and the deed No. 877 dated 25.8.1980 in respect of the C.S. plot No. 175 and the deed No. 15380 dated 26.4.1980, deed No. 1540 dated 18.4.1980 in respect of the C.S. plot No. 173 and the deed No. 6456 dated 17.4.1980, in respect of C.S. plot No. 171. Findings and decisions of the trial court in respect of the said deeds and documents are unwarranted and not tenable because of being based on misreading and misconstruction of those documents. Although, the trial court found that the plaintiffs proved their case by adducing evidence that they are in possession of the suit land. The learned Senior Advocate further submits that the plaintiffs proved their case by adducing reliable oral and documentary evidence and most of the deeds adduced by the plaintiffs were executed and registered more than 30 years before and these deeds bear the evidentiary value as per section 90 of the Evidence Act. The learned trial Judge most arbitrarily and erroneously dismissed the suit of the plaintiffs, which caused miscarriage of justice. The learned Judge also failed to consider that the defendant failed to prove their right, title and interest in the suit land, as such; the R.S. record was wrongly prepared and recorded in the name of the government. The C.S. and S.A. records were correctly prepared and recorded in the name of the plaintiff's predecessors. The learned advocate for the plaintiff next submits that the finding of the trial Court with regard to the exhibit-‘১-ক’, the sale deed No. 2884 dated 18.1.1914 is a forged document because there is no

plot and khatian numbers in the schedule of said deed, as such, Sheikh Moazzem, Kolomdi and Mozaffor did not acquire any right, title and interest in the suit land through this deed. The aforesaid findings are perverse and not sustainable in law. The learned Judge misconstrued the material evidence on record and dismissed the suit on wrong findings. He next submits that the plaintiffs after possessing the suit land, mutated the same in their name and paid rent regularly to the government and their name was recorded correctly in the record of right. The government has no right, title and interest in the suit land. The Government also hopelessly failed to prove their case and the learned Judge of the trial court with erroneous findings came to an erroneous decision and the same is liable to be set aside.

Mr. S.S. Sarker, learned advocate appearing on behalf of the defendant–respondent submits that the learned Joint District Judge after careful consideration of the oral and documentary evidence and other materials on record dismissed the suit of the plaintiffs. He next submits that the plaintiffs seriously failed to prove their case by adducing reliable oral and documentary evidence that they have any right, title and interest in the suit schedule land. On the other hand the defendants proved their case by adducing reliable oral and documentary evidence that the government has right, title, interest and possession in the suit land and the said suit land was recorded correctly in the khas khatian No. 1, according to the provision of the State Acquisition and Tenancy Act and the appeal is liable to be dismissed.

With a view to appreciate the submission made the learned advocates from both sides we have to consider the evidence to evaluate the extent to

which each of the parties has proved their respective case and in doing so we find P.W. 1 Mozammel Hoque Talukder deposed on behalf of the plaintiffs as Managing Director of both the companies. He reiterated the statement made in the plaint that plaintiffs bought this suit land thereafter, they mutated the suit schedule land in their name and constructed a chemical industry with financial assistance from Janata Bank Limited and they owned and possessed the suit land for the last 30 years. On 15.01.2009 he went to Nowapara Tehsil Office to deposit rent in favour of the government, but the Revenue Officials refused to take rent and claimed the same was recorded in the name of the Government under khas khatian No. 1, after obtaining R.S. *Porcha* he came to know that the said land is wrongly recorded in the name of the government as Khas land. The suit land is recorded correctly in the name of private person-the predecessors of these plaintiffs in C. S. and S.A. Khatians. This witness produced all relevant documents; these are C.S. khatian Nos. 388, 206, 168, 366 and 368, S.A. khatian No. 203, 4 copies draft R.S. Khatian No. 1 and Mutation Khatian 5 copies, which marked as Exhibit-1 series. He denied that the land in S.A. plot No. 167, 172, 166 and 173, under S.A. khatian No. 372, 135, 137 and 350 were diluviated in the river Sheetalakkha, during the last R.S. operation the land was recorded in the name of the government without any objection, in khas khatian No. 1, as R.S. plot No. 792, 793, 801, 797. He denied that the plaintiffs are not in possession of the suit land, government possesses the same.

