

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

First Appeal No. 295 of 2017.
With
Civil Rule No. 610(F) of 2017
With
Civil Rule No. 29(Vio)(F) of 2020

Abdul Mazid Talukder and others
..... Plaintiff-Appellants.
Vs.
Abdul Kader and others.
...Respondents.

Mr. Zainul Abedin(appeared virtually) with
Mr. Nurul Amin with
Mr. Shah Alam Bhuiyan with
Mr. Abdul Hai Fakir, Advocates
...For the appellants.
Mr. Abdul Berek Chowdhury with
Mr. Md. Abdul Hai with
Mr. Mustafizur Rahman, Advocates
...For the respondent Nos. 1-5.

<p><u>Present</u> (Physically in Court): Mr. Justice Sheikh Hassan Arif And Mr. Justice Ahmed Sohel</p>

Heard on 14.01.2021, 17.01.2021,
18.01.2021, 19.01.2021 and 20.02.2021
Judgment on: 24.01.2021.

SHEIKH HASSAN ARIF, J

1. The plaintiffs have preferred the instant appeal against judgment and decree dated 25.09.2017 (decree signed on 27.09.2017) passed by the Joint District Judge, 4th Court, Dhaka in Title Suit No. 263 of 2015 thereby dismissing the suit filed by the plaintiffs for declaration of their title and recovery of khas possession in respect of the suit land.

- 1.1. The aforesaid Civil Rules were also issued by this Court at the instance of the plaintiff-appellants in connection with the instant appeal.
- 1.2. Civil Rule No. 610(F) of 2017 was issued calling upon the respondent-defendants to show cause as to why they should not be prevented from further construction on the suit land. At the time of issuance of the Rule, this Court, vide ad-interim order dated 22.10.2017, restrained the defendant-respondents by an order of injunction, for a period of 03(three) months, from doing any further construction on the suit land. Subsequently, the period of the said ad-interim injunction was extended till disposal of the said Rule. Thereafter, on a further application by the plaintiff-appellants alleging violation of the said injunction order, this Court issue Civil Rule No. 29(Vio)(F) of 2020 vide order dated 30.11.2020 asking the defendant-respondents to show cause as to why violation proceedings should not be drawn-up against them.
- 1.3. During pendency of the above Rules, the appellants have fixed this appeal for hearing.

2. **Background Facts:**

- 2.1. The plaintiffs filed Title Suit No. 819 of 2011 before the Second Court of Joint District Judge, Dhaka seeking declaration of Title in respect of the Suit land and recovery of khas possession therein. Subsequently, the said suit was transferred to the

Fourth Court of Joint District Judge, Dhaka and renumbered as Title Suit No. 263 of 2015.

2.2. The case of the plaintiffs, in short, is as follows:

(a) that the suit land measuring 6 decimals of land under C.S. Khatian No. 460, S.A. Khatian No. 522, Plot No. 1249, corresponding R.S. Khatian No. 1338, R.S. Plot No. 18706/20474 and City record (DP) No.2309, Plot No. 58752 of Mouza Senpara Parbata previously under Keranigonj Police Station then Tejgaon P.S then Mirpur P.S and at present Kafrul P.S; C.S J.L No.220, S.A. J.L No.99 (“the suit land”) along with other lands originally belonged to two brothers, named Alimuddin and Salimuddin, in equal shares. That the suit property fell in the saham of Alimuddin by amicable partition among the two brothers and that Alimuddin died leaving behind two sons, Enayetullah and Alimnullah, and one daughter, Khatun Bibi. Accordingly, S.A. record was prepared duly in their names. That Khatun Bibi sold out her portion to her nephew Moniruddin and Alauddin, both sons of Enayetullah, by registered deed No. 5281 dated 05/05/1958. Thereafter, the said Enayetullah and his two sons (Moniruddin and Alauddin) jointly sold out 18.5 decimals of land to Md. Oli Miah by a registered sale deed No. 7355 dated 14.03.1974. Out of the said land, Md. Oli Miah sold out 10(ten) decimals of land to Abdur Rahim Talukder by two registered deeds, being Nos. 28721 and 28726, both dated 16.10.1974. The said Md. Oli

Miah further sold out another 6(six) decimals of land to the said Abdur Rahim Talukder by another registered sale deed, being No. 29678 dated 05.11.1974. Accordingly, R.S Khatian No. 1338, R.S. plot No. 18706, was prepared in the name of the said Abdur Rahim Talukder.

