

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 2692 of 2017

Shree Ananta Kumar Aich, being dead, his legal heirs are-

1(a) Anjali Kumar Aich and others....Petitioners

-Versus-

Shree Sadhon Bhowmik and others....Opposite parties

with

Civil Revision No. 2691 of 2017

Shree Ananta Kumar Aich, being dead, his legal heirs:

1(a) Anjali Rani Aich and others....Petitioners

-Versus-

Shree Sadhon Bhowmik and others....Opposite parties

Mr. Mrinal Kanti Biswas, Advocate with

Mr. Dip Biswas, Advocate

....For the petitioners (In both the revisions)

Mr. Sharan Chandra Talukder, Advocate

....For the opposite party No. 1 (In both the revisions)

Heard on 12.05.2026, 07.06.2026, 15.06.2026, 21.06.2026,
24.06.2026, 05.07.2026, 06.07.2026, 12.07.2026, 19.07.2026,
20.07.2026 and 27.07.2026

Judgment delivered on 30.07.2026

At the very outset, it is noted that at the time of issuance of the Rules, this Court passed an order for analogous hearing of the Rules, and both the Rules were heard analogously and disposed of by this single judgment.

In Civil Revision No. 2691 of 2017 Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 04.05.2017 passed by the Additional District Judge, Netrokona in Other Class Appeal No. 190 of 2005 reversing the judgment and decree dated 07.08.2005 passed by the Senior Assistant Judge, Sadar, Netrokona in Other Class Suit No. 04 of 2001 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

In Civil Revision No. 2692 of 2017 Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 04.05.2017 passed by the Additional District Judge, Netrokona in Other Class Appeal No. 191 of 2005 reversing the judgment and decree dated 07.08.2005 passed by the Senior Assistant Judge, Sadar, Netrokona in Other Class Suit No. 55 of 2001 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The plaint case of Other Class Suit No. 04 of 2001, in a nutshell, is that Digendra Chandra Sarkar was the S.A. recorded tenant of 48 decimals of land of S.A. Khatian No. 7, Dag No. 94, who transferred 17 decimals of land by unregistered deed dated 03.02.1970 in favour of Sree Akshay Kumar Aich. The plaintiff No. 1 is the son of Sree Akshay Kumar Aich, and plaintiff Nos. 7 to 8 are

heirs of Sree Akshay Kumar Aich. After execution of the said deed, due to much uprising, Digendra Chandra Sarkar could not register the deed in favour of Sree Akshay Kumar Aich, but he transferred the possession of the suit land. In the meantime, the predecessor of the plaintiffs filed Other Class Suit No. 185 of 1996 in the Court of Senior Assistant Judge, Netrokona, impleading the heirs of said Digendra Chandra Sarkar as defendants for declaration of title on the suit land, claiming adverse possession, and the said Court, by judgment and decree dated 04.01.2000, passed an ex parte judgment and decree against the defendants, and no appeal has been filed by the defendants against the said ex parte judgment and decree. The defendants threatened the plaintiffs on 02.01.2001 to dispossess them from the suit land. Thereafter, the plaintiffs filed the suit for injunction restraining the defendants from dispossessing them from the suit land.

The defendants contested the suit by filing written statement denying the statement made in the plaint, stating that S.A recorded owner Digendra Chandra Sarkar, died intestate, leaving behind his sons Milon Chandra Sarkar, Animesh Sarkar and Subodh Sarkar, and after the death of Digendra, his sons inherited the suit land and took possession. In an amicable family partition between the sons of Digendra, Subodh Sarkar obtained the suit land along with other land, and he died intestate, leaving behind his sons, Gautam Sarkar, Apolo, Asim Sarkar Tutul, Pintu Sarkar and Sentu Sarkar, who obtained the suit land and took possession of the land by cultivating crops on the suit land. After that, said sons of Subodh Sarkar, by Deed No. 7330 dated 21.12.2000, sold the disputed land to the defendant No. 1, Sadhon Bhowmik. Long after the death of Digendra Chandra Sarkar and his son Subodh Sarkar, the clever predecessors of the plaintiffs filed Other Class Suit No. 185 of 1996, impleading the sons of Subodh Sarkar as defendants. In the said suit, the plaintiffs mala fide mentioned the local address of the defendants although all of them resided in Dhaka. In the said suit, Asim Sarkar Tutul, son of Subodh Sarkar, was not impleaded as a defendant and fraudulently and collusively, without service of summons upon the defendants, obtained an ex parte decree. After service of summons in the instant case, the defendants came to know about the decree passed in the said suit and, in the meantime, the defendants filed a suit for cancellation of the ex parte judgment and decree passed in Other Class Suit No. 185 of 1996, which is now pending. The plaintiffs filed the instant suit to illegally dispossess the defendants from their land. The defendants are paying the rent of the suit land in the name of their predecessor and are now possessing the land.

