19 SCOB [2024] HCD 172

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Civil Revision No. 4016 of 2015

Sannyashi Mondal
.... Plaintiff-petitioner
-Versus-
Nirmol Chandra Mondol and others
....Opposite parties

Mr. Ashim Kumar Mallik, Advocate
....For the plaintiff-petitioner
Mr. Ahmed Nowshed Jamil with
Ms. Syeda Shoukat Ara, Advocates
....For the opposite-party Nos. 1-3

Heard on: 08.02.2023, 22.02.2023, 01.03.2023, 02.03.2023 and 09.03.2023.
Judgment on: 15.03.2023

Present:
Mr. Justice Md. Akhtaruzzaman

Editors' Note:
The petitioner came to the High Court Division for setting aside the compromise judgment and decree on the ground that the decree was fraudulent and illegal as the parties had not signed the compromise decree and were not aware of it. Moreover, they claimed that the engaged lawyers had not also deposed before the court regarding the terms and conditions and consent of the parties of the solenama. They had also questioned about the title of the opposite parties. The Court analyzing the evidence found that the defendant had no title or ownership over the suit land and held that though an advocate has the authority to act on behave of his clients but he should not act on implied authority except for emergency situations. The court also held that the court must inquire into and decide whether there has been a lawful compromise in terms of which the decree should be passed. Moreover, the court held that the compromise should be in writing and signed by the parties and written authority should be given to the appointed lawyers. Thus, for not following the conditions of order 23 rule 3 of Code of Civil Procedure and for not following proper procedure of law, the court made the rule absolute.

Key Words:
Solenama; Compromise Decree; Order 3 Rule 1, 4 of the Code of Civil Procedure; Order 23 Rule 3; In writing; Signed by the parties

No doubt, a pleader stands on the same footing in regard to his authority to act on behalf of his clients. There is inherent in the position of counsel an implied authority to do all that is expedient, proper and necessary for the conduct of the suit and the settlement of disputes. This power, however, must be exercised bonefide and for the benefit of his client. It is prudent and proper to consult his client and take his consent if there is time and opportunity. He should not act on implied authority except when warranted by exigency of circumstances and a signature of the party cannot be obtained without under delay. ...(Para-57)

Rule 3 of Order 23 of the Code of Civil Procedure:

After the institution of the suit, it is open to the parties to compromise, adjust, or settle it by an agreement or compromise. The general principle is that all matters that can be decided in a suit can also be settled using compromise. Rule 3 of Order 23 of the Code lays down that (i) where the court is satisfied that a suit has been adjusted wholly or in part by any lawful agreement in writing and signed by the parties; or (ii) where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall record such agreement, compromise or satisfaction and pass a compromise decree accordingly. ...(Para-61)

The Court must satisfy itself by taking evidence or on affidavits or otherwise that the agreement is lawful:

The Court must satisfy itself about the terms of the agreement. The Court must be satisfied that the agreement is lawful and it can pass a decree by it. The Court should also consider whether such a decree can be enforced against all the parties to the compromise. A Court passing a compromise decree performs a judicial act and not a ministerial work. Therefore, the Court must satisfy itself by taking evidence or on affidavits or otherwise that the agreement is lawful. If the compromise is not lawful, an order recording the compromise can be recalled by the Court. In case of any dispute between the parties to the compromise, the Court must inquire into and decide whether there has been a lawful compromise in terms of which the decree should be passed. The Court in recording compromise should not act casually. Where it is alleged by one party that a compromise has not been entered into or is not lawful, the Court must decide that question. ...(Para 67 & 68)

Order 3 Rule 1 of the Code of Civil Procedure:

Order 3 Rule 1 of the Code of Civil Procedure provides that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. The proviso thereto makes it clear that the Court can, if it so desires, direct that such appearance shall be made by the party in person. ...(Para-70)

'In writing' serves as a crucial jurisprudential tenet, offering a measure of certainty and accountability in legal proceedings and contractual relationships:

In the realm of legal nomenclature, the term 'in writing' possesses a nuanced significance that denotes the requirement for a documented, tangible expression of information, typically through the medium of the written word, in order to establish the veracity and enforceability of a legal agreement, communication, or provision. This requirement is often mandated by statutes, contracts, or judicial rules, necessitating that the content in question be meticulously recorded on a durable and comprehensible medium, affording parties involved a clear and reliable record of their intentions and obligations. Consequently, 'in writing' serves as a crucial jurisprudential tenet, offering a measure of certainty and accountability in legal proceedings and contractual relationships, while adhering to the principles of transparency and due process in the administration of justice. ...(Para-72)

Mutual assent simply means that there is an agreement reached by both parties on all aspects of the contract's terms and conditions. In summary, these requirements ensure

that contracts are properly formed with clarity on obligations expected from each participant in business dealings involving procurement matters. ...(Para-75)

The compromise should be reduced in writing and signed by them. They must depose on oath before the Court supporting the terms laid down in the solenama and upon receiving the solenama the Court shall consider the deposition and scrutinize the record to find out whether the terms and conditions settled therein are fair and legal and if satisfied, would pass a decree based on the solenama. If the parties authorized their engaged lawyers to compromise the suit or appeal, in that case, written authority should be given by the respective parties to their appointed lawyers. In that case, the lawyers are empowered to file solenama on behalf of their clients. The statements of the lawyers should be recorded on oath by the Court concerned and it must be read over and explained to them and accepted by the lawyer to be correct. Then the Court accepts the same upon observing the legal formalities. ...(Para-77)

JUDGMENT

Md. Akhtaruzzaman, J:

1. This Rule under Section 115(1) of the Code of Civil Procedure (in short, the Code) is directed against the impugned judgment and decree dated 10.11.2015 (decree signed on 17.11.2015) passed by the learned Additional District Judge, 4th Court, Khulna in Title Appeal No. 85 of 2004 allowing the appeal and reversing the judgment and decree dated 16.03.2004 (decree signed on 23.03.2004) passed by the learned Assistant Judge, Koyra, Khulna in Title Suit No. 05 of 1999.

2. Relevant facts for the disposal of the present revisional application, in short, are that the petitioner as plaintiff instituted Title Suit No. 05 of 1999 in the Court of the learned Assistant Judge, Koyra, Khulna for setting aside the compromise judgment and decree dated 31.03.1956 and 23.06.1956 respectively passed by the learned Munsif, Third Court, Khulna in Title Suit No. 73 of 1955 alleging that the decree is fraudulent, collusive, illegal, void and not binding upon the plaintiff and his predecessor. It is further stated that the disputed land appertaining to C.S. khatian No. 22 of Mouza Chak Harikati under Paikgacha Police Station at present Koyra, Khulna belonged to Baburam Mondol who died leaving behind his 4(four) sons Shyam Mondol, Shibram Mondol, Notobor Mondol and Darpan Mondol. After the demise of Darpan Mondol his property was inherited to his wife Tuni Dasi. After the death of Tuni Dasi, the land was devolved upon 3(three) brothers, namely, Shyam, Shibram and Notobor. Thereafter Notobor died leaving behind his 4(four) sons, namely, Himchand, Bhuban, Jogendra and Hajra Mondol. Jogendra died leaving behind his only son Sannyashi Mondol who subsequently died keeping his son Kinu Mondol as his legal heir. Bhuban and Himchad Mondol were killed in the year 1971. Kinu Mondol was single and died in the year 1965. In this way, the disputed property was owned by plaintiff Sannyashi Mondol and the S.A. khatian of the property was accordingly prepared in his name. On 06.12.1982 defendant Nos. 1-5 created an obstacle in cutting paddy grown by the plaintiff and disclosed the matter of the compromise decree passed in Title Suit No. 73 of 1955. The plaintiff is an illiterate person and after obtaining the certified copy of the compromise decree came to know that the said decree was obtained by the defendants by way of practicing fraud. No notice was served upon him and hence the suit.