(b) That the Government acquired certain portions of land from the said land of the Abdur Rahim Talukder and others for construction of the road named Begum Rokeya Sarani vide L.A Case No. 5/80-81, and in such acquisition, 9(nine) decimals of land of the suit plot, being C.S plot No. 1249, and 2(two) decimals of land of C.S plot No. 1066 belonging to the said Abdur Rahim Talukder were acquired and, accordingly, an award was prepared in his name and he received the said award. After such acquisition, it is stated, the rest of the unacquired land belonging to the said Abdur Rahim Talukder was demarcated by the land acquisition office by preparing a sketch map and, according to the said sketch map, 6(six) decimals of land of C.S. plot No. 1249 belonging to Abdur Rahim remained unacquired and fell on the east side of the said road and one decimal of such unacquired land of C.S plot No. 1066 belonging to said Abdur Rahim fell on the west side of the road. Accordingly, R.S. khatian was prepared in the name of the said Abdur Rahim Talukder who paid rents to the Government.

- (c) Further case of the plaintiffs is that the said Abdur Rahim Talukder died leaving behind his wife named Nargis Talukder, three brothers named Abdul Mazid Talukder, Kamal Reza Talukder, Golam Mostafa Talukder and three sisters named Nasreen Rahman, Rokhsana Samad and Farzana Talukder upon whom the ownership of the said land devolved. That Golam Mostafa Talukder died leaving behind one wife Nazma Talukder and one daughter Anika Shakram. Thereafter, through an oral amicable partition in between the heirs of Abdur Rahim Talukder, the suit land mentioned in the schedule to the plaint fell in the saham of the plaintiffs, who, accordingly, got their names recorded in R.S Khatian and have been paying land tax.
- (d) It is stated that the plaintiffs have been possessing the said land like their predecessor Abdur Rahim Talukder. However, during operation of City survey, the DP khatian (attestation khatian) was wrongly prepared in the name of the defendants against which their predecessor, Abdur Rahim Talukder, filed Appeal under Section 30 of the State Acquisition and Tenancy Rules, 1955. That during pendency of the said appeal, the said Abdur Rahim Talukder died and, consequently, the Appeal was dismissed beyond the knowledge of the plaintiffs. That, recently, the plaintiffs came to know about the said wrong recording of city khatian and learnt that the defendants were claiming the said land on basis of registered sale deed No. 7175 dated 14.10.1997, which was executed by some Afroza

Mannan and others, which did not in any way attract the suit land. That, on 15.08.2011, the defendants illegally dispossessed the plaintiffs from the suit land and built some small-sized make-shift houses. Thereupon, the plaintiffs requested the defendants to vacate the suit land, but they did not comply and lastly, on 24.09.2011, they refused to vacate the suit land which compelled the plaintiffs to file the said suit seeking declaration of their title and recovery of khash possession.

2.3. The suit was contested by the defendant-respondents by filling written statements wherein they denied all material allegations. According to the defendants:

(a) The suit land along with other lands originally belonged to Alimuddin who died leaving two sons, Enayetullah and Aminullah, and one daughter, Kahtun Bibi. That the said Alimuddin, during his lifetime, transferred 39 decimals of land to his son, Aminullah, by a registered deed, being No. 2906 dated 14.08.1939. That the said Aminullah sold out the same land by registered sale deed No. 2298 dated 09.05.1950 to the predecessor of the defendants, Asharab Ali, who thereafter transferred the said land to his two sons, Abdul Kadir (defendant No.1) and Sadir Mia by a registered heba deed, being No. 6718 dated 18.08.1952. On the other hand, it is stated, Anwar Ullah, son of S.A recorded owner

Aminullah, sold out 3(three) decimals of said the land to Abed Ali by registered deed No. 15195 dated 27.05.1974. Accordingly, R.S khatian No. 3422, corresponding R.S. plot No. 18708 for land measuring 6(six) decimals was prepared in his name. That he sold out 3(three) decimals of the said land by registered deed No. 2663 dated 20.04.1988 to AKM Azizur Rahman, Mrs Rozi Rahman, Mrs. Sufia Khatun, who subsequently sold out the same to the defendant No.1 by registered deed No. 3613 dated 19.08.1991.