Plaint case of Other Class Suit No. 55 of 2001

Plaintiff Sree Sadhon Bhowmik filed Other Class Suit No. 55 of 2001 in the Court of Senior Assistant Judge, Netrokona praying for a decree of declaration that the exparte judgment and decree dated 04.01.2000 (decree signed on 11.01.2000) passed by Senior Assistant Judge, Netrokona in Other Class Suit No. 185 of 1996 is void, ineffective and not binding upon the plaintiffs stating that Subodh Sarkar, Milon Chandra Sarkar and Dr. Animesh Sarkar inherited the suit land from Digendra Chandra Sarkar and in an amicable partition Subodh Sarkar obtained the suit land and cultivating the crops possessing the land. Subodh Sarkar died intestate, leaving behind his sons Gautam Sarkar, Pintu Sarkar, Sentu Sarkar, minor Komal Sarkar, and Asim Sarkar Tutul. Gautam Sarkar, Pintu Sarkar, Sentu Sarkar, Komal Sarkar, and Asim Sarkar Tutul inherited the suit land, and after the death of their father, they took possession of the suit land. After that, Gautam Sarkar, Pintu Sarkar, Sentu Sarkar, Komal Sarkar, and Asim Sarkar Tutul, by Deed No. 7330 dated 21.12.2000, sold the suit land to the plaintiff and handed over possession of the suit land. After purchasing the land, the plaintiff took possession by cultivating the land. In the last part of January, 2001, the plaintiff received summons of Title Suit No. 04 of 2001 filed by the defendants in the Court of Senior Assistant Judge, Netrokona, and after going through the plaint of the said suit, came to know about the ex parte judgment and decree dated 04.01.2000 passed in Other Class Suit No. 185 of 1996. After enquiry on 12.03.2001, he came to know about the said ex parte judgment and decree. The defendant Nos. 1 to 8, fraudulently suppressing the summons, obtained an ex parte judgment and decree in the said suit. Asim Sarkar Tutul, brother of the defendant Nos. 9 to 12, was not impleaded as defendant in Other Class Suit No. 185 of 1996. Milon Sarkar left the country and now lives in India, but the plaintiffs collusively, without service of summons upon him, fraudulently obtained the judgment and decree in the said suit. The defendant fraudulently filed the Other Class Suit No. 04 of 2001 impleading the plaintiff as the defendant to grab the suit land, although they have no possession in the suit land and there was no cause of action for filing the suit.

The defendant Nos. 1 to 8 contested the suit by filing written statement denying the assertion made in the plaint, stating that defendant No. 1 and Anil Kumar Aich, father of the defendant Nos. 2 to 8, filed Other Class Suit No. 185 of 1996 impleading Milon Sarkar and others praying for a decree of declaration of title in the suit land, and the summons were duly served upon the defendants. Digendra Chandra Sarkar sold the suit land to Akshay Kumar Aich, predecessor of the defendant Nos. 1 to 8, and on 03.02.1970 executed a sale deed and handed

over possession of the suit land. After the death of Akshay Kumar Aich, his sons Anil Kumar Aich and Ananta Kumar Aich took possession of the suit land, and in the last records, the suit land was recorded in the name of the defendant Nos. 9 to 14 on 27.07.1983. The defendant Nos. 9 to 14 received the summons of Other Class Suit No. 185 of 1996, but they did not contest the suit. Since the suit land was sold by Digendra Chandra Sarkar to Akshay Kumar Aich, the question of amicable partition amongst the sons of Digendra Chandra Sarkar will not arise at all. No title passed to the sons of Digendra Chandra Sarkar after transfer of the suit land on 03.02.1970. Defendant Nos. 9 to 11 and Ashim Sarker did not sell the suit land by deed No. 21.12.2000.

During pendency of both the suits, the plaintiffs of Other Class Suit No. 55 of 2001 filed an application for analogous trial of both the cases, and the trial Court allowed the application for analogous trial, and both the suits were tried by the Senior Assistant Judge, Sadar, Netrokona. Both the parties adduced evidence during trial of the cases, and evidence of the plaintiff of Other Class Suit No. 04 of 2001 was recorded as P.Ws, and the evidence of the plaintiff of Other Class Suit No. 55 of 2001 was recorded as D.Ws. The plaintiff in Other Class Suit No. 04 of 2001 examined 4 P.Ws, and the plaintiff in Other Class Suit No. 55 of 2001 examined 3 D.Ws to prove their respective cases. After concluding the trial, the Senior Assistant Judge, Netrokona, by a single judgment and decree dated 07.08.2005, decreed the Other Class Suit No. 04 of 2001 on contest against the defendant Nos. 1 to 8 restraining them from dispossessing the plaintiffs from the suit land, and dismissed the Other Class Suit No. 55 of 2001.

The opposite party No. 1 Shree Sadhon Bhowmik filed Title Appeal No. 190 of 2005 against the judgment and decree dated 07.08.2005 passed in Other Class Suit No. 04 of 2001 and also filed Title Appeal No. 191 of 2005 in the Court of District Judge, Netrokona against the judgment and decree dated 07.08.2005 (decree signed on 14.08.2005) passed in Other Class Suit No. 55 of 2001. The Additional District Judge, Netrokona heard both the appeals and, by separate judgment and decree dated 04.05.2017, sent both the suits on remand to the trial Court, setting aside the said judgments and decrees passed by the trial Court in both the suits.

Being aggrieved by and dissatisfied with the judgment and decree dated 04.05.2017 passed by the appellate Court in Title Appeal No. 191 of 2005, the defendant-petitioners filed Civil Revision No. 2692 of 2017 and also filed Civil Revision No. 2691 of 2017 against the judgment and decree dated 04.05.2017 passed by the appellate Court in Title Appeal No. 190 of 2005 and obtained the Rules.