3. Defendant No. 1(ka), 1(Ga), and 1(Gha) contested the suit by filing a joint written statement contending, amongst others, that the land appertaining to C.S. Khatian No. 22

belonged to Baburam Mondol who died leaving behind 4(four) sons, namely, Shibram, Notobor, Shyam and Darpon. Darpon Mondal died leaving behind his wife Tuni Dasi and her name was recorded in the C.S. khatian. Notobor sold his share to Bhim Mondol by a kabala dated 12 Shrabon, 1327 B.S. and handed over possession thereto, and started living at village Chandipur within Paikgacha Police Station. Notobor died leaving behind 4(four) sons, namely, Jogendra, Hazra, Himchand, and Bhuban Mondol. Hazra died leaving behind Kinu Mondol as his heir. Jogendra died leaving behind plaintiff Sannyashi as his heir. Bhim died and his share was transferred to his brothers. Due to arrear rent the land of suit Jama was put in the auction in Execution Case No. 1911 of 1938 and Shashadhar Dhali purchased the said land in the auction who was also given possession thereto. Janjali Dasi wife of Shyam Mondol and Noni Bala wife of Shibram took settlement of the said land and got Dakhila on payment of rents. Heirs of Notobor illegally managed to record the land in R.S Khatian without knowledge of Janjali Dasi and Noni Bala. Against that wrong record of right Janjali and Noni Bala filed Title Suit No. 73 of 1955 in the Court of the Third Munsif, Khulna, and the suit was decreed on compromise on 31.03.1956 and they got mutated their names and possessed the same. Plaintiff Sannyashi sold .31 decimals of land on 15.05.1982 by a kabala Deed No. 6254 and 6255 to Sukh Bibi and Mobarok Ali Gazi and delivered possession in favour of them. Monohor is a Mohorar of Khulna Judge Court who created a forged Power of Attorney in favour of him allegedly executed by Sannyasi. Kinu Mondol sold .31 decimals of land by kabala No. 6351 dated 15.05.1982 to Sukh Bibi and gave delivery of possession. Bijon sold $.16\frac{1}{2}$ decimals of land by kabala No. 6253 dated 15.05.1982 to Mobarak Gazi. Bidhu Bhushan and Amullya sold their shares by kabala No. 3901 dated 11.04.1978 to Mobarak Ali Gazi. Janjali Dasi sold 3.30 acres of land to Purna Charan Sana by Patta dated 13.05.1951 which was taken in the benami of his son Kanai Lal Sana. S.A. record was prepared in the name of Kanai Lal alone. Thereafter Kanai Lal transferred .66 acres of land by kabala No.11667 dated 28.11.1979 in favour of Bidhu Bhusan and others and delivered possession thereto. Janjali Dasi died leaving behind 5(five) sons, namely, Bidhu, Amullya, Bimal, Avilash, and Bijoy as her heirs. Bijoy sold some land to Ajit Sarder and Vejali. Noni Bala died leaving behind 3(three) sons, namely, Ossini, Rasik, and Prasanna. Prasanna sold his share to Manik Dhali and after the demise of Manik Dhali his heirs had been possessing the land. Rasik sold his share to Avati Bala whereas Ossini sold his share to Parimol. The heirs of Noni Bala sold their shares to different persons and accordingly delivered possession in favour of them. After service of notice in Title Suit No. 73 of 1955, both the parties engaged advocates and then the Suit was correctly decreed on compromise on 31.03.1956. Monohar filed Title Suit No. 23 of 1986 which was later renumbered as Title Suit No. 05 of 1987 and it was dismissed on contest. Against the said judgment and decree, the plaintiff filed Title Appeal No. 393 of 1991 but it was eventually dismissed. Monohor also filed Title Suit No. 55 of 1992 which was also dismissed on contest. It is not correct that Kinu died long before 1965 and the Patta No. 6069 dated 13.06.1951 was correctly executed by Janjali Dasi. Bidhu Bhushan did not take settlement as a landless cultivator in settlement Case No. 218/77-78. Sannyashi filed Title Suit No. 22 of 1985 in the Court of 3rd Munsif which was dismissed. In the above circumstances, the contesting defendants prayed for the dismissal of the suit with cost.

4. To prove the case, the plaintiff examined 4(four) witnesses. The submitted documents of this side are marked as Exhibit Nos. 1-13. On the other hand, the contesting defendants also examined 4(four) witnesses and the documents adduced by this side have been marked as Exhibit Nos. ‘Ka’-‘Da’.

5. Upon consideration of the evidence on record, the learned Assistant Judge decreed the suit vide judgment and decree dated 16.03.2004.

6. Being aggrieved by and dissatisfied with the judgment and decree the defendant opposite party Nos. 1-3 preferred Title Appeal No. 85 of 2004 before the learned District Judge, Khulna, and subsequently the appeal was transferred to the Court of the learned Additional District Judge, Court No. 4, Khulna who upon taking hearings from both sides allowed the appeal reversing the judgment and decree passed by the trial Court vide the judgment and decree dated 10.11.2015.

7. Being aggrieved by the judgment and decree passed in Title Appeal No. 85 of 2004, the plaintiff preferred this civil revisional application contending, *interalia*, that Shashadhar Dhali was not an auction purchaser and subsequent transfer in favour of Janjali Dasi and Noni Bala was not lawful. It is further contended that the solenama filed in Title Suit No. 73 of 1955 was not signed by either party of the suit and the respective parties were not examined in the dock. The lower appellate Court as the last Court of facts did not discuss the evidence on record and failed to form any opinion as to possession of the suit land. In respect of not putting signatures on the solenama as well as non-examination of the executants of the same in the Court was taken into consideration by the trial Court but the appellate Court below without applying his judicial mind held that the said matter is merely a procedural mistake and thus the appellate Court below has committed an error of law occasioning failure of justice.

8. Mr. Ashim Kumar Mallik, the learned advocate appearing on behalf of the plaintiff-petitioner at first put the attention of this Court on Deed No. 2464 dated 28.07.1920 (Exhibit No. 'Ta') and submitted that the defendants filed the certified copy of this document but did not formally prove the same by calling away the respective volume of the deed from the concerned sub-registry office. He next submits that according to the claim of the defendants, Shashadhar Dhali acquired the land of suit Jama by way of auction purchase in Rent Execution Case No. 912 of 1941 but in the Sale Certificate (Exhibit No. 'Gha') the name of Shashadhar Dhali as the auction purchaser of the disputed land has not been mentioned. Mr. Mallik further contends that no notice whatsoever was served upon the plaintiff in Title Suit No. 73 of 1955 which was decreed on compromise and further that the solemnama as well as compromise decree (Exhibit No. 'Uma-1') were fraudulently obtained by the defendants. Mr. Mallik finally submits that the plaintiff has been possessing the suit land and the C.S, S.A, and R.S records of the land were correctly prepared in the names of the predecessor in interest of the plaintiff as well as in his name, whereas the defendants have failed to prove their chain of Title in obtaining the property in question, despite that the learned Additional District Judge allowed the appeal on wrong observations which is not tenable in law and, as such, the impugned judgment and decree is liable to be set aside by this Court.

9. As against these, Mr. Ahmed Nowshed Jamil along with Ms. Syeda Shoukat Ara, the learned advocates appearing on behalf of the defendant-opposite parties contend that the suit is not maintainable in its present form without challenging the judgment and decree passed in Rent Suit No. 1911 of 1938 as well as Rent Execution Case No. 912 of 1941 which are still in force. Mr. Jamil, the learned advocate further contends that the title of Sannyashi Mondal had been extinguished in the above-mentioned rent suit. Referring to the decisions reported in 61 DLR (AD) 116, 11 BLD (AD) 101, and 25 BLT 564 the learned advocate submits that without establishing his title to the suit land the plaintiff has no *locus standi* to seek relief under section 42 of the Specific Relief Act. The learned advocate further submits that the

summons of Title Suit No. 73 of 1955 was duly served upon the parties and after appearing in the suit both the parties agreed to compromise the matter and accordingly submitted a solenama which was duly accepted by the Court and the suit was then lawfully decreed. Mr. Nowshed Jamil also submits that under Rule 3 of Order 23 of the Code, there are no mandatory requirements to put the signatures of the respective parties in a deed of compromise. According to him, there is no need to examine any witnesses in support of the solenama which has been duly executed by the parties, even if law permits that being empowered the engaged lawyer can put his signature on the solenama, on behalf of his client. In support of his submission, the learned advocate put reliance on the decision reported in AIR 1926 Patna 73.

10. Heard the learned advocates of both parties and perused the judgment and decree passed by the Courts below along with the evidence and materials on records explicitly. It appears that admittedly the C.S. Khatian No. 22 (Exhibit No.8) of the suit land was prepared in the name of Baburam Mondal who died leaving behind 4(four) sons, namely, Shibram, Notobor, Shyam, and Dorpon and S.A. Khatian No. 20 was accordingly prepared in their names. Thereafter Notobor died having behind 4(four) sons, namely, Jogendra, Hazra, Himchand, and Bhuban Mondal. Then Hazra died leaving Kinu Mondal as his heir. Jogendra died leaving behind plaintiff Sannyashi Mondal as his heir. It is found from the materials on record that S.A. Khatian No.20 [Exhibit No. 8(Kha)] and R.S. Khatian No.11 [Exhibit No. 8(Ka)] were prepared in the names of the plaintiff along with his predecessors in interest. It is the definite case of the plaintiff that on 06.12.1982 the defendants for the first time disclosed the matter of compromise decree passed in Title Suit No. 73 of 1955 which, according to the plaintiff, is a fraudulent, void as well as a forged decree, neither the plaintiff nor his constituent attorney had signed on the solenama; none of either party to the suit deposed on oath before the Court supporting the contents of the Solenama.

