

Bench:

Mr. Justice Md. Ruhul Quddus

and

Mr. Justice Kazi Ebadoth Hossain

First Appeal Number 111 of 1979

Ilias Mondal being dead substituted by his  
legal heirs Sufia Bewa and others

... Appellants

-Versus-

Hazrat Ali being dead his heirs Md.  
Aminul Islam and others

...Respondents

Mr. Md. Shafiul Alam, Advocate

... for appellants number 1(d)-1(h)

Mr. K B Romy, Advocate

... for appellant number 3

Mr. Munsur Habib with Ms. Shimul  
Sultana, Advocates

... for respondents 4, 5 (a)-(b) and 9

Hearing concluded on 16.05.2022

Judgment delivered on 29.05.2022

*Md. Ruhul Quddus, J:*

This first appeal is directed against judgment and decree dated 14.05.1979 passed by the Sub-ordinate Judge (now Joint District Judge), Rajshahi in Other Class Suit Number 71 of 1974 dismissing the suit.

The plaintiffs' case in brief was that the land as described in the schedule of the plaint belonged to Gunjari Bewa, who got it from her father Bandhu Mahato. The plaintiffs were residents of West Dinajpur, West Bengal, India and had some land properties there.

They had executed and registered an exchange deed in favour of Gunjari Bewa on 17.08.1962 exchanging their property in India. Gunjari Bewa had also executed a power of attorney in favour of plaintiff number 3 Ilias Mondal for execution and registration of a deed of exchange conveying the suit land in favour of the plaintiffs on the same date. The plaintiffs got the said power of attorney reauthenticated and revalidated at Rangpur in Miscellaneous Case Number 743 of 1962-63 on 11.10.1962.

It was further stated in the plaint that the suit land originally belonged to Bandhu Mahato, who died leaving behind his widow Kulai Mahatoni. Bandhu Mahato was the second husband of Kulai Mahatoni and Gunjari Bewa was their daughter. Deceased Fakir Mahato was the first husband of Kulai Mahatoni and Daman Mahato was their son. Daman Mahato did not inherit their entire property, but a part thereof. After the death of Kulai Mahatoni, the suit land was recorded in the name of Gunjari Bewa. Defendants number 1-9 created some collusive documents showing Daman Mahato as executant and threatened the plaintiffs to dispossess from the suit land on 15.03.1974 that clouded their right, title and interest over the same. The cause of action for institution of the suit thus arose.

Defendants number 1-9 contested the suit by filing a joint written statement stating that the suit was not maintainable, barred by limitation and the cause of action as pleaded was fictitious. Their positive case was that the suit land belonged to Kulai Mahatoni, not to Bandhu Mahato. Her first husband Fakir Mahato died

immediately before the CS operation and son Daman Mahato was a minor at the time. After the CS operation, Kulai Mahatoni married Bandhu Mahato and within their wedlock Gunjari was born. Kulai Mahatoni died leaving behind her son Daman Mahato (by her first husband Fakir Mahato) and daughter Gunjari Bewa (by her second husband Bandhu Mahato). During the lifetime of Kulai Mahatoni, she had transferred 1.91 acres of land from plot number 222 and .14 acres from plot number 133 to Buddhu Mahato, who subsequently got his name mutated in the Jamindar Seristha and paid rents against the land. Buddhu Mahato died leaving behind his son Babu Ram Mahato, who subsequently died leaving his two sons, namely, defendants number 4 and 5, who inherited the said 1.91 acres of land from plot number 222 and .14 acres of land from plot number 133. The land was recorded in their names in SA Khatian Number 39 and 11. Thereafter, Daman Mahato transferred .17 acre of land (equivalent to 10 *kathas* in local measurement) from plot number 133 in favour of defendant number 6 Haripada Mahato on 05.03.1941. Defendant number 6 constructed a dwelling house thereon and was residing there. This land was recorded in his name against SA Khatian Number 27 and RS Khatian Number 70. Daman Mahato also transferred .35 acre of land from plot number 133 to Laxmi Narayan Misra by an unregistered deed of gift in 1345 BS. The said .35 acre was recorded in the name of Laxmi Narayan Misra in SA Khatian Number 28. Subsequently, Laxmi Narayan transferred the said .35 acre to defendants number 7-9 by a registered deed dated

14.10.1963. Said defendants number 7-9 also got 2.08 acres from plot number 133 by way of exchange from Behari Mahato, who got the same by inheritance from his father Shibu Mahato. Shibu Mahato got the land by way of purchase from Daman Mahato. Although the said Shibu Mahato purchased 2.08 acres from Daman Mahato, wrongly 1.08 acres were recorded in his name in the SA Khatian. Daman Mahato went to India in 1971 and died there leaving his two sons, namely, defendants number 2 and 3, who transferred 2.76 and 2.75 acres of land to defendant number 1 by way of two exchange deeds both dated 16.10.1973. In this way, the defendants got the entire suit land. The power of attorney as claimed by the plaintiffs was a false and forged document.