Learned Advocate Mr. Mrinal Kanti Biswas appearing along with the learned Advocate Mr. Dip Biswas on behalf of the petitioners in both the Rules submits that Digendra Chandra Sarkar was the S.A. recorded tenant who by an unregistered deed dated 03.02.1970 (Exhibit 4) transferred the suit land to Akshay Kumar Aich, predecessor of the petitioners, and handed over possession of the suit land but due to much uprising in 1970, said deed could not be registered in favour of the Akshay Kumar Aich and after purchasing the land Akshay Kumar Aich took possession of the suit land. Subsequently, the predecessor of the plaintiffs filed Other Class Suit No. 185 of 1996 in the Court of Senior Assistant Judge, Netrokona, praying for a decree of declaration of title, impleading the sons and grandsons of Digendra Chandra Sarkar as the defendants, and the summons were also served upon all the defendants, but they did not contest the suit. Consequently, the trial Court passed an ex parte judgment and decree on 04.01.2000, and no step has been taken by the defendants against the said judgment and decree. He further submits that after the death of Digendra Chandra Sarkar, no title passed to the sons and grandsons of Digendra Chandra Sarkar since he sold the suit land on 03.02.1970 to Akshay Kumar Aich and after passing the said ex parte judgment and decree, the petitioners are possessing the land, mutating their names in the records. He also submits that on 02.01.2001, Sadhon Bhowmik threatened the plaintiffs to dispossess them from the suit land, and during trial of the case, the plaintiffs proved their exclusive possession in the suit land, and the trial Court, on consideration of the evidence adduced by both the parties, legally decreed Other Class Suit No. 04 of 2001 restraining the defendant Nos. 1 to 8 from dispossessing the plaintiffs from the suit land. Lastly, learned Advocate submits that both the parties adduced evidence as to service of summons upon the defendants in Other Class Suit No. 185 of 1996, but the appellate Court, on flimsy grounds, sent the cases on remand to the trial Court to frame issue as to whether summons were duly served upon the defendants in Other Class Suit No. 185 of 1996 and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. In support of his submission, learned Advocate relied on decisions reported in 57 DLR (AD) 120, 61 DLR (AD) 116, 42 DLR (AD) 289 and 54 DLR (AD) 74. He prayed for setting aside the impugned judgments and decrees passed by the appellate Court below.

Learned Advocate Mr. Sharan Chandra Talukder appearing on behalf of the opposite party No. 1 in both the Rules submits that the plaintiffs of Other Class Suit No. 04 of 2001 failed to prove that Digendra Chandra Sarkar executed the unregistered sale deed dated 03.02.1970 and no explanation has been given by the plaintiffs as to why Digendra Chandra Sarkar did not register the said deed in

favour of the Akshay Kumar Aich and without service of summons upon the defendants in Other Class Suit No. 185 of 1996, the plaintiffs fraudulently obtained an ex parte judgment and decree on 04.01.2000 against the heirs of Digendra Chandra Sarkar without impleading Asim Sarkar Tutul, grandson of Digendra Chandra Sarkar as defendant in the Other Class Suit No. 185 of 1996. Therefore, the said judgment and decree passed in Other Class Suit No. 185 of 1996 is fraudulent, collusive and not binding upon the heirs of Digendra Chandra Sarkar. He further submits that the plaintiffs in Other Class Suit No. 04 of 2001 failed to prove his possession in the suit land and cause of action for filing the suit, and the trial Court, on misreading and non-reading of the material evidence of both the parties, illegally decreed the Other Class Suit No. 04 of 2001 and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He also submits that Digendra Chandra Sarkar did not transfer the suit land to Akshay Kumar Aich and Sadhon Bhowmik purchased the suit land by Deed No. 7330 dated 21.12.2000 from grandsons of Digendra Chandra Sarkar and during trial, the plaintiff Sadhon Bhowmik proved his exclusive title and possession in the suit land. Having drawn the attention of this Court to the evidence of P.Ws 1 to 4, learned Advocate submits that P.Ws 1 and 2 admitted the possession of defendant Sadhon Bhowmik in the suit land, and the plaintiff in Other Class Suit No. 55 of 2001 is entitled to a decree of declaration of title and cancellation of the ex parte judgment and decree dated 04.01.2000 passed in Other Class Suit No. 185 of 1996. In support of his submission, learned Advocate relied on the decisions reported in 12 BLC (AD) 7, 15 BLD (AD) 239, 50 DLR 411, 45 DLR 375, AIR 1948 FC 121 and AIR 1948 PC 121.

I have considered the submission of the learned Advocate Mr. Mrinal Kanti Biswas, who appeared along with the learned Advocate Mr. Dip Biswas on behalf of the petitioners, and the learned Advocate Mr. Sharan Chandra Talukder, who appeared on behalf of the opposite party No. 1, and have perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the Courts below in both the suits, and the records.

The issues involves in the Rules as to whether the plaintiff of Other Class Suit No. 04 of 2001 proved that Digendra Chandra Sarkar executed unregistered deed dated 03.02.1970 (exhibit 4) in favour of Akshay Kumar Aich and whether the summons of Other Class Suit No. 185 of 1996 were duly served upon the defendants and whether all the heirs of Digendra Chandra Sarkar were impleaded as defendants in the said suit and as to whether any issue is required to be framed regarding service of summons upon the defendants in Other Class Suit No. 185 of 1996 and as to whether Sadhon Bhowmik acquired title purchasing the suit land

by Deed No. 7330 dated 21.12.2000 (Exhibit Kha) and the plaintiffs of both the suits proved their possession in the suit land.