During cross-examination this witness deposed that he filed this suit with regard to the properties of the 5 (five) C. S. khatians and the owners of the suit land are different. This witness stated that Ayamon Nessa Bibi

owned and possessed an area of 53 decimals of land in the suit schedule property. Thereafter, she sold the said land to her 3 (three) brother. However he cannot disclose when and where the owners of the C.S. plot No. 167 made amicable settlement. This witness also disclosed that the R.S. plot Nos. of the suit schedule lands are 798, 792, 796, 797 and 801. He denied the suggestion that he bought diluviated property. This witness disclosed that in 1981-1982, he constructed a Chemical Industry, in an area of 307 decimals of land. It was measured by an *Amin* and the industry surrounded by boundary wall. He denied the suggestion that he constructed the said industry in the government land. He denied the suggestion that he filed this suit to grab the government land. He denied the suggestion that he deposed falsely in this suit. He also denied the suggestion that the sale deed mentioned in the plaint are false, fabricated and collusive and the vendors are not owner of the suit land.

P.W. 2 Md. Hanif, an official of the Sub-Registry Office authenticated 11 deeds. In his cross-examination he denied the suggestion that he deposed falsely in this case.

P.W. 3 Mohammad Ali Samad an official of the Sadar Record Room he authenticated deed No. 2084 dated 29.4.1940. During cross-examination he stated that he has no personal knowledge about the said deed and denied the suggestion that he deposed falsely in this case.

P.W. 4 Abdus Sattar in his deposition he deposed that he knows the plaintiffs and the suit schedule land. In his deposition he stated that there are factories of Talukder and Mehabub companies in the suit schedule land. This witness also disclosed that he live in the neighbouring plot of the suit schedule land. This witness also deposed that the government never

possessed the suit schedule land. During cross-examination this witness disclosed that he live at the eastern side of the suit schedule land. He denied the suggestion that he deposed falsely.

P.W. 5 Rafiqul Islam in his deposition he stated that he knows the plaintiff and the suit schedule land. He lives near the suit schedule land. He disclosed that the Talukder Chemical Company is in the suit schedule land. He disclosed that the government never possesses the suit land. During cross-examination he stated that he did not know the defendant. He denied the suggestion that the government possesses the suit land. He also denied the suggestion that he deposed falsely in the suit.

D.W. 1 Md. Solimullah, a Revenue Officer of the Tarabo Land Office, he deposed on behalf of the defendant No.1 to 4. This witness reiterated the statement made in the written statement and deposed that the suit schedule land situated in R.S. khatian No.1, R.S. plot No. 792, 793, 801 and 797, S.A. khatian No. 372, 137, 150 S.A. plot No. 166, 167, 172, 173 and 179, under Tarabo Mouza. A part of the suit schedule land were diluviated in the river as such, it was recorded in the name of the government No. 1 khas khatian, an area of 20 decimals of land in R.S. plot No. 792, an area of 13 decimals of land in plot 801, 31 decimals of land in plot No. 797 and 18 decimals of land in plot No. 793. In total an area of 87 decimals of land were recorded in the No. 1 khas khatian. The said 87 decimals of land belonged to the government. This witness deposed that the government possessed the suit land. He denied the suggestion that the plaintiffs possessed the suit schedule land. This witness produced all relevant documents; these are attested photocopy of S.A. and R.S. khatian, which marked as Exhibit 'ka' series.

During cross examination this witness disclosed that there are no C. S. records in the Tarabo Land Office. He could not disclose the name of the C.S. tenant. However, this witness could not disclose whether the property was acquired by the government from S. A. recorded tenant. He claimed this land as government property according to the R.S. record. However, he could not disclose when the property was alluviated or diluviated. He could not disclose whether they open any record or filed any Miscellaneous Case with regard to the alluvion and diluvion of the said property. This witness also disclosed that the property is not leased out to anyone. He denied the suggestion that the suit land is possessed by the plaintiffs. He also denied the suggestion that the R.S was wrongly recorded in the name of the government. He denied the suggestion that they received any rent from the plaintiffs. He denied the suggestion that he deposed falsely in this suit.

These are all about the deposition of the witnesses in a nutshell wherefrom it transpires that the plaintiffs filed this suit for declaration of title for an area of 1.75 acres of land in 5 (five) separate plots under different khatians, including an area of 53 decimals of land in C.S. Plot No. 167 under C.S. Khatian No. 388. The land originally belonged to one Ayamon Nessa Bibi, she transferred the suit land to her 3 (three) brothers namely Sheikh Mozaffor, Sheikh Majom and Sheikh Kolomdi vide a registered saff-kabala deed being No. 2884 dated 18.1.1914, the said deed is exhibited as exhibit-1 'A'.