On the aforesaid pleadings, learned trial Judge framed the issues, namely, (i) whether the suit was maintainable in its present form, (ii) whether there was any defect of party, (iii) whether the suit was barred by limitation, (iv) whether the plaintiffs had the right, title, interest and possession over the suit property; (v) whether the plaintiffs were entitled to get the decree as prayed for, (vi) what other relief they were entitled to, and (vii) whether the suit property was valued and stamped properly.

In order to prove their case, the plaintiffs examined five witnesses. Of them plaintiff number 3 Ilias Mondal deposed as PW 1. He stated that plaintiff number 2 and 1 were his mother and nephew respectively. The suit land belonged to Bandhu Mahato. On his death, his daughter Gunjari Bewa got the land by way of

inheritance but it was recorded in the name of her mother Kulai Mahatoni, who was not the real owner of the same. However, after the death of her parents, Gunjari Bewa became the owner of the land, she possessed the same and her name was recorded in the sherista of ex-landlord. The SA record was published in the names of Gunjari Bewa and Daman Mahato. He stated that they could not yet get their exchange deed executed and registered, but for that purpose a case was pending before the concerned authority. In the RS Khatian, their names were recorded and they were possessing the entire suit land. It was not a fact that Kulai Mahatoni owned and possessed the entire suit land or transferred 1.91 acres from plot number 222 and .14 acres from plot number 133 to Buddhu Mahato. It was also not a fact that Daman Mahato transferred .17 acre of land from plot number 133 to Haripada Mahato (defendant 6), or that Daman and Gunjari gifted any part of the suit land. It was also not a fact that Shibu Mahato purchased 2.08 acres from Daman Mahato and the defendants number 7-9 got title from him, or that defendant number 1 got rest of the suit land. PW 1 produces some old rent receipts showing payment of rent in the Zaminder's sherista (vide Exhibit-1 series), some rent receipts showing payment of rent in the Revenue Office in the names of Daman Mahato and Gunjari Dasi (Exhibit-2 series), original power of attorney (Exhibit-3), certified copy of the exchange deed (Exhibit-4) and the CS Khatian in the name of Kulai Mahatoni (Exhibit-5).

PW 1 flatly denied all the defendants' questions put to him. In cross-examination, he admitted that he had seen SA Khatian in the name of Babu Ram Mahato.

PW 2 Alef Mondal, an adjacent land owner stated that the suit land belonged to Bandhu Mahato. As he died before the CS operation, it was recorded in the name of his widow Kulai Mahatoni in the CS Khatian. Gunjari was the daughter of Bandhu Mahato and Kulai Mahatoni and she inherited her father's property, which the plaintiffs were possessing.

In cross-examination, PW 2 could not say how many years ago Kulai Mahatoni had died. He, however, affirmed that after the departure of Gunjari Bewa, the plaintiffs came and started possessing the suit land.

PW 3 Dabir Uddin Sarker stated that the suit land belonged to Bandhu Mahato, who died before the CS operation leaving behind his widow Kulai Mahatoni and daughter Gunjari Bewa. Bandhu Mahato was the second husband of Kulai Mahatoni and her first husband was Fakir Mahato. After Bandhu's death, Gunjari possessed the suit land. Daman Mahato also possessed a part of the suit land.

In cross-examination, PW 3 stated that he was a barber by profession. Bandhu Mahato died before 2/3 years of starting of the CS operation. At that time Daman Mahato was 25/30 years old. He could not say how Bandhu Mahato got the suit land and admitted that defendants number 2 and 3 were residing at the old homestead of Bandhu Mahato. Kulai Mahatoni, Gunjari and Daman were also

residing at the same homestead. He denied the defendants' suggestion that the entire suit land belonged to them.

PW 4 Sonardi stated that the plaintiffs possessed the entire suit land. His sons were cultivating 13 *bighas* thereof as a sharecropper. The plaintiffs possessed the land, and the defendants did not.

In cross-examination, PW 4 stated that defendants number 7-9 got some land by exchange from Behari Mahato and they were possessing the said land.

PW 5 Mafizuddin stated that he was a day labourer. It was not a fact that plaintiff number 3 was his wife's uncle. Plaintiff number 1 himself cultivated a portion of the land and the remaining portion was cultivated by *bargadar* (sharecropper). Defendants number 7-9 did not possess any land in the suit *mouza*. The homestead of defendants number 2, 3 and 6 situated in different places. He (PW 5) did not receive any notice from the Court and came along with PW 1.