On perusal of the evidence, it reveals that Digendra Chandra Sarkar was the S.A. recorded tenant of 48 decimals of land of S.A. Khatian No. 7, S.A. Dag No. 94 of Mouza Sakhua. The case of the plaintiffs in Other Class Suit No. 04 of 2001 is that Akshay Kumar Aich purchased 17 decimals of land of S.A. Dag No. 94 by an unregistered deed dated 03.02.1970 from S.A. recorded tenant Digendra Chandra Sarkar and the plaintiffs filed the Other Class Suit No. 185 of 1996 impleading the heirs of Digendra Chandra Sarkar as defendants praying for a decree of declaration of their title based on adverse possession in the suit land and summons were served upon all the defendants but the defendants did not appear in the said suit. Consequently, the trial Court passed an ex parte judgment and decree on 04.01.2000 in the said suit in favour of the plaintiffs, and now the petitioners are possessing the suit land, but after a false transfer by the grandsons of Digendra Chandra Sarkar in favour of Sadhon Bhowmik, on 02.01.2001, the defendants made an attempt to dispossess the petitioners from the suit land. The case of the plaintiff in Other Class Suit No. 55 of 2001 is that Digendra Chandra Sarkar did not transfer the suit land in favour of Akshay Kumar Aich and plaintiff Sadhon Bhowmik purchased the suit land by Deed No. 7330 dated 21.12.2000 (exhibit Kha) from the heirs of Digendra Chandra Sarkar and now possessing the suit land and summons of Other Class Suit No. 185 of 1996 were not served upon the defendants and Ashim Kumar Tutul, grandson of Digendra Chandra Sarkar, was not a party in Other Class Suit No. 185 of 1996.

P.W. 1 stated that his father Akshay Kumar Aich purchased the suit land from Digendra Chandra Sarkar by an unregistered deed dated 03.02.1970 (Exhibit 4), and D.W. 1 stated that he purchased the suit land from the Appolo, Tutul, Pintu and Sentu, grandsons of Digendra Chandra Sarkar, by deed No. 7330 dated 21.12.2000 (Exhibit Kha). The plaintiffs of Other Class Suit No. 4 of 2001 filed the suit praying for a decree of permanent injunction, and the plaintiff of Other Class Suit No. 55 of 2001 filed the suit for declaration of title of the suit land. Therefore, without arriving at any finding as to the title of the plaintiffs of both the suits, Other Class Suit No. 55 of 2001 cannot be disposed of.

On perusal of the evidence, it further reveals that the unregistered deed dated 03.02.1970 allegedly executed by Digendra Chandra Sarkar in favour of Akshay Kumar Aich is not proved by P.W. 1. No explanation has been given by the plaintiffs of Other Class Suit No. 04 of 2001 as to why the deed dated 03.02.1970 is not proved by him. No evidence is adduced by the plaintiffs in Other Class Suit No. 04 of 2001 regarding the date of death of Digendra Chandra

Sarkar. None of the P.Ws proved the alleged signature of Digendra Chandra Sarkar appearing on the deed dated 03.02.1970. P.W. 2 Md. Gias Uddin proved the unregistered deed dated 03.02.1970 as Exhibit 4, but he is not a party in the instant suit. P.W. 2 proved the signature of his father Shashi Kumar, appearing on the unregistered deed dated 03.02.1970 (Exhibit 4) as Exhibit 4/2. No statement is made by P.W. 2, from whom he obtained the unregistered deed dated 03.02.1970 (Exhibit 4). P.W. 1 stated that at the relevant time, there was much uprising, for which Digendra Chandra Sarkar could not register the deed dated 03.02.1970 (Exhibit 4). Historically, a peaceful general election was held in 1970. There was no much uprising in 1970. Therefore, the explanation regarding the non-registration of the deed dated 03.02.1970 (Exhibit 4) by Digendra Chandra Sarkar is found to be untrue. The plaintiffs failed to give any good explanation regarding the non-registration of the deed dated 03.02.1970 by Digendra Chandra Sarkar in favour of Sree Akshay Kumar Aich.

After issuance of a certificate under section 60 of the Registration Act, 1908, it is to be presumed that the deed has been duly registered in the manner provided under the Registration Act and that the facts mentioned in the endorsement referred to in section 59 of the Registration Act, 1908 have been complied with. The presumption under section 60 of the Registration Act, 1908 is rebuttable. If any person disputes the correct registration of the deed after issuance of the certificate under section 60 of the Registration Act, 1908, he may adduce evidence to rebut the presumption. There is no scope to issue a certificate under Section 60 of the Registration Act in respect of an unregistered deed. There is no presumption under Section 60 of the said Act regarding the unregistered deed dated 03.02.1970 (Exhibit 4) as to its correct execution by Digendra Chandra Sarkar. None of the P.W. proved the alleged signature of Digendra Chandra Sarkar appearing on the deed dated 03.02.1970. No step was taken by the plaintiffs in Other Class Suit No. 04 of 2001 sending the unregistered deed (Exhibit 4) to the handwriting expert to ascertain that it was executed by Digendra Chandra Sarkar. I am of the view that the plaintiffs in Other Class Suit No. 04 of 2001 failed to prove that the deed dated 03.02.1970 was executed by Digendra Chandra Sarkar.