We have noticed that the findings of the learned Joint District Judge with regard to the C.S. Khatian No. 388 and the registered saff-kabala deed No. 2884 dated 18.1.1914 that Ayamon Nessa Bibi did not acquire any

right, title and interest according to the C.S. Khatian No. 388, as such, Sheikh Mozaffor, Sheikh Majom and Sheikh Kolomddi did not acquire any right, title and interest in the C.S. plot No. 167 vide registered saff-kabala deed being No. 2884 dated 18.1.1914. Firstly, the trial court finds that Ayamon Nessa Bibi could not prove her right, title and interest in an area of 53 decimals of land in C.S. plot No. 167, under C.S. Khatian No. 388. In this regard the learned Joint District Judge observed that:

‘‘ প্রদর্শনী-১-(এ৩) দৃষ্টে দেখা যায় যে, সি.এস. ৩৮৮ খতিয়ানের উপরস্থ মালিক ছিলেন আয়ামন নেছা বিবি এবং মফিজউদ্দিন ছিলেন তাহার অধিনস্থ প্রজা। স্বত্ব ও দখলকার কলামে মফিজউদ্দিনের নাম লিপি আছে। সুতরাং প্রদর্শনী-১-(এ৩) দৃষ্টে প্রতীয়মান হয় যে মফিজউদ্দিন নালিশী সি. এস. ৩৮৮ খতিয়ানের জমিতে প্রজা হিসাবে মালিক ও দখলকার ছিলেন। সুতরাং আরজী বর্নিত মতে নালিশী ৩৮৮ খতিয়ানের ১৬৭ দাগের ৫৩ শতক জমিতে আয়ামন নেছা বিবির স্বত্ব দখল থাকার বিষয়টি প্রমাণিত হয় নাই।’’

We have perused the C.S. Khatian No. 388, in the plain reading of this C.S. khatian, we find that the name of Aymon Nessa Bibi appeared as owner of the suit land and the name of one Mofizuddin appeared as korfa (under-raiyet), an under-raiyet or cultivating raiyet, who holds land by cultivating it either by himself or with the aid of some other person, he was not owner of the said land. Further, Ayamon Nessa Bibi transferred the suit land in 1914, long before enactment of the State Acquisition and Tenancy Act, 1950. The aforesaid findings of the trial court with regard to the exhibit-‘১-৩’ that Aymunnessa Bibi did not get any right and title in the suit plot No. 167 and she was not in possession of the suit land was erroneous, unjust and not sustainable in law. It was recorded correctly in the name of

Ayamon Nessa Bibi and which established her right, title and possession in the suit plot No. 167, under C.S. khatian No. 388. As such, we find and hold that the findings of the learned Joint District Judge with regard to the C.S. khatian No. 388 is erroneous, wrong and misconstrued.

Secondly, the learned Joint District Judge also finds that Sheikh Mozaffor, Sheikh Majom and Sheikh Kolomddi did not acquire any right, title and interest in the C.S. plot No. 167 vide the registered saff-kabala deed No. 2884 dated 18.1.1914. The learned Joint District Judge arrived at this finding on misconception of facts and circumstances of the case and took an erroneous decision that:

“ যেহেতু প্রদর্শনী-১ (জ) তে নালিশী দাগ খতিয়ান উল্লেখ নাই সেহেতু সিদ্ধান্ত গ্রহীত হইলে যে, ইং ১৮.১.১৯১৪ তারিখের ২৮৮৪ নং কবলার নালিশী জমিতে শেখ মাজ্জম, কলমদি ও শেখ মুজাফফরের স্বত্ব অর্জিত হয় নাই।”

Learned Joint District Judge disbelieved this registered saff-kabala deed No. 2884 dated 18.1.1914, assigning a reason that there is no plot and khatian numbers in the said deed. We have perused the aforesaid deed, which marked as exhibit-১ (জ), we find that it is an ancient document. In the schedule of said deed the land was described by the boundaries, it was butted and bounded at the eastern side jote of Golami, at the southern side the jote of Munshi soud, at the western side the Lakka river and at the northern side the jote of Kadir Boks and Rahim Boks. However, the operation of Cadastral Survey in our country was started in 1890 from Chittagong and it was finished in 1940, in Dinajpur District. The sale deed was executed and registered in 1914, during this period people and the deed writers used to identify or specify land, by the owner of surrounding jote etc. as well as the measurement of the land. We do not find any wrong

in describing or specifying the land in the sale deed by names of the owners of the surrounding jote, as the plot numbers were not available at that time.