11. On the other hand, the defendants claimed that due to arrear rent, the land of suit Jama was put in auction in Rent Case No. 1911 of 1938, and Shashadhar Dhali purchased the said land in Rent Execution Case No. 912 of 1941 and got delivery of possession through Court. Then Janjali Dasi and Noni Bala took the settlement of the said land and obtained Dakhila on payment of rent. But the heirs of Notobor illegally managed to record the land in R.S. Khatian in their names against which Janjali and Noni Bala filed Title Suit No. 73 of 1955 in the Court of the 3rd Munsif, Khulna where a compromise decree was passed on 31.03.1956. Thereafter the decree holders mutated their names and started to possess the said land. To appreciate the case of the contesting defendants, the relevant portion of the written statement submitted in Title Suit No. 73 of 1955 is reproduced below:

> "যোগেন্দ্র নাথ মন্ডল মৃত্যুবরণ করিলে সন্ন্যাসী মন্ডলকে অর্থাৎ বাদীকে রাখিয়া যান। ভীম মন্ডল অবিবাহিত অবস্থায় মৃত্যু বরণ করিলে তাহার অংশের জমি সহোদর ভ্রাতাগণ প্রাপ্ত হয়। পরে উক্ত জমার কর বাকী পড়িলে মালেক প ন্যায্য বাকী করের বাবদ তাহাদের সেরেস্তায় লিখিত উপর নটবর মন্ডল দিং নামে খুলনার তৃতীয় মুন্সেফী আদালতে ১৯৩৮ সালের ১৯১১ নং খাজনার নালিশ মামলায় ডিক্রি সিদ্ধ করত তাহা খাজনা জারির বিধান মতে ১৯৪১ সালের ৯১২ নং জারিতে দিয়া গত ১৯৪২ সালের ২৭/১ তারিখে প্রকাশ্যে নিলামে উক্ত বাড়ির মহল নিলাম খরিদ করেন। পরে উক্ত নিলাম ইং ০৪/০৩/৪২ তারিখে আদালত কর্তৃক রীতিমত বহাল হইলে তাহারা রয়নামা প্রাপ্তে তাহা জারিতে দিয়া গত ইং ২৩/০৪/৪৩ তারিখে উক্ত জমি জমার আদালত যোগে দখল প্রাপ্ত হন।
>
> পরে উক্ত জমার মালেক মন্মথ সানা দিং দরগাতী স্বত্ব খাজনায় নিলামে বিক্রয় হইলে তাহাদের উপরিস্ড় মালেক শশধর ঢালী দিং তাহা খরিদ করিয়া তাহার বয়নামা প্রাপ্ত তাহা জারিতে দিয়া উক্ত দরগাতী জমায় আদালত যোগে সেহিরতান দখল লইয়া নালিশী জমি জমায় মালিক হয়েন। উক্ত জমি জমা তৎকালীর দখলীয়কার শ্যাম মন্ডল এবং শিবরাম মন্ডল এর পুত্রগণকে উচ্ছেদ করিবার জন্য প্রস্তুতী গ্রহণ করিলে উক্ত মালেক শশধর ঢালী দিং নিকট হইতে উক্ত জমি জমায় বাবদ ষোল আনায় ৩৬ টাকা তের আনা ৬ পাই কর অবধাবনে শ্যাম মন্ডল এর স্ত্রী জঞ্জালী দাসী, বার আনা অংশে এবং শিবরাম এর স্ত্রী ননীবালা দাসী চার আনা অংশে বন্দোবস্ত গ্রহণ করেন। তাহার

প্রমাণ স্বরূপ ১৩৫৪ সালের ২৭শে পৌষ তারিখে ১৩৫৩/৫৪ সালের করাদি আদায়পূর্বক তাহার উপযুক্ত দাখিলাদী গ্রহণ করিয়া নালিশী জমি জমায় নিজেদের স্বত্ব দখল স্থির রাখেন।"

In the aforesaid premises the crux points before this Court are:-

(1) Whether Shashadhar Dhali and others were auction purchased the suit land in Rent Execution Case No. 912 of 1941 or not?
(2) Whether Janjali Dasi and Noni Bala validly take the settlement of the land from Shashadhar Dhali? and;
(3) Whether Janjali Dasi and Noni Bala had lawfully obtained a compromise decree in Title Suit No.73 of 1955 or not.

12. It is contended in the written statement filed by defendant No. 1, son of Janjali Dasi that after the auction purchase, Shashadhar Dhali obtained a Boynama (Sale Certificate) and on 23.04.1943 got possession of the land through Court. In this respect, D.W.1 Nirmal Chandra Mondal in his examination in chief gives out that:

"C.S. 22 খতিয়ানের জমি মালেক বন্দোবস্ড় দিয়েছিল। পরে বলে নালিশী ঐ জমার জমি খাজনার দায়ে নিলাম হয়েছিল। ঐ নিলাম হয়েছিল বাংলা ১৩৪৩/১৩৪৪ সালে। ঐ ৪৩/৪৪ সালে বন্দোবস্ত হয়েছিল। ঐ নিলাম কিনেছিল শশধর ঢালী। তারা বয়নামা দখলনামা পেয়েছিল। নিলাম ক্রেতারা ননী বালাকে।. আনা ও জঞ্জালী দাসীকে ।।/ আনা অংশে বন্দোবস্ত দিয়েছিল। বাংলা ১৩৪৩/১৩৪৪ সালের দিকে জঞ্জালী দাসী ও ননীবালা বন্দোবস্ড় নিয়েছিল। মালেক প্রজা সম্পর্ক হয়েছিল তাদের মধ্যে। কর খাজনা দিত। ১২ আনা জঞ্জালী দাসী ও ৪ আনা ননী বালা দখল করত। নালিশী জমি কবলা করার পর নটবরের কোন স্বত্ব দখল ছিল না কারণ পরে বন্দোবস্ড় হয়েছিল।"

13. In his evidence, D.W.1 submitted the certified copy of the suit register of Rent Case No.1911 of 1938 (Exhibit No. 'Ga') and a certified copy of Sale Certificate of Rent Execution Case No.912 of 1941.

In reply to cross-examination D.W. 1 states as under:-

"খাজনা জারী মামলার সময় আমি কোর্টে গিয়েছিলাম। ঐ মামলায় কে উকিল ছিল জানি না। ঐ মামলায় দায়িক কে কে ছিল জানি না। কার কার জমি নিলাম হয়েছে জানি না। ঐ নিলামে শ্যাম মন্ডলের কোন জমি নিলাম হয়নি একথা সত্য। ১৯১১/৩৮ নং খাজনা মামলা, ৯১২/৪১ নং জারী মামলা ও ২৭/০১/৪২ তারিখের নিলাম তঞ্চকী, যোগাযোগী, বেআইনী অকার্যকর।... ... ... জঞ্জালী দাসী ও ননী বালা ডিক্রিদার। নিলাম খরিদ করেছিল শশধর ঢালী। ঐ শশধর ঢালীকে আমি দেখিনি। শশধর ঢালী কোথায় নিলাম খরিদ করে তা দেখিনি। ... ... ঐ খতিয়ানের জমিতে কে খাজনা দিত আর কে দিত না সে সম্পর্কে আমার বাস্ড়ব জ্ঞান আছে। জঞ্জালী ও ননী বালা খাজনা দিত। জঞ্জালী ও ননী বালাকে আমি দেখেছি। জঞ্জালী ও ননী বালাকে ইং ১৯৫৩ সালের পৌষ মাসে বন্দোবস্ত দিয়েছিল শশধর। বন্দোবস্ড় দেওয়ার সময় আমি জানি না। জঞ্জালী দাসী ও ননী বালা শশধরকে খাজনা দিত কিনা জানি না, তবে চেক দাখিল আছে এইটুকু জানি।"

[emphasis added]

14. From the evidence of D.W. 1 it appears that on 28.02.2004 he testified himself before the Court and on that day he introduced himself as a man of 50 years old and during the cross-examination he claimed that at the time of auction sale, he was present in the Court. From the written statement it is seen that Rent Case No. 1911 was filed in 1938 and the Rent Execution Case No. 912 was started in the year 1941 and Shashadhar Dhali purchased the auction on 27.01.1942. If D.W.1 claimed that on 28.02.2004 (the date of making deposition before the Court) he was a man of 50 years old, then how on 27.01.1942 he was present in the Court to see the auction proceeding? In my view, at the relevant time, he was not at all born. In this situation, I am of the view that D.W.1 tells a lie regarding his presence before the Court on 27.01.1942 when the rent execution case proceeded.

15. The contesting defendant claimed that after completing the formalities of the auction, the sale was confirmed on 04.03.1942 and the Court issued the Sale Certificate and thereafter auction purchaser Shashadhar Dhali got possession of the said land on 23.04.1943.

16. Exhibit No. 'Ga' is the certified copy of the suit register of Rent Case No.1911 of 1938 and Exhibit No. 'Kha' is the certified copy of the Sale Certificate issued in Rent Execution Case No. 912 of 1941. But on perusal of these 2(two) documents, it is not found that Shahadhar Dhali was the auction purchaser of the suit land. During the hearing, the learned advocate of the defendant-opposite party put the attention of this Court to Exhibit No.5 and argued that the name of auction purchaser Shashadhar Dhali is found on this document which was vehemently opposed by the learned advocate of the plaintiff-petitioner.