On perusal of the plaint of Other Class Suit No. 04 of 2001 and Other Class Suit No. 55 of 2001 in juxtaposition, it transpires that both the parties claimed possession of 17 decimals of land situated on the west side within the disputed Dag No. 94. P.W. 2 Md. Gias Uddin stated that the plaintiffs possess the suit land and the defendants have no possession of the suit land, but he could not say the total land possessed by the plaintiffs. During cross-examination, P.W. 2

affirmed that the suit dag number is 14. P.W. 2 stated the south boundary of the suit land, but he did not disclose all boundaries of the suit land. The south boundary stated by P.W. 2 relates to Dag No. 14. P.W. 3, Tajul Sarkar, stated that the suit land is 17 decimals, which is situated to the west of the disputed dag. He did not disclose the suit dag. The north boundary stated in the plaint is not corroborated by P.W. 3. P.W. 4 Biplab Chakraborty stated that the plaintiffs possesses the suit land and stated the west, north, and east boundaries of the suit land. During cross-examination, P.W. 4 admitted that the suit dag number is 46. Therefore, the boundary stated by P.W. 4 relates to Dag No. 46. In reply to a question, P.W. 2 affirmed that দাগের পূর্বদিকে সাধন ভৌমিক রয়েছে। As per the evidence of P.W. 2, the plaintiffs are possessing the land of Dag No. 14, and the defendants are possessing the land situated to the east of the disputed dag.

P.W. 1 stated that 17 decimals of the suit land out of 48 decimals of land is situated to the west side within the suit dag No. 94. P.W. 2 admitted in cross-examination that Sadhon Bhowmik possessed the east side of the disputed dag, but in the schedule of the plaint it has been asserted that the plaintiffs are also possessing the east of the suit land. P.W. 2 contradicted the boundary stated in the plaint of Other Class Suit No. 04 of 2001.

In the plaint of Other Class Suit No. 04 of 2001, the plaintiffs have given a boundary of 17 decimals of land situated to the west of S.A. Dag No. 94 out of 48 decimals of land. P.W. 1 Ananta Kumar Aich stated that 17 decimals of the suit land is situated on the west side of Dag No. 94, but he did not give any evidence as to the boundary of the suit land. In reply to a question, P.W. 1 stated that 17 decimals of the suit land is situated on the west side within the disputed dag, and Sadhon Bhowmik is possessing 11 decimals, and Ananta and Anil are possessing 20 decimals of other land of the disputed dag. In the boundary mentioned in the plaint, the location of the plaintiffs has been shown to the east and south of the suit land, but the location of Sadhon Bhowmik, Ananta and Anil is not shown in the boundary mentioned in the plaint. I am of the view that the boundary mentioned in the plaint does not attract the suit land.

In the plaint of Other Class Suit No. 04 of 2001, it has been asserted that on 02.01.2001, the defendants threatened the plaintiffs to dispossess them from the suit land. P.W. 1 stated that on 02.01.2001, the defendants threatened to dispossess him from the suit land. In reply to a question, P.W. 1 affirmed that he heard from the locals about the threat of dispossession and that on 02.01.2001 he did not talk to Sadhan Babu. P.W. 2 stated that the defendants threatened the plaintiffs to dispossess them from the suit land. P.W. 3 stated that in January 2001, the defendants threatened the plaintiffs to dispossess them from the suit

land. Nothing has been stated by P.Ws 1, 2 and 3 that, in their presence, the defendants threatened P.W. 1 to dispossess him from the suit land. The plaintiffs in Other Class Suit No. 04 of 2001 did not adduce any witness from whom P.W. 1 heard that the defendants threatened to dispossess them from the suit land. P.W. 1 did not say anything about the boundary of the suit land. P.W. 2 stated that the plaintiffs are possessing Dag No. 14, and P.W. 4 stated that the plaintiffs are possessing Dag No. 46. To obtain a decree of permanent injunction, the plaintiff shall prove his exclusive possession within the specific boundary of the suit land. The evidence of P.W. 1 regarding his possession in the suit Dag No. 94 is contradicted by P.Ws 2 and 4. Therefore, I am of the view that the plaintiffs of Other Class Suit No. 04 of 2001 failed to prove their exclusive possession in the suit land and the cause of action for filing the Other Class Suit No. 04 of 2001.

Now the question has arisen as to whether the summons were duly served upon the defendants of Other Class Suit No. 185 of 1996.

In the judgment and order passed by the trial Court in Other Class Suit No. 04 of 2001, it has been mentioned that the summons were served upon the defendants of Other Class Suit No. 185 of 1996 without reference to the particular order. Therefore, the appellate Court ought to have examined the order sheets of Other Class Suit No. 185 of 1996 to arrive at a finding as to whether summons were duly served upon the defendants. During the course of the hearing, the learned Advocate Mr. Mrinal Kanti Biswas, appearing along with the learned Advocate Mr. Dip Biswas on behalf of the petitioners, having placed the certified copy of the order sheets of Other Class Suit No. 185 of 1996, submits that summons were duly served upon all the defendants.