Further, where any document purporting or proved to be 30 years old is produced from the proper custody, section 90 of the Evidence Act entitles the court to presume that it is a genuine document. The deed itself is more than 30 years old is an ancient document. A 30 years old document when produced from proper custody presumption under section 90 of the Evidence Act as to its validity can be raised. Learned Joint District Judge utterly failed to consider the C.S. record as well as this ancient document and came to a wrong finding that the plaintiff's predecessors-in-interest do not have any right and interest in the suit land.

On a careful scrutiny of the judgment of the trial court we find that the learned Judge of the trial court failed to consider that the plaintiffs filed this suit for declaration of title for an area of 1.75 acres of land in 5 (five) separate plots under different khatians. From the materials placed before us and the evidence on records including the exhibits, we find that the learned Joint District Judge did not consider other 4 (four) C. S. plots mentioned in the schedule of the plaint, though the plaintiffs adduced oral and documentary evidence in support of their case. The trial court utterly failed to consider other documents of the plaintiffs, which were testified by the P.W. 2 and P.W. 3 such as, (a) the *Heba-bil-awaj* deed No. 2084 dated 29.4.1940, the deed No. 15636 dated 29.04.1980, the deed No. 15741 dated 29.04.1980 and 15334 dated 26.4.1980, S.A. khatian No. 203, mutation case and rent receipt of the plaintiffs with regard to the C.S. plot No. 166, (b) the deed No. 15248 dated 25.4.1980, mutation case and rent receipt of the plaintiffs with regard to the C.S. plot No. 172, (c) registered saff-kabala

deed No. 15380 dated 26.4.1980 and the deed No. 15403 dated 28.4.1980, S.A. Khatian No. 137 mutation case and rent receipt of the plaintiffs with regard to the C.S. plot No. 173, C. S. Khatian No. 168. (d) the deed No. 641 dated 24.02.1956, deed No. 6454 dated 09.10.1956, deeds No. 14214 and deed No. 14297, both dated 17.4.1980 mutation case and rent receipt of the plaintiffs with regard to the C. S. plot No. 171, C. S. khatian No. 366.

We have perused these documents and find that the plaintiffs proved their right, title, interest and possession in the suit schedule land and the findings and decision of the trial court is unjust, arbitrary and without any basis rather based on non consideration of the evidence on record as such not sustainable in law.

On a careful scrutiny of the judgment of the trial court we find that the trial court was of the opinion that that defendant failed to prove that the suit schedule land was acquired by the Government through the process of alluvion and diluvion. In respect of finding to this effect, we have also scrutinised the evidence and find no reason to differ with the learned Joint District Judge in respect of this finding. We have also noticed that the trial court was of the opinion that the plaintiff successfully proved that they possessed the suit land by adducing reliable oral and documentary evidence. However, we have noticed that the learned Joint District Judge found to the effect that the plaintiff failed to prove their title in the suit land. From the material placed before us and the consideration of the evidence on record, we find that plaintiffs produced all relevant documents and oral evidence to prove their right, title, interest and possession in the suit land and their names were recorded correctly in the C. S. and S. A

Khatians. The R. S. record was wrongly prepared and recorded in the name of Government under khas khatian at the instance of a vested quarter.

Having considered the materials on record and after hearing the learned advocates appearing from the both sides, we hold that the learned Joint District Judge passed this judgment and decree without applying his judicial mind as such, we are inclined to interfere with the same. We therefore find merits in this appeal.

Accordingly, the appeal is **allowed**.

The impugned judgment and decree dated 20.03.2011 passed by the learned Joint District Judge, 2nd Court, Narayangonj, in Title Suit No. 64 of 2009 dismissing the suit of the plaintiffs, is hereby set aside and the suit is hereby decreed .

Communicate a copy of this judgment and decree immediately.

Nozrul Islam Chowdhury, J.

I agree.