17. On perusal of Exhibit No.5, it is evident that though it is a sale certificate it does not attract the case in hand as well as the execution case mentioned by the defendant-opposite partitas in their written statement. Rather this is a Sale Certificate of Rent Case No.223 of 1946. So, on going through Exhibit No.5 as well as Exhibit Nos. 'Ga' and 'Gha' I am of the view that Shashadhar Dhali was not at all the auction purchaser of the suit land under Rent Execution Case No. 912 of 1941.

18. It has been observed from the deposition of D.W. 1 that this witness in his evidence has failed to prove the existence of the rent case and rent execution case as well as the matter of auction purchase by Shashadhar Dhali. Other D.Ws also do not corroborate the evidence of D.W.1 regarding the auction purchase of Shashadhar Dhali. In respect of auction purchase made by Shashadhar Dhali, in his evidence D.W.2 Bipin Bihari Sarker divulges, "নালিশী জমায় ৪২ বিঘা জমি। ঐ জমি ২০/৫০ বছর আগে নিলাম হয়েছিল।" So from the evidence of D.W.2 it is clear that he has no definite knowledge about the auction purchase and it further appears from his evidence that he could not say who participated in the auction sale.

19. Regarding acquiring the ownership of Shashadhar Dhali the learned Assistant Judge in his judgment dated 16.03.2004 has observed:

> "বিবাদীপক্ষ দাবী করিয়াছে যে, ১৯১১/৩৮ নং খাজনা মামলার ডিক্রির ভিত্তিতে ৯১২/৪১ নং খাজনা জারী মামলায় নটবর দিং এর জমি নিলাম হয় এবং শশধর ঢালী দিং নিলাম খরিদ করে। বিবাদীপক্ষ হইতে এই খাজনা জারী মামলার স্যুট রেজিষ্ট্রারের জাবেদা নকল ও এই খাজনা জারী মামলায় নিলামের বয়নামার জাবেদা নকল দাখিল করা হইয়াছে। **বয়নামাতে নিলাম ক্রেতার নাম শশধর নয়।"** (emphasis added)

20. The contesting defendant-opposite parties in their written statement more specifically claimed that Janjali Dasi and Noni Bala Dasi took settlement of the land from Shashadhar Dhali upon paying rent to him and accordingly obtained Dakhila dated 27 Poush 1354 B.S. and possessed the same lawfully. But while testifying before the Court, D.W.1 Nirmal Chandra Mondal in his Examination-in-chief more clearly stated: **"বাংলা ১৩৪৩/৪৪ সালের দিকে জঞ্জালী দাসী ও ননী বালা বন্দোবস্ত নিয়েছিল।"**

21. This witness was cross-examined by the plaintiff and in his cross-examination D.W.1 gives out that:

> "জঞ্জালী ও ননী বালাকে ইং ১৯৫৩ সালের পৌষ মাসে বন্দোবস্ত দিয়েছিল শশীধর। বন্দোবস্ত দেওয়ার সময় আমি জানি না। জঞ্জালী দাসী ও ননী বালা শশীধরকে খাজনা দিত কিনা জানি না, তবে চেক দাখিল আছে এইটুকু জানি।" (emphasis put)

22. From going through the averments of the written statement and the evidence of D.W.1 it appears clearly that the defendants have failed to prove the matter of auction purchased by Shashadhar Dhali and also failed to establish when Janjali and Noni Bala took settlement of land from Shashadhar Dhali. Moreover, the contesting defendant-opposite parties had failed to submit any documents of settlement in the names of Janjali and Noni Bala obtained from Shashadhar Dhali.

23. In this respect, the learned Assistant Judge has observed:

> "নটবরের পুত্র যোগেন্দ্র মারা গেলে পুত্র সন্ন্যাসী একমাত্র ওয়ারিশ থাকার কথা উভয়পক্ষ কর্তৃক স্বীকৃত। নিলাম ক্রেতা বা কথিত শশধরের নিকট থেকে ননীবালা ও জঞ্জালী দাসীর বন্দোবস্ত নেওয়ার কথা বিবাদীপক্ষ দাবী করলেও কোন বন্দোবস্তের কাগজ আদালতে দাখিল করেনি। জঞ্জালী দাসী দিং মালেক বরাবর কোন খাজনা আদায় দিয়ে মালেক প্রজা সম্পর্ক সৃষ্টি হওয়া বিবাদী পক্ষ প্রমাণ করেনি।"

24. From the above discussion it is seen that the contesting defendants had failed to prove the acquisition of ownership of Shashadhar Dhali as well as the subsequent title acquired by Janjali and Noni Bala by adducing oral and documentary evidence and, as such, the trial Court has taken the correct view on the disputed matter. But without taking into consideration the evidence as well as materials on record, the appellate Court below allowed the appeal, and in deciding Title Appeal No.85 of 2004 the learned Additional District Judge has observed:

> "বিবাদী দাবী করেন যে, নালিশী জোতের ভূমি বাবদ উপরস্থ মালিক নটবর মন্ডল গং বিরুদ্ধে খাজনা বাকী মামলা দায়ের করিয়াছিলেন এবং ডিক্রি জারী মামলা দায়ের করিয়া নীলাম বিক্রয় করিয়াছেন। বাদীপক্ষের দাখিলী প্রদর্শনী-খ(৬) চিহ্নিত খাজনা জারী মামলার স্যুট রেজিষ্ট্রারের জাবেদা নকল এবং প্রদর্শনী-খ(৫) চিহ্নিত নীলামের বয়নামার জাবেদা নকল পর্যালোচনায় দেখা যায় যে, সি,এস ২২নং খতিয়ানের সাকুল্য ১৩.৯০ একর ভূমি বাবদ খাজনা মামলায় ডিক্রি হয় এবং শশধর ঢালী নীলাম খরিদ্দার হন। বিজ্ঞ নিম্ন আদালত তর্কিত রায়ে বয়নামাতে নিলাম ক্রেতার নাম শশধর নয় মর্মে উল্লেখ করিলেও কে নিলাম ক্রেতা তাহা উল্লেখ করেন নাই। কাজেই বিজ্ঞ নিম্ন আদালত এই বিষয়ে ভুল পর্যবেক্ষণ করিয়াছেন। উপরোক্ত খাজনা মোকদ্দমা, খাজনা জারী মোকদ্দমার মাধ্যমে নিলাম বিক্রয় এবং নিলাম ক্রেতাকে আদালতযোগে দখল প্রদানযোগে বয়নামার মাধ্যমে ইহাই প্রতিষ্ঠিত হয় যে, সি.এস. রেকর্ডীয় মালিকগণের তর্কিত জোতে স্বত্বের অবসান ঘটিয়াছে।"

25. In my view, the observations made by the appellate Court below on this point are not proper and correct.

26. The contesting defendants though claimed that Jonjali Dasi and Noni Bala obtained the land by way of settlement from Shashadhar Dhali but they have failed to produce any documents to prove their chain of title in the suit land. S.A. and R.S khatians were not prepared in their names which gives indications that the suit land is not being possessed by them.

27. The defendant in their written statement also contends that the land appertaining to C.S. Khatian No. 22 measuring 13.90 acres of land belonged to Shibram, Notobar, Shyam Mondal, and Tuni Dasi with their equal shares. Among them, Notobor Mondal sold his share to Vim Mondal on 12 Shrabon 1327 B.S to realize his debts by dint of a kabala deed and handed over possession thereto.

28. In this respect, D.W.1 in his examination-in-chief states that Notobar sold his share to Vim Mondal in 1327 B.S. But while he was cross-examined by the plaintiff, this witness narrates that:

"১৩২৭ সালে আমার জন্ম হয়েছিল কিনা স্মরণ নাই। আমার কোন সালে জন্ম স্মরণ নাই। ১৯২৭ সালে ভীম মন্ডল ও নটবরের সাথে কি কথাবার্তা হয়েছিল তা বলিতে পারি না। . . . ভীম ঐ জমি দখল করেছিল কিনা তা আমি নিজে দেখিনি।"

29. During the examination, D.W.1 submitted the certified copy of deed No. 2464 dated 28.07.1920 (Exhibit No. 'Ta'). On perusal of this document, it appears that it is a certified copy of the said deed. The defendant did not file the original copy of the deed. The defendants did not call for the respective volume of the above-mentioned deed from the relevant Sub-registry Office to prove the certified copy as Exhibit No. Ta. Corresponding Bangla date *i.e.* 12 Shrabon, 1327 B.S. was not written in this deed. Under the settled principle of law, there is no scope to take into consideration of a certified copy of a deed without formally proving the same by calling upon the volume of the deed from the respective Sub-registry Office. The learned trial Court did not consider this deed as genuine and observed:-

"বিবাদীপক্ষ দাবী করিয়াছে যে, নটবর তার অংশের জমি ১৩২৭ সালে ১২ই শ্রাবণ তারিখের কবলা মূলে ভীম মন্ডলের নিকট বিক্রয় করে। বিবাদীপক্ষ হইতে ভীম মন্ডলের নামীয় ২৮/০৭/১৯২০ তারিখের ২৪৬৪ নং কবলার জাবেদা নকল দাখিল করিয়াছে। এই দলিল নালিশী জমির বলিয়া প্রমাণিত নয়।"