At this stage, it is relevant here to quote the order dated 03.10.1999 passed by the trial Court in Title Suit No. 185 of 1996, which runs as follows;

“অদ্য ১ নং বিবাদীর শেষ বাসস্থানে ঢালের ঘোষণায় জারীকৃত সমন ফেরতের জন্য দিন ধার্য আছে।
বাদীপক্ষের বিজ্ঞ আইনজীবী হাজিরা দাখিল করিয়াছে। ১ নং বিবাদীর শেষ বাসস্থানে ঢালের ঘোষণার
সমন জারী অন্তে ফেরত আসিয়াছে। বিবাদীপক্ষ কোন প্রকার পদক্ষেপ গ্রহণ করে নাই। বিবাদীপক্ষ
হাজির না হওয়ায় আগামী ইং ১০/১১/৯৯ একতরফা শুনানির জন্য ধার্য রহিল।”

On perusal of the certified copy of the order sheets of Other Class Suit No. 185 of 1996, it reveals that no finding has been arrived at by the Senior Assistant Judge, Netrokona, that summons have been served upon all the defendants. In the order dated 03.10.1999, the trial Court opined that summons were served upon the defendant No. 1, but the defendants did not take any step, and the trial Court passed an order fixing the next date on 10.11.1999 for ex parte hearing without fixing the date for filing the written statement. After service of summons upon the defendants, the Court shall fix a date for filing the written statement. The trial

Court cannot prejudge that the defendants will not appear to contest the suit. Order sheets of Other Class Suit No. 185 of 1996 depict that the summons were not served upon all the defendants, and the trial Court prejudged that the defendants would not appear in the suit and illegally passed ex parte judgment and decree in Other Class Suit No. 185 of 1996 without giving any opportunity of hearing to the defendants.

In the plaint of Other Class Suit No. 55 of 2001, it has been specifically asserted that Asim Sarkar Tutul, grandson of Digendra Chandra Sarkar, was not impleaded as defendant in Other Class Suit No. 185 of 1996, which is not disputed by the defendants-petitioners. I am of the view that Asim Sarkar Tutul was a necessary party in Other Class Suit No. 185 of 1996, but the plaintiffs did not implead said Asim Sarkar Tutul as defendant, and without service of summons upon the defendants of Other Class Suit No. 185 of 1996, plaintiffs fraudulently obtained an ex parte judgment and decree on 04.01.2000 in Other Class Suit No. 185 of 1996.

On perusal of the judgment and decree passed by the trial Court in Other Class Suit No. 55 of 2001, it reveals that the trial Court framed issue No. 4 as to whether the ex parte judgment and decree passed in Other Class Suit No. 185 of 1996 is voidable or not, although no specific issue has been framed as to the service of summons upon the defendants of Other Class Suit No. 185 of 1996. Both the parties adduced evidence as to the service or non-service of summons upon the defendants. Furthermore, the order sheets of Other Class Suit No. 185 of 1996 depict whether summons were served upon the defendants or not. It is a settled proposition that when both the parties have adduced sufficient evidence to adjudicate the dispute between the parties, the appellate Court shall dispose of the suit considering the evidence available on the record. Remand is a time-consuming process, and it involves a heavy financial burden upon the parties. Therefore, ordinarily the Court should not send the case on remand if no additional evidence is required. Since the order sheets of Other Class Suit No. 185 of 1996 depict whether the summons of Other Class Suit No. 185 of 1996 was served upon the defendants or not, no specific issue is required to be framed further as to the service of summons upon the defendants.

In the case of Abdul Awal Khan vs. Md. Sadu Mia and others reported in 1986 (VI) BLD (AD) 156, judgment delivered on 14.11.1985, the Appellate Division has held that;

“It appears that there are evidence and other materials on record adduced by both the plaintiff and the contesting defendant and that both the trial Court and the lower

Appellate Court arrived at conflicting findings on consideration of the same evidence on record. The learned Single Judge of the High Court Division, after setting out the cases of the parties and respective findings of the two courts below, simply observed that it is a “fit ease for re-hearing” of the appeal. We fail to understand why this abrupt order of remand has been made by the learned Single Judge, who, without deciding the question raised in revision, on the basis of the evidence on record, shifted the responsibility to the lower Appellate Court. Evidence has been led by both the parties and the two courts below arrived at conflicting findings, and it was for the revisional court to see whether the trial Court’s finding had been reversed on proper consideration of the evidence. When evidence on all material points are there on record, the revisional court is not justified in sending the case back to the court below for reconsidering the matter. What we find is that the revisional application itself has not been disposed of according to law and as such this should be done.”

In this respect, it is also profitable here to rely on the decision made in the case of Hussain Ahmed Chowdhury alias Ahmed Hossain Chowdhury and others vs. Md. Nurul Amin and others reported in 47 DLR (AD) 162, in which the Appellate Division has held that;

“A perusal of the judgment of the High Court Division shows that the learned Single Judge found that there is a misreading of evidence and that both the courts below have not at all considered the material evidence on record and for that he sent the case back on remand. It is to be stated here that if there is misreading of evidence and non-consideration of some material evidence, then it was incumbent on the revisional court to consider the same and to arrive at a proper finding on the material evidence on record and to finally dispose of the case. In the instant case, even if it is accepted that there is misreading of evidence and non-consideration of material evidence, then the learned Single Judge was within its competence to dispose of the matter on the materials on record without remanding

the suit. The suit being an old case of 30 years, the remand order ought not to have been made so lightly without any justifiable ground for remand.”