(b) Further case of the defendants is that Khatun Bibi, daughter of the C.S recorded owner Alimuddin, transferred her share in the suit land to Moniruddin and Alauddin (sons of Enayetullah) by a registered heba deed No.5281 dated 05.05.1958 and, thereafter, Enayetullah, along with his two sons, sold out 10 decimals of their land by a registered deed No. 6600 dated 07.03.1974 to Jamal Uddin, whose name was recorded in R.S khatian No. 4237. That the said Jamal Uddin sold out .4125 ajutangsho land by registered deed Nos. 5048, 5049 and 5050, all dated 10.09.1987, to AKM Azizur Rahman, Mrs. Rozi Rahman, Mrs. Sufia Khatun, who, subsequently, sold out the said land to defendant Nos. 2-5 by three registered deeds, being Nos. 3611, 3612 and 3614, all dated 19.08.1999. By this way, it is stated, the defendants, got title in 46.125 decimals of land. That during attestation of

city survey, the said land was recorded in their names. It is further stated that the plaintiffs' predecessor, Abdur Rahim Talukder, filed Appeal Case under Rule 31 of the Tenancy Rules against the said attestation khatian, but the said appeal was dismissed on merit. Accordingly, the record was duly prepared in defendants' name and they have been possessing the suit land peacefully for 60 years. It is stated that the defendants were in possession and they have never dispossessed the plaintiffs as the plaintiffs were not in possess at all. Accordingly, it is contended, the suit is liable to be dismissed.

2.4. Upon such pleadings, the Court below framed five issues in the following terms:

1. Whether the suit is maintainable in its present form;
2. Whether the suit is barred by limitation;
3. Whether the plaintiffs have got title in the Suit land;
4. Whether the defendants dispossessed the plaintiffs from the suit land; and
5. Whether the plaintiffs are entitled to get a decree as prayed for.

2.5. During trial, the plaintiffs produced seven witnesses (P.W. 1 to P.W. 7) and exhibited various documents which were noted by the trial Court as exhibits 1 to 16. On the other hand, the defendants produced two witnesses (D.W.-1 and D.W.-2) and submitted various documents which were recorded by the trial

court as exhibits “ক” to “প”. Upon hearing the parties and examining the evidences on record, the trial Court dismissed the suit by the impugned judgment and decree mainly contending that plaintiffs failed to prove their title and that they also failed to prove that they were in possession or that during such possession, they were dispossessed by the defendants and further held that the suit land was unspecified land. Being aggrieved by such dismissal of the suit, the plaintiffs preferred the instant appeal and obtained the aforesaid Rules therein.

3. Submissions:

We have heard the learned advocates both physically and virtually. Learned advocate for the appellant, Mr. Abdul Hai Fakir, has placed the impugned judgment before us along with the depositions of the witnesses of both the parties. Learned advocates of both sides helped us in meticulously examining the exhibits, in particular the sketch map and the pantograph submitted by the parties before the Court below.

3.1. Learned advocate for the appellants mainly submits as follows:

- (1) That the plaintiffs have annexed a sketch map along with the plaint and this sketch map has been identified as similar sketch map lying with the land acquisition office having been prepared by an official of the land acquisition office for the purpose of demarcating the land of the late

Abdur Rahim Talukder after acquisition was done. Therefore, the trial Court committed gross illegality in holding that the suit land was unspecified land;

(2) That the plaintiffs have produced a trained surveyor as witness, who prepared a pantograph, and the said pantograph (Exhibits-16) was proved by the said witness to be the correct pantograph prepared in respect of the suit land by way of comparing the maps of C.S record, S.A record and City Jarip record and, according to the said pantograph, the land of the plaintiffs was clearly identified. Therefore, the Trial Court committed illegality in totally ignoring the said pantograph (Exhibit-16) and the report of the land acquisition official (Exhibit-15), as proved by the plaintiffs, for identifying the suit land properly.