30. But on misreading as well as misconceiving the evidence on record and ignoring the relevant provisions of the Evidence Act the learned Additional District Judge, Khulna has misconstrued Exhibit No. 'Ta' and thus came to an erroneous decision observing as under:-

"বিবাদীপক্ষের দাখিলী ২৮/০৭/১৯২০ ইং তারিখের ২৪৬৪ নং দলিল (প্রদর্শনী-ট) দৃষ্টে দেখা যায় যে, নটবর মন্ডল তাহার হিস্যা প্রাপ্ত ভূমি হইতে ৫ বিঘা ১৮ কাঠা ৪ ছটাক ১০ গন্ডা ভূমি ভীম মন্ডল বরাবর হস্তান্তর করিয়াছেন। বিজ্ঞ নিম্ন আদালত উক্ত দলিলমূলে হস্তান্তরিত ভূমি নালিশী ভূমি প্রমাণিত নয় মর্মে উল্লেখ করিয়াছেন। কিন্তু কোন কারণ ব্যাখ্যা করেন নাই। পর্যালোচনায় দেখা যায় যে, দলিলে উল্লেখিত থানা, মৌজা সঠিক আছে। নটবর পৈত্রিক ভূমি ব্যতিত উক্ত মৌজায় অন্য কোন ভূমি অর্জন করিয়াছেন বলিয়া প্রমাণ নাই। ফলে অত্র আপীল আদালত মনে করেন যে, নটবর নালিশী জোতের ভূমি হস্তান্তর করিয়াছেন।"

31. Admittedly, the disputed 13.90 acres of land originally belonged to the predecessor in the interest of plaintiff Sannyashi Mondol and the C.S., S.A, and R.S. khatians of the land in question were correctly prepared in their names.

32. The plaintiff in his plaint stated that he has been peacefully possessing the land but while on 06.12.1982 he went to cut paddy from the disputed land then defendant Nos. 1-5 restrained him from cutting the crops and subsequently disclosed that they had obtained a compromise decree in Title Suit No. 73 of 1955. As an illiterate villager, he became surprised and thereafter with the help of others was able to obtain the certified copy of the judgment and decree of the above-mentioned suit on 23.06.1983 and then came to know that Jonjali Dasi and Noni Bala obtained the collusive, fraudulent and a forged compromise decree in the said title suit where no notice was served upon him and, as such, filed the above-mentioned suit praying for setting aside the compromise decree passed in Title Suit No. 73 of 1955.

33. Monohor Chandra Roy, the constituent attorney of the plaintiff Sannyashi Mondal deposed as P.W.1 in the case in hand, and in his evidence, this witness divulges that the suit land was never been auctioned sold. The alleged proceeding was false, fraudulent, collusive, and paper transaction only. The auction purchaser did not get possession of the said land. P.W.1 further says that Jonjali Dasi and Noni Bala did not obtain settlement of the land. The matter of taking settlement by Jonjali Dasi and Noni Bala is false.

34. In reply to the cross-examination done by the defendants, P.W.1 states that the matter of the auction purchase by Shashadhar Dhali is false. This witness denied the defence suggestion that Jonjali Dasi and Noni Bala obtained settlement of the land from Shahadhar Dhali. P.W.1 further denied the defence suggestion that the summons of Title Suit No. 73 of 1955 were duly served upon the plaintiff.

35. In his evidence, P.W.2 Horendro Nath Roy @ Mondal gives out that the suit land is being possessed by the plaintiff. The defendant Nos.1-5 put an obstacle on 06.12.1982 while the plaintiff Sannyashi Mondal went for cutting paddy from the suit land and at the same time they (defendants) disclosed the matter of judgment and decree passed in Title Suit No.73 of 1955. In his evidence this witness further states:

> "০৬/১২/৮২ তারিখের পূর্বে দেঃ ৭৩/৫৫ নং মামলা সম্পর্কে কখনো শুনিনি। ঐ মামলার নোটিশ জারী হয়েছিল কিনা তা বাপ-দাদার কাছ থেকে শুনিনি। খাজনা মামলার কথাও কোন দিন শুনিনি। নিলাম হওয়ার কথা বা আদালত মাধ্যমে দখল দেওয়ার কথা জানি না।"

36. P.W.2 was cross-examined by the defendants and in his cross-examination, this witness more clearly says that plaintiff Sannyashi Mondal has been staying in the locality even after 06/12/1982. This witness denied the defence suggestions that defendant Nos.1-5 did not put constraint on the plaintiff in cutting paddy on 06.12.1982 or that they did not disclose the matter of the disputed decree on the same day.

37. In his testimony, P.W.3 Tajendro Nath Dhali @ Bholanath states that the suit land has been possessed by the plaintiff.

38. In reply to cross-examination, this witness says that 3/4 years ago he saw Sannyashi Mondal cultivating his land.

39. In his deposition P.W.4 Norendra Nath Roy states that the suit land has been possessed by Monohor.

40. In reply to cross-examination, this witness narrates that Monohor represented Sannyashi Mondal.

41. From the above, it appears that the P.Ws have corroborated the case of the plaintiff and are also able to prove the possession of the plaintiff in the suit land. The learned advocate of the contesting defendants submits that the decree under challenge was passed on 31.03.1956 but the plaintiff had instituted the present suit on 26.06.83. As such, the suit is hopelessly barred by limitation. As against this, the learned advocate of the plaintiff's side contends that the plaintiff has been able to prove that no summons was served upon the defendant in Title Suit No. 73 of 1955. The compromise decree of the said suit was fraudulently obtained by the plaintiff of that suit. Since fraud vitiates everything, then after gathering knowledge on 06.12.1982 the present plaintiff filed the suit in hand well within the limitation period prescribed by law.

42. It is found from the deposition of the P.Ws that summons of Title Suit No.73 of 1955 were not served upon the present plaintiff Sannyashi Mondal and taking into consideration the matter the learned Assistant Judge in his judgment and decree dated 16.03.2004 has observed:

> "বিবাদীপক্ষ দাবী করিয়াছে যে, খুলনার ৩য় মুনসেফী আদালতের দেঃ ৭৩/৫৫ নং মামলা জঞ্জালী দাসী দিং করলে ঐ মামলার বিবাদীদের অর্থাৎ সন্নাসী দিং এর সহিত জঞ্জালী দাসী দিং এর সোলে সুত্রে ডিক্রি হয় বলিয়া

বিবাদীপক্ষ দাবী করিয়াছে। এই ডিক্রি বাদীপক্ষ তঞ্চকী, যোগসাজসী ও বাদীর উপর বাধ্যকর নয় বলে দাবী করেছে। সন্নাসী ঐ সোলেতে স্বাক্ষর করেনি বলেও বাদীপক্ষ দাবী করেছে। দেঃ ৭৩/৫৫ নং মামলার নথি তলবান্তে অত্র মামলার নথিতে সামিল করা হইয়াছে। দেঃ ৭৩/৫৫ নং মামলার নথিতে থাকা উক্ত সোলেনামা পক্ষগণ কর্তৃক আদৌ স্বাক্ষরিত নয় বলিয়া দেখা যায়। ঐ সোলেনামার সমর্থনে কোন পক্ষ থেকেই কোন জবানবন্দী প্রদান করা হয়নি বলিয়াও দেখা যায়। ইং ১২/০৩/৫৬ তারিখে সম্পাদিত ও দাখিলী সোলেনামার ৬নং শর্ত মোতাবেক ঐ তারিখ থেকে ১০ দিনের মধ্যে রেজিষ্ট্রি কবলা বা তাহার টিকিট আদালতে দাখিল না করিলে বাদীগণের মামলা ডিসমিস হইবে মর্মে উল্লেখ দেখা যায়। এরূপ কোন কবলা বা দলিলের টিকিট উক্ত ১২/০৩/৫৬ তারিখ থেকে ১০ দিনের মধ্যে আদালতে দাখিল হয়নি বা উক্ত সময়ের মধ্যে কবলা রেজিষ্ট্রিও করা হয়নি বলিয়াও দাখিলী টিকিট দৃষ্টে দেখা যায়। সোলেনামার শর্ত মোতাবেক বাদীর ঐ মামলা ডিসমিস হওয়ার কথা। কিন্তু উল্লেখিত ১০ দিন পরেও ঐ সোলেসুত্রে দেঃ ৭৩/৫৫ নং মামলাটি ডিক্রি হয়, যাহা সোলের শর্তের বিপরীত হইতেছে। পক্ষগণ কর্তৃক স্বাক্ষরিত নয় এমন সোলেনামা দাখিল করিয়া উক্ত সোলে সূত্রে ডিক্রি করায় দেঃ ৭৩/৫৫ নং মামলাটির সোলে ডিক্রি ঐ মামলার বাদীপক্ষ প্রতারণামূলক ভাবে হাসিল করিয়াছে বলিয়া আদালত মনে করেন। সোলেনামা এই মামলার বাদীপক্ষ কর্তৃক সম্পাদিত বা স্বাক্ষরিত নয়-তা দ্বারা বাদীপক্ষকে আইন বাধ্য করা যায় না। দেঃ ৭৩/৫৫ নং মামলার বাদীপক্ষ কর্তৃক প্রতারণা প্রমাণিত হওয়ায় এবং উক্ত ডিক্রির বিষয়ে ০৬/১২/৮২ তারিখে বাদীপক্ষ জানার দাবী করায় ও সে মর্মে সাক্ষ্য প্রদান করায় অত্র মামলা তামাদি দোষে বারিত নহে মর্মে সিদ্ধান্ত গৃহীত হইল। বিবাদীপক্ষ হইতে ডিক্রি হওয়ার পরবর্তী সময়ের হস্তান্তরের দলিল দাখিল করা হইয়াছে। নালিশী মামলায় যেহেতু বাদী সন্নাসী ৩নং বিবাদী ছিল এবং সোলেনামাটিতে সন্নাসীকে যেহেতু পক্ষ দেখানো হয়েছে, তাই নালিশী জমিতে সন্নাসীর স্বত্ব দখল থাকুক বা না থাকুক ঐ সোলে ডিক্রির বিরুদ্ধে মামলা করার অধিকার সন্নাসীর আছে বলিয়া আদালত মনে করেন। প্রতারণা প্রমাণিত হওয়ায় নালিশী ডিক্রি ভয়েড বলিয়া আদালত মনে করেন। সে কারণে উক্ত ডিক্রি রদ রহিত বা বাতিল না চেয়ে বাদীর উপর বাধ্যকর নহে ঘোষণার অত্র মামলা আইনতঃ অচল নহে বলিয়া আদালত মনে করেন।"