It appears that Grandsons of Digendra Chandra Sarkar transferred the suit land to D.W. 1 Sadhon Bhowmik by deed No. 7330 dated 21.12.2000 (Exhibit Kha) which proved that the heirs of Digendra Chandra Sarkar denied the execution of the unregistered deed dated 03.02.1970 (exhibit 4) by Digendra Chandra Sarkar. The plaintiffs in Other Class Suit No. 04 of 2001 failed to prove that the unregistered sale deed dated 03.02.1970 was executed by Digendra Chandra Sarkar. I am of the view that the plaintiffs acquired no title based on the unregistered deed dated 03.02.1970 (Exhibit 4). After the death of Digendra Chandra Sarkar, the title of Digendra Chandra Sarkar on 17 decimals of suit land passed to his sons, and after amicable settlement amongst the sons of Digendra Chandra Sarkar, title of the suit land passed to Subodh Sarkar, son of Digendra Chandra Sarkar, and after his death, title of the suit land passed to his sons, from whom Sadhon Bhowmik purchased 17 decimals of suit land by registered Deed No. 7330 dated 21.12.2000 (Exhibit Kha). P.W. 1 did not take any step to prove that the heirs of Digendra Chandra Sarkar did not sell 17 decimals of suit land by Deed No. 7330 dated 21.12.2000 (Exhibit Kha) to Sadhon Bhowmik. I am of the view that the plaintiff of Other Class Suit No. 55 of 2001 acquired the title to 17 decimals of suit land by Deed No. 7330 dated 21.12.2000 (Exhibit Kha).

D.W. 1 Sadhon Bhowmik stated that he purchased 17 decimals of land out of 48 decimals of land of Dag No. 94 from Apolo, Tutul, Pintu and Sentu, grandsons of Digendra Chandra Sarkar, by registered deed dated 21.12.2000 (Exhibit Kha), and based on the purchase, he is possessing the suit land, and before transfer, his vendors owned the suit land and handed over possession of the suit land to him. He is possessing the land by cultivating the land. During cross-examination, D.W. 1 affirmed that immediately after purchase, he took possession. He himself owned the land. D.W. 2 Muslim stated that the defendants are possessing the suit land. Subodh is the son of Digendra Chandra Sarkar, and Apolo, Tutul and three others are the sons of Subodh. During cross-examination, D.W. 2 affirmed that he heard from Tutul that Milon went to India. He heard immediately after the war of liberation that Digendra Chandra Sarkar executed the bainanama in favour of Akshay Kumar Aich. He heard that Sadhon purchased the land, but he did not see that he was possessing the land. D.W. 3 Md. Jahed Ali stated that Sadhon Babu is possessing the land. He denied the suggestion that Sadhon Babu is not possessing the land. D.W. 4 Jahangir is a witness to Deed No. 7330 dated 21.12.2000. He proved his signature on the said deed (Exhibit Kha).

On perusal of the evidence adduced by both the parties, it reveals that the possession of Sadhon Bhowmik over 11 decimals of land of Dag No. 94 is admitted by P.W. 1, and the possession of Sadhon Bhowmik in the suit dag is also admitted by P.W. 2. D.W. 2 stated that Sadhon Bhowmik is possessing the suit land. By cross-examining D.Ws. 1, 2 and 3, the defence could not assail their evidence as regards possession of D.W. 1 in the suit land. Evidence of D.W. 1 regarding his possession of the suit land is corroborated by D.Ws. 2 and 3, which is also partly corroborated by P.W. 1 and fully by P.W. 2. I am of the view that the plaintiff of Other Class Suit No. 55 of 2001 proved his possession of the suit land. Therefore, the plaintiff of Other Class Suit No. 55 of 2001 is not required to make any prayer for further relief in the suit regarding recovery of possession.

On perusal of the judgment and order passed by the appellate Court, it reveals that without proper assessment and evaluation of the evidence of both the parties and without examining the order sheets of Other Class Suit No. 185 of 1996, the appellate Court avoided writing a proper judgment and arrived at a wrong decision, sending the case on remand directing the trial Court to frame an issue as to whether summons were served upon the defendants of Other Class Suit No. 185 of 1996. It is found that the plaintiffs of Other Class Suit No. 04 of 2001 failed to prove that Digendra Chandra Sarkar sold the suit land to Akshay Kumar Aich by the unregistered deed dated 03.02.1970 (Exhibit 4). The plaintiffs also failed to prove that they were in possession of the suit land. I am of the view that the impugned judgment and decree passed by the trial Court in Other Class Suit No. 04 of 2001 suffers from misreading and non-reading of material evidence, and the trial Court arrived at a wrong finding as to the possession of the plaintiffs and cause of action for filing the suit and thereby committed an error of law resulting in an error in the decision occasioning failure of justice.

Since the plaintiff of Other Class Suit No. 04 of 2001 failed to prove sale of 17 decimals of suit land by Digendra Chandra Sarkar in favour of Akshay Kumar Aich, the title of the heirs of Digendra Chandra Sarkar passed to the plaintiff of Other Class Suit No. 55 of 2001 who purchased the suit land from the grandsons of Digendra Chandra Sarkar by the Deed No. 7330 dated 21.12.2000 (exhibit Kha) and is now possessing the suit land. The summons in Other Class Suit No. 185 of 1996 was not served upon the defendants. Asim Sarkar Tutul, grandson of Digendra Chandra Sarkar, was not impleaded as defendant in the said suit. I am of the view that the judgment and decree passed in Other Class Suit No. 185 of 1996 are collusive and not binding on the plaintiff of Other Class Suit No. 55 of 2001 and are liable to be set aside.