(3) That preparation of R.S record is an admitted fact in this case and it is also admitted that the land of the defendants is not within R.S plot No. 20474, which was claimed by the plaintiffs, and that the land of the defendants fell under R.S plot No. 20473, being an adjacent land of the suit land. Therefore, since this R.S record has never been challenged by the defendants and it is the definite case of the defendants that they do not have any claim over R.S plot No. 20474 of R.S khatian No. 1338, the trial Court illegally to hold that the defendants did not even have

any right to contest the claim of the plaintiffs in respect of R.S Plot No. 20474;

(4) That there is no averment in the written statement or in the deposition of the witnesses of the defendants that the suit land, being R.S Plot No. 20474, has ever encroached upon the land of the defendants in any way either during preparation of R.S. record, in particular by way of any mistake committed in preparation of R.S record, and since the defendants did not produce any counter pantograph as prepared by any expert-surveyor showing that the suit land claimed by the plaintiffs has in any way encroached upon the land of the defendants, the defendants even did not have any right before the trial Court to contest the claims of the plaintiff as regards title, possession and/or dispossession in respect of the suit land. However, the trial Court below has completely ignored this aspect of the case and, accordingly, led itself to reach a wrong conclusion that the plaintiffs failed to prove their case by merely relying on some statements and deposition of the defendants.

(5) That since the plaintiffs have proved the chain of registered documents by which they acquired title and have also proved the exact location of their land by producing the surveyor, who was assigned to demarcate the un-acquired land of the plaintiffs' predecessor-Abdur

Rahim Talukder, the trial Court committed gross illegality in holding that the land in question was unspecified.

(6) That since the plaintiffs have produced the rent receipts proving the payment of rents as against the R.S record of plaintiffs' name in respect of the suit land, the plaintiffs were not required to prove their possession in the suit land any further. In support of this submission, learned advocate refers to **Erfan Ali vs. Joynal Abedin Mia and others, 35 DLR (AD)(1983)-216.**

(7) That the witnesses of the plaintiffs have specifically proved the fact of dispossession and the said witnesses could not be shakened by cross examination. Therefore, the trial Court also committed illegality in not believing the fact of dispossession of the plaintiffs by the defendants, particularly when the witnesses of the defendants stated that the defendant No.1-Abdul Kader was Ward Commissioner of the concerned ward at the relevant time of dispossession.

(8) That the Court below has also committed illegality in holding that the plaintiffs should have filed partition suit, particularly when none of the co-sharerers of the plaintiffs have raised any dispute in respect of the claim of the plaintiffs in the suit land.

4. As against above submissions, Mr. Abdul Barek Chowdhury, learned advocate, along with Mr. Abdul Hai and Mr. Mustafizur Rahman Khan, learned advocates appearing for the defendant-respondent Nos. 1-5, submits as follows:

(1) That the title deeds submitted by the plaintiffs to show the chain of their title have different and contradictory schedules of the suit land and the plaintiffs have failed to explain such contradiction during trial. Therefore, when the plaintiffs gave different demarcation of the suit land, which was in clear contradiction with the demarcation mentioned in the said chain of title deeds, the trial Court committed no illegality in holding that the Suit land was unspecified land and that the plaintiffs failed to properly specify the Suit land to seek a decree of recovery of khash possession.

(2) That there is nothing in the plaint as to how the plaintiffs came into possession of the suit land before their alleged dispossession done by the defendants. Therefore, the trial Court committed no illegality in dismissing their suit seeking declaration of title and recovery of khash possession.

(3) That the Exhibit- 16, as produced by the plaintiffs through a private surveyor, was rightly not relied upon by the Court below inasmuch as that the individual who prepared the said pantograph (Exhibit-16) was not authorized to prepare such pantograph. Therefore, the said

pantograph was rightly not relied upon by the court below for identification and/or demarcation of the suit land and as such the Court below committed no illegality in holding that the suit land was not specified one.

(4) That the trial Court below rightly pointed out that the chain of title deeds of the plaintiffs have repeatedly stated in their schedules that the land of Ashraf Ali, predecessor of the defendants, was situated on the east of the suit land— whereas the plaintiffs claimed in the plaint and by way of depositions that the land of Ashraf Ali is situated on the south of the suit land. Upon finding this clear contradiction, the trial Court rightly held that the plaintiffs failed to locate their land for seeking a decree of khash possession.

5. Deliberations and findings of the Court:

5.1. We have re-assessed the evidences on record, depositions of the witnesses and examined the impugned judgment. Upon such re-assessment and examinations, the vital points for determination in this appeal are as follows;

A) Whether the suit land was unspecified?