43. Exhibit No.1 is the solenama filed in Title Suit No. 73 of 1955 whereas Exhibit No.11 is the compromise decree passed in the above suit dated 31.03.1956 where it is evident that neither the plaintiff nor the defendant put their signatures on it. Moreover, the parties to the solenama did not depose before the Court supporting the contents of the same but the learned Munsif, Third Court, Khulna accepted the solenama and eventually passed the decree on 31.03.1956. The plaintiff claimed that the compromise decree was fraudulently obtained by Jonjali Dasi and Noni Bala and, as such, the matter of the compromise decree was not disclosed by them for a long time, and on 06.12.82 the defendants for the 1st time disclosed the same while the plaintiff went to harvest paddy from his property. It is further seen from the evidence of the respective parties that the defendants have failed to prove that summons of Title Suit No. 73 of 1955 was served upon the plaintiff Sannyashi Mondal and none of the witnesses of the defendants are able to prove the matter. On the other hand, the P.Ws in their testimony state that they did not hear that summons were served upon plaintiff Sannyashi Mondal in Title Suit No. 73 of 1955.

44. On perusal of the record, it appears that in the plaint the plaintiff stated that on 06.12.1982 he went to the disputed property for cutting paddy but defendant Nos. 1-5 put resistance to it and disclosed that they got a compromise decree regarding disputed land in the name of their mother Jongali Dasi. The matter was brought to the notice of the Chairman of the local Union Parishad who requested both the parties to present before him on 15.05.1983 with relevant papers/documents in support of their respective claims. On 06.12.1982 the plaintiff for the first time came to know about the compromise decree passed in Title Suit No. 73 of 1955. Before that it was not at all within his knowledge. Then the appointed attorney of the plaintiff went to the Court on 15.06.1983 and engaged Advocate Md. Tayabur Rahman to enquired into the matter and on 23.06.1983 obtained the certified copy of the compromise decree passed in Title Suit No. 73 of 1955 and came to know about the disputed decree. The plaintiff further learnt that in the said suit a false wokalatnama had been filed on his behalf. Upon obtaining the certified copy of the disputed decree and after

engaging a lawyer plaintiff filed Title Suit No. 162 of 1983 on 16.06.1983 in the Court of the learned Munsif, Khulna. Against the said compromise decree the suit was subsequently transferred to the learned Assistant Judge, Koyra, Khulna on 25.02.1999 and it was then renumbered as Title Suit No. 5 of 1999 which was decreed on 16.03.2004

45. After going through the evidence and materials on record, it appears palpably that after getting certified copy on 23.06.1983 of the disputed compromise decree passed in Title Suit No. 73 of 1955 the plaintiff came to know about the said decree and then on 26.06.1983 filed Title Suit No. 182 of 1983 which was subsequently renumbered as Title Suit No. 5 of 1999. I have also considered the evidence of the witnesses and the exhibited documents and of the view that Title Suit No. 182 of 1983 was filed within the limitation period and as such it is not barred by limitation.

46. On going through the order passed by the learned Munsif, Third Court, Khulna dated 31.03.1956 (Exhibit No. 11) it is palpably clear that in passing the impugned judgment and decree the learned Munsif admittedly did not record the evidence of the parties to the solenama and upon hearing the learned advocate only, he accepted the solenama and passed the impugned decree. In passing the judgment and decree in the instant suit, the learned Assistant Judge, Koyra, Khulna has considered the solenama and the compromise decree passed on 31.03.1956 and thus disbelieved the same and held the opinion that the said compromise decree was obtained by practicing fraud. The relevant observations made by the learned Assistant Judge have already been quoted earlier.

47. But in reversing the judgment and decree, specifically, in respect of the compromise decree passed in Title Suit No. 73 of 1955 the learned Additional District Judge, 4th Court, Khulna has observed:-

> "বিজ্ঞ নিম্ন আদালত তর্কিত রায়ে দেওয়ানী-৭৩/৫৫ নং মোকদ্দমায় তর্কিত সোলেনামাটি প্রতারনামূলকভাবে হাসিল করা হইয়াছে মর্মে সিদ্ধান্ত গ্রহণ করিয়াছেন। উক্ত মোকদ্দমার নথির আদেশনামা পর্যালোচনায় দেখা যায় যে, মোকদ্দমাটি সোলে সূত্রে ডিক্রি হইয়াছে এবং যথারীতি ডিক্রি ড্রনআপ হইয়াছে। নথিতে রক্ষিত কথিত সোলেনামার দরখাস্তটি সামিল আছে। **একথা সঠিক যে, তাহাতে সন্নাসী মন্ডল গং কিংবা জজ্ঞালী দাসী গং এর স্বাক্ষর নাই। তবে আদেশনামায় ১৩/১২/১৯৫৫ ইং তারিখে উভয় মোকদ্দমার উভয় পক্ষ হাজির হইয়া আপোষের কথা বলিয়া সময় প্রার্থনা করিয়াছেন মর্মে দেখা যায়। ইহার পর ১৯/০১/৫৬, ১৩/০৩/৫৬, ২১/০৩/৫৬ ইং তারিখে উভয় পক্ষ হাজির হইয়া আপোষনামার জন্য সময় প্রার্থনা করিয়াছেন।**
>
> দাখিলী সোলেনামার ৬নং শর্তে দরখাস্ত দাখিলের দিন হইতে ১০(দশ) দিনের মধ্যে বিবাদীপক্ষ বরাবর এক কবলা দলিল রেজিষ্ট্রির শর্ত থাকে এবং ব্যর্থতায় মোকদ্দমা ডিসমিস হইবে উল্লেখ থাকে। বিবাদীর দাখিলী প্রদর্শনী-ত চিহ্নিত দলিলের সই মহুরী নকল দৃষ্টে দেখা যায় যে, জঞ্জালী দাসী সন্নাসী মন্ডল গং বরাবর ১.২৪ একর ভূমি বাবদ কবলা দলিল ২৮/০৩/১৯৫৬ ইং তারিখ সম্পাদন ও রেজিষ্ট্রি করিয়া দিয়াছেন। ৩১/০৩/১৯৫৬ ইং তারিখের ২১ নং আদেশনামা দৃষ্টে দেখা যায় যে, পূর্বোক্ত রেজিষ্ট্রি দলিলের রশিদ আদালতে দাখিল করা হইয়াছে এবং উক্ত আদেশে উক্ত রশিদ বিবাদী অর্থাৎ সন্নাসী মন্ডল গং উঠাইয়া নিতে পারিবেন মর্মে উল্লেখ আছে। তর্কিত সোলেমানার দরখাস্তে বিজ্ঞ বিচারকের স্বাক্ষরযুক্ত ২৩/০৬/১৯৫৬ ইং তারিখে সোলেনামাটি ডিক্রির অংশ মর্মে আদেশ প্রদান করা হইয়াছে। অর্থাৎ দাখিলী সোলেনামার ৬নং শর্ত পূরণের পরই উক্ত সোলেনামাটি ডিক্রির অংশ গণ্য হইয়াছে। ফলে **তর্কিত সোলেনামায় পক্ষগণের দস্তখত না থাকিলেও কয়েকটি ধাপ পরিক্রমা পূর্বক সোলেসূত্রে চূড়ান্ত ডিক্রি হয়। সোলেনামায় পক্ষগণের দস্তখত না থাকাটি একটি পদ্ধতিগত ত্রুটি হইতে পারে। তবে যতগুলো ধাপ অতিক্রমপূর্বক সোলেসূত্রে ডিক্রি হইয়াছে তাহাতে কোন প্রতারনার আশ্রয় নেওয়ার সুযোগ কম।** বিবাদী পক্ষের দাখিলী ২৮/০৩/৫৬ ইং তারিখের ৩৭৪৮নং দলিলের সই মহুরী নকল (প্রদর্শনী-ত) হইতে ইহাই প্রমাণিত হয় যে, তর্কিত সোলেসূত্রে ডিক্রি কার্যকর হইয়াছে। (emphasis supplied)

48. From the above observations made by the learned Additional District Judge, this Court is of the view that the learned Additional District Judge in passing the impugned

judgment and decree did not consider the provisions of Order 23 Rule 3 of the Code along with the case laws pronounced by the superior courts. He has a lack of knowledge in considering a compromise decree as well as a lack of knowledge in procedural laws, especially, on the Code of Civil Procedure. It is highly dissatisfactory that being a senior member of the subordinate judiciary, the learned Additional District Judge, 4th Court, Khulna has no preliminary knowledge of the Code of Civil Procedure and if he deals with civil litigation in such a manner in that case, this Court is of the view that the litigants are not safe in his Court. In this situation, my considered view is that Mr. Nurul Alam Biplob, the learned Additional District Judge needs vigorous training on the procedural laws as well as on handling civil litigation. It is expected that the concerned authorities will take immediate steps for him based on the observations made above.

