

Bench:

Mr. Justice BhishmadevChakrabortty

And

Mr. Justice Murad-A-MowlaSohel

First Appeal No.234 of 2015

Muhammad Masum Mia Probashy and others

..... appellants

-Versus-

Joynal Abedin and others

.....respondents

Mr. Sheikh Muhammed Serajul Islam, Senior
Advocate

..... for the appellants

Mr. Shoeb Mohammad Khan, Advocate

..... for respondent 13

Judgment on 08.01.2026

BhishmadevChakrabortty, J:

The plaintiffs have preferred this appeal which is directed against the judgment and decree of the Joint District Judge, Court 1, Munshiganj passed on 01.04.2015 in Title Suit 46 of 2008 dismissing the suit for declaration of title in the suit land and partition with further prayer that the RS record is erroneous.

The plaint case, in brief, is that land measuring 41 decimals as described in schedule-1 to the plaint originally belonged to Durga Charan Das and CS *khatian* was correctly prepared in his name. He died leaving behind 3 sons Manmohan Das, Mohan Banshi Das and Gobinda Chandra Das who became owner of it in equal shares. Gobinda Chandra died leaving behind only son Haricharan Das who sold his share to Ashananda Sarker through a registered *kabala* dated 10.12.1942 and handed over possession thereof. Ashananda died leaving behind his son Santosh Sarker and wife Tirthomoyee Sarker

who sold their share of 14 decimals to Ahammad and Nur Mohammad through a registered *kabala* dated 31.03.1953. Mohan Banshi died leaving behind his only son Sananda Chandra. Manmohan Das and Sananda Chandra sold out their share of 14 decimals from the suit plot to Ahammad and Nur Mohammad through a registered *kabala* dated 28.05.1956. Thus Ahammad and Nur Mohammad became owner of the land measuring 28 decimals. Accordingly, SA *khatian* was prepared in their names but erroneously the names of Upendra Chandra Das, Harihor Das and Narayan Dhali were included therein. Ahammad died leaving behind a wife Ambia, a son Mojibor and 3 daughters Zamila, Shahanara and Mazida. Zamila died leaving behind a son Zainal and a daughter Rushia. Shahanara left Bangladesh for Pakistan bestowing her portion to Mojibor and Mazida. Nur Mohammad died leaving behind 5 sons Mahfuz, Hafizuddin, Matin, Momin and Manir and 4 daughters Hashi, Basiran, Asiran and Zahanara. Asiran died leaving behind a son Selim and a daughter Nurjahan. Hafizuddin, Matin, Momin and Manir transferred their shares to plaintiffs' father Mahfuz through a registered heba-bil-ewaz dated 05.12.2004. Hashi, Basiron, and Zahanara sold out their 1.53 decimals of share to Mahfuz also through a registered deed dated 18.10.2006. In the aforesaid way Mahfuz got 3.60 decimals by inheritance and purchase. During possession and enjoyment he transferred his share to his 3 sons Masum, Minhaz and Jumman

through a registered gift dated 18.10.2006. Selim, Nurzahan, Mojibar, Joynal, Rushia, Mazada and Ambia transferred their share to the plaintiffs by another registered gift dated 12.04.2007. In this way, the plaintiffs got the suit land of schedule 2 measuring 28 decimals. On their behalf their father Mahfuz Miah used to cultivate the suit land who paid rent up to 1411 BS. Defendants 1-6 disclosed that they bought the suit land from the heirs of Ahammad and Nur Mohammad which clouded the title of the plaintiffs in the suit land. They collected certified copies of CS, SA and RS *khatians* of the suit land and came to learn that the names of Upendra, Harihar and Narayan were wrongly recorded with the plaintiffs' predecessors in SA *khatian* and RS *khatian* has been prepared in the name of some defendants. The suit land is *ejmali* property. The defendants refused to partition the land on 05.12.2007 hence, the suit for declaration of title, partition claiming saham of 28 decimals described in schedule 2 to the plaint and that RS record has been prepared wrongly showing less land to the plaintiffs' previous owner.

Only added defendant 13 contested the suit by filing written statement denying the statements made in the plaint. They admitted that the suit land originally belonged to Durga Charan but he had three sons Manmohan, Gobinda and Adhar who inherited 13.67 decimals each. Manmohan sold a part of his land to Sananda on 16.06.1952. Manmohan and Sananda transferred their share to Ahammad and Nur