B) Whether the plaintiff proved their title and possession and/or dispossession.

5.2. The title claim of the plaintiffs mainly relies on the transfer of Md. Oli Mia in their favour in respect of 18.5 decimals of land in the

C.S Plot Nos. 1249 and 1066. Trial Court rightly found, upon examination of exhibit-5 series and exhibit-6 (the title deeds submitted by the plaintiffs) that Abdul Rahim Talukder, the predecessor of the plaintiffs, got 16(sixteen) decimals of land from the said Md. Oli Mia by way of three registered sale deeds, being Nos. 28721 and 28726, both dated 16.10.1974, and deed No. 29678 dated 05.11.1974. According to plaintiffs' claim, an area of 9 decimals of land of C.S Plot No.1249 and 2 decimals of land of C.S Plot No. 1066 were acquired by the government in L.A. No. 05/1980-1981 for construction of Begum Rokeya Sarani Road and after such acquisition, 7 decimals of land under the said two C.S plots remained unacquired. Their claim is that out of the said 7 decimals land, 6 decimals land fell under C.S Plot No. 1249 on the eastern side of the said road and one decimal of land of C.S Plot No. 1066 fell on the western side of the said road. This fact of unacquired land remaining on the eastern and western side of the Rokeya Sarani Road has been proved by the plaintiffs by producing P.W. 4 and Exhibit-15, which was the report officially prepared by P.W. 4 and submitted before the land acquisition office after acquisition of the said land. P.W. 4 has clearly deposed that he was a canongo at the relevant time of the said acquisition and he was assigned, along with surveyor Saidul and one chainman, to demarcate the unacquired land of the said Abdur Rahim Talukder upon an application filed by the said Abdur Rahim Talukder. He further

deposed that a হাত নকশা (sketch map) was prepared by him after he took the measurement of the said unacquired land and he submitted a report along with that হাত নকশা (sketch map) by specifically demarcating the said 6 decimals of land on the east side of the said road and 01 (one) decimal of land on the west side of the said road. According to him, the said sketch map was still lying with the L.A. Section of the concerned department of the government. He also deposed that at the time of the said measurement of unacquired land and preparation of the said report, the defendant No. 1, who was the local commissioner, was present along with the said Abdur Rahim Talukder himself.

5.3. Now, let us have a look at the report submitted by him (P.W. 4) after such measurement, which was marked by the trial Court as exhibit-15. It appears from the said exhibit-15, the report of the said Canongo, that the said report was prepared by three officials of the land acquisition office and P.W. 4 himself signed the said report along with 2 others on 19.01.2004. In the said report, the said three officials have categorically stated that they prepared a হাত নকশা (sketch map) in respect of the unacquired land. It further appears from the said report that after acquisition of various lands from C.S Plot Nos. 1249 and 1066, including some land of Abdur Rahim Talukder under the same Plots, 7(seven) decimals of land belonging to the said Abdur Rahim Talukder remained unacquired. However, according to the said

report, Abdur Rahim Talukder was not found in possession of the said 7(seven) decimals of land. Therefore, this report (Exhibit-15) as well as the deposition of P.W. 4 cannot be ruled out in this case under any circumstances, particularly when the plaintiffs have, by way of Exhibit-16 (pantograph prepared by a trained surveyor), successfully shown before the Court below as regards the specific location of the said 7(seven) decimals, unacquired land.

5.4. According to the said report (Exhibit-15), 6 decimals of the C.S Plot No. 1249 fell on the east side of the acquired land of Rokey Sarani road and 1 decimal of C.S Plot No. 1066 fell on west side of the said road. Therefore, it cannot be said that the said unacquired land of Abdur Rahim Talukder was or is unspecified land in the suit. When the plaintiffs have proved the said report of the land office as exhibit-15 by P.W.4, one of the officials who officially prepared such report, we fail to understand as to what more is necessary on the part of the plaintiffs to prove the exact location of the suit land.