49. Mr. Ahmed Nowshed Jamil, the learned advocate of the defendant- opposite parties submits that there are no mandatory provisions of law that in every compromise the respective parties should be examined on oath before the Court and put their signatures on the solenama and the appointed advocate being the authorised representative of the respective parties are legally empowered under the Wokalatnama to act anything in favour of his client and, as such, the learned advocate has authority to put signature on the solenama and to depose before the Court accordingly. I have already mentioned earlier that Mr. Jamil has submitted a case law reported in AIR 1976 Patna 73 and submits that an advocate has the authority to compromise a suit without having any instructions from the respective party if the same seems to be bonafide in the interest of the parties.

50. In the case of ***Sourindra Nath Mitra*** v**.** ***Heramba Nath Bandopadhya****,* reported in AIR 1923 P.C. 98 it was held by their Lordships of the Judicial Committee of the Privy Council that:

> "On principle, there does not seem to be any reason for interfering with a compromise consented to by the pleader duly authorized on this behalf, unless fraud or collusion is imputed to the pleader. No such collusion or fraud has been pleaded in the petition. No doubt, ignorance of the compromise, want of instructions to the pleader, and possibly fraud practiced by the opposite party has been vaguely stated in the petition. These are, however, not sufficient to effect the compromise filed in the present case."

51. The above-mentioned *ratio* was subsequently adopted in the case of ***Laurentius Ekka*** v**.** ***Dukhi Koeri*** [AIR 1926 Patna 73].

52. In the present case at hand, the plaintiff-petitioner claimed that the compromise decree [Exhibit No. 'Uma-1'] was obtained by the defendant-opposite parties in collusion as well as by practicing fraud where none of the parties to Suit No. 73 of 1955 put their signatures on the solenama and further that neither the parties nor their engaged lawyers had deposed before the Court to prove that the terms and conditions settled by the parties in the solenama are fair and those were settled with their consent.

53. Rule 1 of Order III of the Code of Civil Procedure says:

> "Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person."

54. Rule 4, Clause (1) of that Order says:
"No pleader shall act for any person in any Court unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment."

55. Therefore, when an advocate so appointed under Rule 1 of Order III of the Code, he can appear, plead, and act on behalf of the client.

56. In the case of ***Govindammal*** v. ***Marimuthu Maistry and others*** [AIR 1959 Mad 7] the Madras High Court observed:

"The decisions appear to be fairly clear that even in cases where there is no express authorisation to enter into a compromise under the inherent authority impliedly given to the Vakil he has the power to enter into the compromise on behalf of his client. But in the present state of the clientele world and the position in which the Bar now finds itself and in the face of divided judicial authority and absence of statutory backing, prudence dictates that unless express power is given in the vakalat itself to enter into compromise, in accordance with the general practice obtaining, a special vakalat should be filed or the specific consent of the party to enter into the compromise should be obtained. If an endorsement is made on the plaint etc. it would be better to get the signature or the thumb impression of the party affixed thereto, making it evident that the party is aware of what is being done by the vakil on his or her behalf."

57. No doubt, a pleader stands on the same footing in regard to his authority to act on behalf of his clients. There is inherent in the position of counsel an implied authority to do all that is expedient, proper and necessary for the conduct of the suit and the settlement of disputes. This power, however, must be exercised bonefide and for the benefit of his client. It is prudent and proper to consult his client and taken his consent if there is time and opportunity. He should not act on implied authority except when warranted by exigency of circumstances and a signature of the party cannot be obtained without under delay.

58. In the case of ***United States*** v. ***Beebe*** [(1901) 180 under Section 343 (Z16)] it was held that an attorney who is clothed with no other authority than that arising from his employment in that capacity has no implied power by virtue of his general retainer to compromise and settle his client's claim or cause of action except in situations where he is confronted with an emergency and prompt action is necessary to protect the interests of the client and there is no opportunity for consultation with him. Generally, unless such an emergency exists, either precedent special authority from the client or subsequent ratification by him is essential in order that a compromise or settlement by an attorney shall be binding on his client.

59. It has been further observed in the said case that:
"Obviously, therefore, if a litigant instructs his attorney not to compromise his case, the attorney is bound by such instructions, even though he honestly believes that a compromise settlement would be to the best interest of his client. On the

> other hand, there can be no question but that an attorney may be specially authorised to enter into a compromise which will be binding on the client, though it has been held that an attorney employed to bring suit for damages or to settle by compromise is not authorised to compromise without first consulting his client, especially after suit has been started. Some cases hold that the authority of an attorney to compromise is presumed until the contrary is shown: United States v. Beebe (Z16); at least it is not to be presumed that this was done, without lawful authority, and slight evidence in such a case may be sufficient to authorise the belief that he was clothed with all the power he assumed to exercise."

60. It appears from the materials on record that the solenama filed in Title Suit No. 73 of 1955 was not at all signed by either party of the suit or they were sworn in and deposed before the Court to support the contents of the solenama. The learned Assistant Judge observed that the same was obtained fraudulently by the plaintiff of the above-mentioned suit and, as such, taking into consideration other facts and circumstances he decreed the suit. In this situation, my considered view is that the submission put forward by Mr. Ahmed Nowshed Jamil, the learned advocate of the defendant-opposite party bears no substance.

61. After the institution of the suit, it is open to the parties to compromise, adjust, or settle it by an agreement or compromise. The general principle is that all matters that can be decided in a suit can also be settled using compromise. Rule 3 of Order 23 of the Code lays down that (i) where the court is satisfied that a suit has been adjusted wholly or in part by any lawful agreement in writing and signed by the parties; or (ii) where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall record such agreement, compromise or satisfaction and pass a compromise decree accordingly.

62. As to the power of an advocate, in the case of ***Sarath Kumar Dasi*** v. ***Amulyadhan*** [AIR 1923 PC13] the Privy Council held that it is not competent for a pleader to enter into a compromise on behalf of his client without his express authority to do so.

63. A Division Bench of the Bombay High Court in the case of ***Laxmidas Ranchhoddas*** v. ***Savitabai*** [(1955) 57 BLR 988] has discussed the position of an advocate to file a compromise petition on behalf of his client. According to the observation of the Court:

> "It is impossible for a member of the Bar to do justice to his client and to carry on his profession according to the highest standards unless he has the implied authority to do everything in the interests of his client. This authority not only consists in putting forward such arguments as he thinks proper but also in settling the client's litigation if he feels that a settlement would be in the interests of his client and it would be foolish to let the litigation proceed to a judgment. This implied authority has also been described as an actual authority of counsel or an advocate. This authority may be limited or restricted or even taken away. If a limitation is put upon the counsel's authority, his implied or actual authority disappears or is destroyed. In such a case he has only an ostensible authority as far as the other side is concerned. When the actual authority is destroyed and merely the ostensible authority remains, then although the other side did not know of the limitation put upon the authority of an advocate, the Court will not enforce the settlement when in fact the client had withdrawn or limited the authority of his advocate."

64. From the above discussion it is by now settled that without having any written or implied authority from the client, the engaged advocate is not in a position to file solenama on behalf of his/her client.

65. The role of the advocate in doing public justice has been discussed by Lord Denning M.R. in Rondel's Case [1967 1Q.B. 443] which is reproduced below:

> "A barrister cannot pick or choose his clients. He is bound to accept a brief for any man who comes before the courts. No matter how great a rascal the man may be. No matter how given to complaining. No matter how undeserving or unpopular his cause. The barrister must defend him to the end. Provided only that he is paid a proper fee, or in the case of a dock brief, a nominal fee. He must accept the brief, and do all he honourably can on behalf of his client. I say all he honourably can, because his duty is not only to his client. All those who practice that the Bar have from time to time been confronted with cases civil and criminal which they would have liked to refuse, but have accepted them as burdensome duty. This is the service they do to the public. Counsel has the duty and right to speak freely and independently without fear of authority, without fear of the judges and also without fear of a stab in the back from his own client. To some extent, he is a minister of justice.
>
> It is a mistake to suppose that he is the mouth piece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

66. In the case of ***Rondel*** v. ***Worsley*** [(1969) 1 A.C. 191] Lord Reid has made the eloquent and luminous observations in respect of the duties of an advocate while putting submission before the Court. According to him:

> "Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. But, as an officer of the court, concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict, with his client's wishes or with what his client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. And by so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him."