The learned Advocate Mr. Sharan Chandra Talukder, appearing on behalf of the opposite party No. 1, Sadhon Bhowmik, in both the Rules submits that the revisional Court exercises the same power as the appellate Court and since the appellate Court did not dispose of the suits on merit and judgments and decrees passed by the Courts below in both suits are pending before this Court, this Court is legally empowered to dispose of both suits in either way. In reply to a query made by this Court, the learned Advocate Mr. Mrinal Kanti Biswas, appearing on behalf of the petitioners, conceded that, exercising jurisdiction under section 115(1) of the Code of Civil Procedure, 1908, this Court is legally empowered to pass a decree in favour of either party, although the plaintiff of Other Class Suit No. 55 of 2001 did not prefer any revision against the judgment and decree passed by the appellate Court. In support of his submission, the learned Advocate Mr. Sharan Chandra Talukder relied on a decision made in the case of Meher Banu and others Vs. Abdul Barek and others reported in 13 BLT (AD) 177, in which our Apex Court has opined in the following language.

“It is needless to mention here that the power of the appellate court can be exercised by the revisional court in appropriate cases and, in our view, the present case is one of such nature. In this connection, it is to be noted that if the matter was sent back on remand to the appellate court, it would have consumed much more time in the disposal of the matter and in that view of the matter also the impugned judgment of the High Court Division does not suffer from any legal infirmity.”

In this respect, I recall the observation of our Apex Court made in the case of Md. Shajahan Khan vs Additional Deputy Commissioner (Revenue), Munshiganj and others reported in 2003 (XI) BLT (AD) 60 judgment dated 17.11.2001, in which it has been observed that;

“It is well settled that once the conditions in section 115(1) of the Code of Civil Procedure are satisfied and the High Court’s jurisdiction to interfere is established, the proceedings as a whole from start to finish can be scrutinized, and any order necessary for doing justice may be passed. There is no limit to the area in which the revisional power is to be exercised by the High Court Division in the facts and circumstances of each case.”

In this respect, it is relevant here to rely on the decision made in the case of Haji Mustafizur Rahman being dead, his heirs Kabir Ahmed and others vs

Abdul Kader being dead his heirs Nurul Islam and others reported in 4MLR (AD) 1, in which our Apex Court, considering several decisions of its own, has held that;

“The learned Judge quite apparently did not make the order of remand on the grounds as provided in Order XLI Rules 23 and 25, but it was made under a general and inherent power of the Court. This Court observed in Probodh Ranjan Shome Vs Md. Easin 1980 BSCR 457 that it is well-settled that remand orders are not to be made as a matter of course. When there is sufficient evidence on record, remand of a case to the trial Court for fresh hearing is not called for. It has been laid down since long almost uniformly, that a remand order should be avoided as far as possible. The Privy Council in some cases observed that indiscriminate order of remand is tantamount to shirking the responsibility vide Dr. Rezia Khatun Vs. Bhanu Guha and another, 1986 BLD (AD) 135.”

In the case of Attor Mia and another vs Mst. Mahmuda Khatun Chowdhury and others reported in 43 DLR (AD) 78, it has been held that:

“When there was evidence on record and when an appellate judgment is assailed in the revisional Court on the specific ground of misreading of important evidence on record, the revisional Court is fully clothed with necessary powers to notice the alleged misreading and set aside the judgment of the first Appellate Court, if necessary.”

Considering the above proposition adopted by our Apex Court, I am of the view that this Court is empowered under Section 115(1) of the Code of Civil Procedure, 1908 to dispose of both the suits and arrive at any decision as to title and possession of both parties based on evidence adduced by the parties. It is found that the plaintiffs in Other Class Suit No. 04 of 2001 failed to prove their title and possession in the suit land. The summons were not served upon all the defendants of Other Class Suit No. 185 of 1996. The impugned judgment and decree passed by the trial Court in Other Class Suit No. 185 of 1996 is collusive, illegal, and not binding upon the plaintiff of Other Class Suit No. 55 of 2001 and the judgment and decree dated 07.08.2005 passed in Other Class Suit No. 04 of 2001 decreeing the suit is liable to be set aside. The plaintiff in Other Class Suit No. 55 of 2001 proved his title and possession in the suit land. The judgment and decree dated 07.08.2005 passed in Other Class Suit No. 55 of 2001 dismissing the

suit is hereby set aside. The plaintiff of Other Class Suit No. 55 of 2001 is entitled to get a decree of declaration of title on the suit land.

With the above findings and observation, the ex parte judgment and decree dated 04.01.2000 passed by the Senior Assistant Judge, Sadar, Netrokona in Other Class Suit No. 185 of 1996 are hereby set aside, and the judgment and decree dated 07.08.2005 passed by the Senior Assistant Judge, Sadar, Netrokona in Other Class Suit No. 04 of 2001 and the impugned judgments and decrees dated 04.05.2017 passed in Other Class Appeal No. 190 of 2005 and Other Class Appeal No. 191 of 2005 by the Additional District Judge, Netrokona, are also hereby set aside.

The Other Class Suit No. 55 of 2001 is decreed in favour of the plaintiff and against the defendants. The plaintiff Sadhon Bhowmik acquired title to the suit land.

In the result, both the Rules are discharged.

The order of stay granted earlier by this Court is hereby vacated.

However, there will be no order as to costs.

Send down the lower Court's records at once.