5.5. The standard of proof in a civil litigation is “balance of probability” unlike the standard in criminal case which is “beyond reasonable doubt”. In proving the title as well as the specific location of a particular land by a party, he does not need to prove the same beyond reasonable doubt. Rather, that party is required to prove the same by a standard of balance of

probability. In the instant case, with the production of Exhibit 15, which was proved by P.W. 4 (one of the officials who prepared the said report and signed the same), who even deposed that a sketch map was prepared by them at the time of demarcation of the said land, and when such deposition of P.W. 4 and report (Exhibit-15) are supported by the pantograph (Exhibit-16) submitted on behalf of the plaintiffs through P.W. 8, who is a trained surveyor and a former land official, we do not find any cogent reason as to how the Court below has concluded that the suit land is unspecified land.

5.6. It is true that in the said report (Exhibit-15) it has been stated that Abdur Rahim Talukder was not found in possession of the said unacquired 7 decimals land. However, as against this statement, when the plaintiffs have submitted the rent receipts showing recording of the name of their predecessor in the R.S. Khatian during R.S Survey, we are of the view that the latches on the part of the plaintiffs in respect of their possession of the suit land have been cured, particularly when the said R.S. record has never been questioned by anyone in the suit.

5.7. There is another aspect in this suit, which is that, in the chain of title deeds, in particular the schedules of those deeds of the plaintiffs (Exhibit 5 Series and Exhibit-6), Ashraf Ali's land was stated to be on the eastern side of the plaintiff's land and it was also found by the Court below that in all the said chain title

deeds, the demarcation in the schedules was same which, according to the Court below, was impossible, and this led the learned judge to conclude that the demarcation of the land was also confusing and unspecified. It has to be borne in mind that during trial of the suit, Abdur Rahim Talukder was not alive. The plaintiffs were just heirs of the said Abdur Rahim Talukder and they were not in a position to describe as to why the said chain title deeds of the plaintiffs mentioned such inconsistent demarcation of the land. Therefore, we are of the view that even if there is any mistake or inconsistency in the demarcation of the schedules of land in the said chain title deeds of the plaintiffs (Exhibit-5 Series and Exhibit-6), that cannot by itself make the land in question unspecified, particularly when P.W. 4, P.W.8, along with Exhibits 15 and 16, have in clear terms specified the land in question.

- 5.8. In this regard, we have also examined the pantograph itself (Exhibit 16), which was prepared by P.W.8 who himself has signed it at the bottom and identified himself as an M.S.T.S. trained Surveyor and former Sarder Amin, Card No. 9, Dhaka Settlement signifying his experience in the land office of the government and his expertise in preparing such pantographs. It is admitted by the learned advocates in the course of arguments that pantograph is a map prepared by survey-trained individuals by comparing the maps prepared in C.S, S.A., R.S, City Jarip

etc. However, the instant pantograph (Exhibit-16), it appears, has been prepared by the said P.W. 8 by comparing C.S map, R.S map and City map, and he has marked the linings of the plots therein by different colors, namely: C.S map lines have been drawn in black, R.S map lines have been drawn in green and City map lines have been drawn in red. It has become evident from the deposition of P.W. 8, as extensively cross-examined by the learned advocate of the defendants, that he was in fact an expert in preparing such pantographs and the defendants have failed to shake his credibility, capacity and expertise in preparing such pantographs. Defendants also have not produced a counter-pantograph map prepared by another surveyor suggesting any doubt in the accuracy of the pantograph prepared by P.W. 8. The only suggestion given from the defendants' side during cross-examination was that the P.W. 8 was not authorized to prepare such pantograph, which he clearly denied. Therefore, we are of the view that the trial Court ought to have relied upon this pantograph as the same was prepared by comparison of three maps, namely C.S map, R.S map and City map, of the respective lands of the parties.

5.9. Admittedly, during City survey, certain lands have been recorded under City Survey DP khatian No. 2309 City Jarip Plot No. 58752. It appears from the said pantograph that the land under City Jarip Plot No. 58752 is a huge plot and it encroached

upon the lands of R.S Plot No. 20474, 6 decimals of which have been claimed by the plaintiffs in the suit. It further appears that the said City Jarip Plot is not only situated on the eastern side of the R.S Plot No. 20474, rather it covers some portion on the southern side of the said R.S Plot No. 20474. This being the apparent picture from the said pantograph (Exhibit-16), we may easily find a reason as to why the chain title documents of the plaintiffs-(Exhibit -5 series and Exhibit-6) described the land of Ashraf Ali on the eastern side of plaintiffs' land. This also justifies as to why the P.Ws have repeatedly deposed before the Court below that at present the building of the defendants is situated on the southern side of the suit land. However, very unfortunately, the Court below has totally ignored this scientific and practical aspect of the case.