Mohammad through a kabala dated 28.05.1956. Gobinda's son Haricharan sold his share to Ashananda through a kabala dated 10.12.1942. Ashananda died leaving behind a son Santosh and wife Thirthomoyee who sold it to Ahammad and Nur Mohammad through a registered *kabala* dated 31.03.1953. Adhar Chandra died leaving behind one son Upendra who sold his share to Gongacharan through a registered *kabala* dated 28.05.1956 and the latter sold the same to Narayan Chandra in the same year through another registered *kabala*. Narayan Chandra sold it to Abed Ali by a registered deed dated 05.11.1963. Abed Ali appointed Zakir Hossain his attorney through registered power of attorney. Zakir Hossain sold it to defendant 13 through a registered *kabala* dated 08.07.2007. Ahammad during his possession and enjoyment died leaving behind one wife Ambia, one minor son Mojibar and 3 minor daughters Jamila, Shahanara and Majeda. Ambia was appointed as a legal guardian of her minor sons and daughters through Court vide Case No.47 of 1976. Nur Mohammad died leaving behind 5 sons namely Mafuz Miah, Hafiz Uddin, Matin, Manir and 4 daughters Ashik, Boshiron, Asiron and Jahanara. The above heirs themselves and Ambia herself and on behalf of her some minor sons and daughters, *i.e.*, all the heirs of Ahammad and Nur Mohammad sold out total 28 decimals of land to Joynal Abedin and Abdul Motaleb through a registered *kabala* dated 18.06.1976 and handed over possession thereof. Subsequently, Joynal

Abedin sold his share to defendant 13 through a registered *kabala* dated 08.07.2007. The heirs of Abdul Motaleb sold out their shares also to defendant 13 also through another registered *kabala* dated 18.10.2010. In the above way defendant 13 become the owner of the entire shares of the suit plots. He paid rent to the concerned and has been possessing the same by filling earth and cultivating crops therein. The plaintiffs' predecessors in interest have lost their interest in the suit land by selling it to Joynal and Motaleb in 1976 and such the plaintiff accrued no right, title and interest in the suit land. In the premises above, the suit would be dismissed.

On pleadings the trial Court framed as many as 8 issues. In the trial, plaintiffs examined 3 witnesses and produced their documents exhibits 1-6. On the other hand defendant 13 examined 7 witnesses and produced his documents exhibits-Ka-Ta. However, the Joint District Judge dismissed the suit deciding the material issues in favour of defendant 13. Being aggrieved by the plaintiffs approached this Court with the present appeal.

Mr. Sheikh Muhammed Serajul Islam, learned Senior Advocate for the appellants taking us through the materials on record submits that admittedly the suit property belonged to Ahammad Bepary and Nur Mohammad by way of purchase. Latifa Khatun, wife of Nur Mohammad did not accord any permission through Court to sell the share of her minor sons and daughters. Therefore, the deed dated

18.06.1976 by Ambia and others has got no evidentiary value and shall not be binding upon the heirs of Nur Mohammad. The purchase of defendant 13 from the vendees of the aforesaid deed and their heirs do not stand. Such purchase do not create any right of defendant 13 in the suit land. He then refers to the evidence of DW 1 and submits that since he claimed the suit property from the purchasers of exhibit-Da, it was his duty to prove that the owners of the property of other parts were major at the relevant time. The previous purchasers Joynal and Motaleb committed fraud and shown to have purchased the suit land from the heirs of Ahammad and Nur Mohammad. It is well settled position of law that fraud vitiates everything. He refers to the evidence of PWs 1, 2 and 3 and witnesses of the defendant and submits that the plaintiffs are in exclusive possession of the suit land. Since, the transfer of the heirs of Ahammad and Nur Mohammad was not valid in the eye of law, the plaintiffs being the gradual heirs of Nur Mohammad are entitled to get their share in the suit land by inheritance, heba-bil-ewaj and others as claimed. The trial Court failed to assess the oral and documentary evidence in its legal perspective and has gone wrong in law and fact in dismissing the suit which may be interfered with in this appeal. Mr. Islam alternatively submits that the plaintiffs in evidence of PW1 produced some documents in original but those were not exhibited erroneously for want of proof, therefore, the suit may be sent on remand to prove

those documents in accordance with law for ends of justice, otherwise the appellants would suffer irreparably.

Mr. Shoeb Mohammad Khan, learned Advocate for respondent 13 on the other hand opposes the appeal and supports the judgment and decree passed by the trial Court. He submits that this is a suit for declaration of title and partition with another prayer that the RS record is erroneous. In such a suit, the plaintiffs have to prove their title in the suit land first. Although, the plaintiffs claimed the suit land by way of inheritance and gift but the deed of heba-bil-ewaj of 2004 and gift of 2007 through which the plaintiffs claimed title in the suit land were not produced in the Court and marked as exhibits. He submits that defendant 13 claimed the suit land by way of gradual purchase through registered *kabalas* from the original owners but those *kabalas* were not challenged in the present suit and as such the suit in the present form is not maintainable. He further submits that the defendant's witnesses proved in evidence that he is in possession of the suit land measuring 28 decimals. In addition to the oral evidence of PWs he refers to the DCR and rent receipts in respect of the suit land which also proves his possession in the suit land. On the contrary the plaintiffs are not in possession in any part of the suit land. Therefore, the suit for mere partition without prayer of recovery of possession is not at all maintainable. The trial Court on correct assessment of fact and law dismissed the suit which may not be

interfered with by this Court in appeal. Therefore, the appeal would be dismissed.