On the other hand, defendant number 5 Ganesh Mahato deposed as DW 1. He stated defendant number 4 was his elder brother and he deposed on behalf of the both. The suit land belonged to Kulai Mahatoni, widow of Fakir Mahato. She transferred 1.91 acres of land from plot number 222 and .14 acres of land from plot number 133 to Buddhu Mahato in 1336 BS. Buddhu Mahato got his name mutated in the Zamindar's sherista and paid rent to the landlord. He died leaving behind Babu Ram Mahato to inherit the property. Babu Ram Mahato was the father of defendants 4-5 and

they were owning and possessing that part of the suit land. He produced two old rent receipts showing payment of rent in the Zaminder's sherista, which were marked as Exhibits A and A-1, three other old rent receipts in the name of his father [Exhibits A (2), A(3) and A(4)]; some rent receipts showing payment of rent in the Revenue Office in support of payment of rent against the claimed land (Exhibit-B series) and the certified copy of the CS Khatian (Exhibit-C).

DW 1 further stated that Kulai Mahatoni died leaving behind her son Daman Mahato. Fakir Mahato was her first husband and Bandhu was the second. Fakir Mahato was no more alive at the time of preparation of CS Khatian. He (DW 1) had heard it from his father that Kulai Mahatoni married Bandhu Mahato one year after the CS operation. The suit land did not belong to Bandhu Mahato. Gunjari Bewa did not inherit the suit land and never possessed it. Defendant number 6 had his homestead on 10 *kathas* of land in Plot Number 133 while defendants number 7-9 possessed  $7\frac{1}{4}$  *bighas*, he himself possessed 8 *kathas* and defendant number 1 possessed the remaining land in the said plot. Plaintiff Number 3 Ilias forcibly took all the papers relating to the suit land from Daman Mahato, when he left for India in 1971. The defendants possessed the entire land within the knowledge of the plaintiffs.

In cross-examination, DW 1 stated that his grandfather Buddhu Mahato died 25/30 years back. Kulai Mahatoni had transferred the land to Buddhu Mahato without any written

instrument. It is not a fact that exhibits-A to A (4) were created for the purpose of the litigation. He, however, stated that Gunjari Bewa left for India in 1962. At that time, she was 43/44 years old and was a widow. He heard that the plaintiffs had exchanged land with Gunjari Bewa, but could not exactly say the area of the land. She resided at the homestead of her husband. He denied the suggestion that the defendant created forged documents.

Defendant number 9 Abul Hoque deposed as DW 2 and stated that defendants number 7-8 were his full brothers. He deposed on their behalf as well. They possessed 7  $\frac{1}{4}$  *bighas* of land in the suit plot number 133. They got 2.08 acres of land from Behari Lal by way of exchange on 21.06.1962 and purchased 0.35 acre from Laxmi Narayan Misra. The exchanged land was recorded in the name of Shibu Mahato against SA Khatian Number 26. He was the father of Behari Lal Mahato and had acquired it by way of purchase from Daman Mahato.

In cross-examination, DW 2 stated that they had resided at Malda District in West Bengal. They came to the then East Pakistan on 29.06.1962. He had meeting with Behari Lal at Malda and saw papers regarding the suit land. Behari Lal had told him that their purchase was done orally and the exchange deed was not yet registered. He could not reply if the plaintiffs got the suit land by way of exchange from Gunjari Bewa.

DW 3 Haripada Mahato (defendant number 6) stated that he had title and interest over 10 *kathas* of land in plot number 133. He

was residing thereon with his family. This land belonged to him by virtue of purchase from Daman Mahato about 40 years back. He produced the original sale deed dated 08.03.1941, which was marked as Exhibit-G. He also proved some old rent receipts which were marked as Exhibit-H series and the S A Khatian Number 27 recorded in his name as Exhibit-I (with objection).

In cross-examination, DW 3 stated that 10 *kathas* of land was purchased in his name during his childhood. The plaintiffs had their homestead in a plot other than the suit land.

DW 4 Tulshi Ram Mahato, a 95 years old villager stated that he had seen Kulai Mahatoni in the village Hapania. Fakir Mahato was her first husband and Bandhu Mahato was the second. He used to visit the village Hapania. His son and elder sister got married there. At the time of CS operation, Kulai Mahatoni was a widow. Her first husband Fakir Mahato died 2/3 years before the CS operation. After 2/3 years of the CS operation, she married Bandhu Mahato who was a resident of village Monipur under Tanore Police Station. Monipur was 3 miles away from Hapania. Gunjari was born after 8/9 years of her (Kulai's) second marriage. Daman Mahato was 5/6 years old at the time of CS operation. In cross-examination, DW 4 denied that defendant number 5 was his nephew.