5.10. Admittedly, the defendants are not claiming any right and title in R.S Plot No. 20474. They have not stated a single word in their written statement that the location of R.S Plot No. 20474 has in any way encroached upon their lands. Their witnesses have also deposed that they do not have any claim on R.S Plot No. 20474. Therefore, apparently, a gross mistake has been committed in preparing the City Jarip map and/ City Jarip Khatian, particularly when this pantograph has also shown the road in question, namely Rokeya Sarani Road, on the western side of the suit land.

5.11. Since the plaintiffs have proved, with the help of P.W. 4 and P.W. 8 as well as other witnesses, that Abdur Rahim Talukder, their predecessor, was the owner of the land in question and after acquisition, 7 decimals of land of Abdur Rahim Talukder remained un-acquired and the said 7 decimals of land have been clearly identified by P.W. 4 through the report-(Exhibit-15) which is exactly supported by the pantograph-(Exhibit-16) prepared by P.W. 8 and duly proved before the Court, we do not see any further necessity on the part of the plaintiffs to adduce any further evidence, any further documents or further witnesses to prove their title in the suit land, particularly when defendants are not claiming any title in R.S Plot No.20474. On the other hand, since the said P.W. 4 (with Exhibit-15) and P.W. 8 (with Exhibit-16) have clearly identified the existence of the land in question, which has clearly been overlapped by City Jarip Plot No. 58752 of City Jarip DP Khatian No. 2309 (DP), we are of the view that, in fact the land claimed by the defendants on the strength of this City Jarip has encroached upon the land of the plaintiffs as clearly identified and demarcated by P.W. 4 and P.W. 8. Therefore, when plaintiffs have been able to prove their case to this extent of title and demarcation in respect of the claimed land, we are of the view that the case of the plaintiffs as regards dispossession by the defendants are just some ancillary facts which need not be dealt into so seriously, particularly when

the defendants do not claim the title in the lands of R.S Plot No. 20474.

5.12. Even then it appears that the witnesses of the plaintiffs have deposed before the Court below as regards the fact of dispossession by the defendants and that the defendant No.1 was the running commissioner of the Ward within which the suit land is situated. When the claim of the plaintiffs as regards title of R.S Plot No.20474, in particular the 6 decimals of land on the eastern side of Rokeya Sarani road, has remained unchallenged by the defendants, we are of the view that the plaintiffs are not required to prove their title and possession/ dispossession in the suit land any further given that Abdur Rahim Talukder was the recorded owner of the suit land by virtue of R.S record of rights and paid land rents on the basis of such record.

5.13. In view of above, we are of the view that this appeal should succeed and the plaintiffs should get decree in respect of declaration of their title in the suit land and recovery of khas possession, particularly when it appears that the defendants are in physical possession of the suit land which has been overlapped by the City Jarip Plot No. 58752, which was recorded in the name of the defendants.

6. **Orders of the Court:**

6.1. In the result, the appeal is allowed. Accordingly, the judgment and decree dated 25.09.2017 (decree signed on 27.09.2017) passed by the Joint District Judge, Fourth Court, Dhaka in Title Suit No. 263 of 2015, thereby dismissing the suit filed by the plaintiffs for declaration of their title and recovery of khas position, are hereby set aside. Thus, the suit is decreed in favour of the Plaintiffs. Plaintiffs are declared to be the owner of six decimals land in R.S Plot No.20474 as demarcated by sketch map annexed to the plaint. Accordingly, the plaintiffs are entitled to recover khas possession of the land in question in accordance with law, if necessary by filing execution case for execution of the decree. They are also entitled to correct the City Jarip record in their favour in respect of the land in question.

6.2. It is also declared that the City Jarip DP Khatian No. 2309 (DP) prepared in the name of defendants is wrong and illegal to the extent of the suit land as demarcated in the sketch map annexed to the plaint and supported by Exhibit-16.

6.3. Accordingly, the connected Civil Rule No. 610(F) of 2017 and Civil Rule No. 29(Vio)(F) of 2020 are also disposed of.

Send down the lower Court records.

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(Sheikh Hassan Arif,J)

I agree.

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(Ahmed Sohel, J)