We have considered the submissions of both the sides and gone through the materials on record.

It appears that in the suit the plaintiffs prayed for declaration of title in the suit land with prayer for partition claiming their *saham* of 28 decimals of land as described in schedule 2 to the plaint. They further prayed that RS khatian has been prepared erroneously showing less land to their predecessors in interest with some other defendants. The genealogy of the claim of the parties that Ahammad and Nur Mohammad purchased the suit land from the heirs of recorded tenants Santosh and others through registered *kabalas* are admitted by the parties. The plaintiffs claimed that Hafiz Uddin, Momin, Matin and Manir, the heirs of Nur Mohammad transferred their shares to the plaintiffs' father by a registered heba-bil-ewaj dated 05.12.2004. They also claimed that Salim, Nurjahan, Mojibor, Joynal, Rushida, Majida and Ambia also transferred their shares to the plaintiffs by another registered heba-bil-ewaj dated 12.04.2007. They further claimed 3.06 decimals by a registered heba dated 18.10.2006 from their father Mafuz. But it is found in the record that deeds dated 05.12.2004 and 12.04.2007 were not produced in the Court and marked as exhibits as required by law. Even it is taken as true that those were not marked as exhibits at the fault of the learned Judge but it does not help the

plaintiffs anyway to prove their case because the heirs of Ahammad and Nur Mohammad already sold the same to Joynal Abedin and Motaleb on 18.06.1976 through exhibit-Da measuring 28 decimals and as such Mahfuz, father of the plaintiffs having no right and title in any part of suit land cannot transfer the same to the plaintiffs in any manner whatsoever. We find no reason to remand the case to prove the aforesaid documents because of the fact as above. The submission of the appellant to that effect, therefore, bears no merit. In a suit for declaration of title and partition the plaintiffs are to prove their title in the suit land first which they failed to do by producing and exhibiting documents as required by the law. On the other hand defendant 13 claimed the suit land by way of gradual purchase from the original recorded tenants. He produced the deed dated 18.06.1976 (exhibit-Da) through which Joynal Abedin and Motaleb purchased the suit land from the heirs of Ahammad and Nur Mohammad. The aforesaid *kabala* exhibit-Da shows that out 13 vendors only vendor numbers 11, 12 and 13 Marjia Khatun, Mojibor Rahman and Jahanara Khatun respectively were minors and on their behalf their mother Ambia Khatun as vendor number 2 according permission through Court sold it. The other vendors are found major at that time. The other heirs of Ahammad and Nur Mohammad sold the property as *sui juries* at their own capacity and as such the submission of Mr. Islam to that effect has no leg to stand. Defendant 13 subsequently purchased the

aforesaid land from Joynal Abedin and the heirs of Motaleb through exhibits-Ka and Ga dated 08.07.2007 and 18.10.2010 respectively. The aforesaid documents produced by defendant 13 are all registered documents. The registered deeds of defendant 13 have been proved by the evidence of DW2 Jakir Hossain, DW4 Parvin Akhter and DW5 Samima Akhter, a mohorar of Sub-registry office. In the present suit the aforesaid documents were not challenged. Therefore, the suit in the present form without any declaration against those is found not maintainable also.

We have gone through the evidence of witnesses of both the parties. The evidence led by DWs 2, 3 and 4 proves that defendant 13 is in possession of the suit land. All of them led corroborative evidence as to the possession of defendant 13 Humayun Kabir in the suit land by saying that he has been cultivating potatoes in the suit land. Although, the learned Advocate for the appellants raised objection that they are interested witnesses but we find that they are natural witnesses in this case. We further find that the defendant in support of oral evidence of witnesses of possession produced documentary evidence exhibits-Jha, Yeo, Ta and Tha, mutation *khatians* and exhibits-Jha and Jha (1) and Jha (2), the rent receipts. It is now well settled that rent receipts are evidence of possession and can be treated as collateral evidence of title. The plaintiffs failed to prove that they have possession over on an inch of suit land.

Therefore, the suit in the present form is also not maintainable without seeking consequential relief of recovery of possession.

Under the facts and circumstances, we find that the plaintiffs failed to prove their title and possession in the suit land and as such they are not entitled to get declaration of title and partition as prayed for. The trial Court on threadbare discussions dismissed the suit. We find nothing to interfere with the impugned judgment and decree.

Accordingly, this appeal is dismissed. No order as to costs. The judgment and decree passed by the trial Court is hereby affirmed.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J.

I agree.