67. The Court must satisfy itself about the terms of the agreement. The Court must be satisfied that the agreement is lawful and it can pass a decree by it. The Court should also consider whether such a decree can be enforced against all the parties to the compromise. A Court passing a compromise decree performs a judicial act and not a ministerial work. Therefore, the Court must satisfy itself by taking evidence or on affidavits or otherwise that the agreement is lawful. If the compromise is not lawful, an order recording the compromise can be recalled by the Court. In case of any dispute between the parties to the compromise, the Court must inquire into and decide whether there has been a lawful compromise in terms of which the decree should be passed.

68. The Court in recording compromise should not act casually. Where it is alleged by one party that a compromise has not been entered into or is not lawful, the Court must decide that question.

69. Mr. Ashim Kumar Mallik, the learned advocate appearing on behalf of the plaintiff-petitioner vehemently opposed the submission of the learned advocate of the defendant-opposite party and upon putting reliance in the case of ***Pushpa Devi Bhagat*** v. ***Rajinder Singh & others,*** reported in (2006) 5 SCC 566 submits that without putting signature in the solenama and without deposing before the Court by the parties to the solenama the Court has no power to accept the solenama and subsequently passed a decree and further that upon considering the deposition as well as the solenama the Court has a solemn duty to see whether the terms and conditions of the solenama appear to be fair and legal. Mr. Mallik also contends that in the impugned solenama neither the parties nor their advocates put their signatures and none of them had deposed on oath before the Court to prove that the contents of the solenama were fair and legal as well as the parties had validly settled the terms and conditions of the solenama. The learned advocate further submits that the compromise petition was filed in Title Suit No. 73 of 1955 without the knowledge of Sannyashi Mondal and without instruction to his pleader and that it was prejudicial to the plaintiff-petitioner's interest. The learned advocate of the plaintiff-petitioner contends that the words "in writing" and "signed by the parties" occurring in Rule 3 of Order 23 of the Code would contemplate drawing up a document or instrument or a compromise petition containing the terms of the settlement in writing and signed by the parties and in the instant case, there is no such instrument, document or petition in writing and signed by the parties.

70. Now let us first consider the meaning of the words 'signed by parties'. Order 3 Rule 1 of the Code of Civil Procedure provides that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf. The proviso thereto makes it clear that the Court can, if it so desires, direct that such appearance shall be made by the party in person. Rule 4 provides that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment. Sub-rule (2) of Rule 4 provides that every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

71. The question whether 'signed by parties' would include signing by the pleader was considered by the Supreme Court of India in ***Byram Pestonji Gariwala*** v. ***Union Bank of India*** [1992 (1) SCC 31] with reference to Order 3 of the Code of Civil Procedure where the Court has observed:

> "30. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognized agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy, and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. The legislature has not evinced any intention to change the well recognized and universally acclaimed common law tradition.
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> ... ...
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> 35. So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly, but impliedly reduced counsel's role or capacity to represent his client as effectively as in the past.
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> ... ...
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> 37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement of compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted."

72. In the realm of legal nomenclature, the term 'in writing' possesses a nuanced significance that denotes the requirement for a documented, tangible expression of information, typically through the medium of the written word, in order to establish the veracity and enforceability of a legal agreement, communication, or provision. This requirement is often mandated by statutes, contracts, or judicial rules, necessitating that the content in question be meticulously recorded on a durable and comprehensible medium, affording parties involved a clear and reliable record of their intentions and obligations. Consequently, 'in writing' serves as a crucial jurisprudential tenet, offering a measure of certainty and accountability in legal proceedings and contractual relationships, while adhering to the principles of transparency and due process in the administration of justice.

73. In the case in hand, the respective statements of the plaintiff's advocate and the defendant's advocate of Title Suit No. 73 of 1955 were not recorded in any manner by the trial Court in regard in the terms of the compromise and accordingly, it was not possible to read it over to them and the learned Munsif, 3rd Court, Khulna was also not in a position to lawfully accepted the solenama but what happened as we have observed that without

fulfilling the conditions laid down in Order 23 Rule 3 of the Code, the learned Munsif had illegally passed the impugned compromise decree.

74. In the case of ***Gurpect Singh*** v. ***Chatur Bhuj Goel*** [1988 (1) SCC 270], the Supreme Court of India has observed as under:

> "According to the grammatical construction, the word 'or' makes the two conditions disjunctive. At first blush, the argument of the learned counsel appears to be plausible but that is of no avail. In our opinion, the present case clearly falls within the first part and not the second. We find no justification to confine the applicability of the first part of order XXIII, r. 3 of the Code to a compromise effected out of Court. Under the rule prior to the amendment, the agreement com promising the suit could be written or oral and necessarily the Court had to enquire whether or not such compromise had been effected. It was open to the Court to decide the matter by taking evidence in the usual way or upon affidavits. The whole object of the amendment by adding the words 'in writing and signed by the parties' is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.
>
> Under r. 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing."

75. Mutual assent simply means that there is an agreement reached by both parties on all aspects of the contract's terms and conditions. In summary, these requirements ensure that contracts are properly formed with clarity on obligations expected from each participant in business dealings involving procurement matters.

76. A compromise decree, in the realm of legal proceedings, represents a judicially sanctioned agreement between parties involved in a legal dispute. Such decrees often emerge as an amicable resolution to protracted litigation, allowing both parties to find common ground and reach a settlement. These decrees are typically the result of rigorous negotiations and are formalized with the approval of a court, ensuring that the terms and conditions are legally binding. The aim is to facilitate a fair and equitable solution that serves the best interests of all parties involved while avoiding the uncertainty and expense of a protracted legal battle. A compromise decree, when executed properly, can provide a sense of closure to the parties and help them move forward with their lives or business endeavors.

77. Therefore, considering the submission of the learned advocate of the respective parties and the case laws cited by them, I am of the view that parties have every right to file solenama to adjust the suit or appeal. The compromise should be reduced in writing and

signed by them. They must depose on oath before the Court supporting the terms laid down in the solenama and upon receiving the solenama the Court shall consider the deposition and scrutinize the record to find out whether the terms and conditions settled therein are fair and legal and if satisfied, would pass a decree based on the solenama. If the parties authorized their engaged lawyers to compromise the suit or appeal, in that case, written authority should be given by the respective parties to their appointed lawyers. In that case, the lawyers are empowered to file solenama on behalf of their clients. The statements of the lawyers should be recorded on oath by the Court concerned and it must be read over and explained to them and accepted by the lawyer to be correct. Then the Court accepts the same upon observing the legal formalities. But on going through the solenama [Exhibit No.1) as well as the compromise decree (Exhibit No. 1/1) passed in Title Suit No.73 of 1955, it appears that none of the conditions laid down in Order 23 Rule 3 of the Code had been followed by the learned Munsif, 3rd Court, Khulna. In the above circumstances, I am of the view that the compromise decree passed in Title Suit No.73 of 1955 is not a decree at all in the eye of the law. The learned Assistant Judge, Koyra, Khulna on meticulous findings on the evidence and materials on record has correctly decreed the suit but falling into error of law as well as facts the learned Additional District Judge, 4th Court, Khulna vide impugned judgment and decree dated 10.11.2015 allowed the appeal setting aside the judgment and decree passed by the learned Assistant Judge, Khulna in Title Suit No. 5 of 1999.

78. From the above discussion and taking into consideration of the facts and circumstances of the case, this Court is of the view that the submission put forward by the learned advocate of the defendant-opposite party is not sustainable in law and, as such, the impugned judgment and decree dated 10.11.15 passed by the learned Additional District Judge, 4th Court, Khulna is liable to be interferable by this Court.

79. In the result, the Rule is made absolute without any order as to costs.

80. The impugned judgment and decree dated 10.11.2015 (decree signed on 17.11.2015) passed by the learned Additional District Judge, 4th Court, Khulna in Title Appeal No. 85 of 2004 is set-aside. The judgment and decree dated 16.03.2004 (decree signed on 23.03.2004) passed by the learned Assistant Judge, Koyra, Khulna in Title Suit No. 05 of 1999 is hereby upheld.

81. The order of *stay* granted earlier by this Court on 29.11.2015 is re-called and vacated.

82. The Registrar General, Supreme Court of Bangladesh is directed to send a copy of this judgment to Mr. Nurul Alam Biplob, Additional District Judge, 4th Court, Khulna whereby he is posted now for the reason that he can learn the law.

83. Send down the L.C. Records along with a copy of this judgment to the Court concerned at once.