DW 5 Laxmi Narayan Misra stated that he owned and possessed 35 decimals of land in plot number 133 by virtue of gift from Daman Mahato and Gunjari Bewa. The suit land belonged to Kulai Mahatoni. The SA Khatian in respect of the said 35 decimals

of land was recorded in his name. He paid rent against the land and got rent receipts. Subsequently, he sold out the said 35 decimals of land to defendants number 7-9 in 1963 (Exhibit-E). Since then, they (defendants 7-9) were possessing the land. The land did not belong to Bandhu Mahato. He saw him (Bandhu Mahato) and he died about 40 years back.

In cross-examination, DW 5 stated that he did not remember the plot number of his homestead. He resided in Hapania with his family. At the time of partition of India, he was 62/65 years old and was a priest (পুরোহিত) by occupation. He did not witness the second marriage Kulai Mahatoni with Bandhu Mahato. Daman purchased stamp paper for the deed of gift in his favour and Moghu wrote the deed of gift. He denied the defendants' suggestion that he had resided in India.

DW 6 Hazrat Ali (defendant number 1) stated that he had 16 *bighas* of land in the schedule. He got this 16 *bighas* from defendants number 2 and 3 by registered exchange deed, which they were possessing.

In cross-examination, DW 6 stated that he migrated from Malda District of West Bengal in 1369 BS. The plaintiffs also came from West Bengal. He gave 4 *bighas* of land to defendants number 2 and 3 in exchange of said 16 *bighas*. He had 45 *bighas* of land in West Bengal. The exchanged 16 *bighas* were agro and *bhiti* land. It was not correct to say that the 4 *bighas* did not belong to him and it was not also correct to say that the exchange deed was a forged one.

He did not see Gunjari Bewa and it was not correct to say that the plaintiffs got the suit land by way of exchange from Gunjari Bewa.

D W 7 Aminul Islam stated that defendant number 1 (DW 6) was his father. A deed writer of Chapai Nawabganj Sub-Registry Office named Heras Uddin was the scribe of the exchange deed. Defendant number 1 Hazrat Ali and defendant number 2 Puran Mahato executed the exchange deed dated 16.10.1973 by putting their left thumb impressions in his presence (marked as Exhibit-J). The parties to the exchange deed got possession of their respective exchanged land and since then they have been possessing the same.

In cross-examination, D W 7 stated that he was a deed writer at Nawabganj Sub-Registry Office. The land situated at Tanore Police Station within the jurisdiction of Rajshahi Sadar Sub-Registry Office. The deed was registered at Nawabganj because Nawabganj Sub-Registry Office was nearer to their house. He denied the suggestion that the exchange deed was forged and collusive.

DW 8 Bhupendra Nath Mahato (defendant 3) stated that the suit land belonged to his paternal grandmother Kulai Mahatoni. On her death, his father Daman Mahato got the suit land by inheritance. Gunjari Bewa was his aunt and Fakir Mahato was his paternal grandfather. He heard that Bandhu Mahato was the father of Gunjari Bewa. They were possessing 25 *bighas* of land out of 36 *bighas*. They (defendants 2-3) had transferred 16 *bighas* of land to defendant number 1 in exchange of 4 *bighas*. Gunjari Bewa had no title and

possession in the suit land. Defendants number 2, 5 and 6 had their homestead in the suit land. The plaintiffs did not possess the same.

In cross-examination, DW 8 stated that neither he nor defendant number 2 could read and write. He could not say whether the SA Khatian was prepared in the name of his father and aunt Gunjari Bewa, but he was told like that. They (defendants 2-3) had transferred 16 *bighas* of land to defendant number 1 by way of exchange, because the exchanged land was nearer to their house. He denied the defendants suggestion that the suit land originally belonged to Bandhu Mahato.

DW 9 Fakaruddin, an adjacent land owner stated that defendants number 1-9 possessed the suit land. His homestead was 10/12 miles away from the suit land. He could not say the plot number of the suit land but stated that plot number 146 of Mouza Hapania belonged to him. He denied the suggestion that he had no land adjacent to the suit land.

DW 10 Aynal Hoque stated that he knew the parties as well as the suit land. Defendants number 1-9 possessed the same and the plaintiffs did not. He had land adjacent to the suit land. He denied the suggestion that defendant number 1 was his maternal uncle. He affirmed that his maternal grandfather was Khabir Uddin, but could not say whether defendant 1's father was Khabir Uddin or not. He, however, stated that he used to call defendant number 1 as uncle by curtesy.

After conclusion of hearing, learned Judge of the trial Court dismissed the suit by the impugned judgment and decree mainly on the ground that the plaintiffs could not establish the title of Gunjari Bewa over the suit land, challenging which the plaintiffs preferred this first appeal.

Mr. Shafiul Alam, learned Advocate appearing for appellants number 1(d) to 1(h) and Mr. K B Romy, learned advocate for appellant number 3 make their submissions in similar line. Their submissions in brief are that the plaintiffs got the land from Gunjari Bewa by way of exchange and were possessing the suit land. They recorded oral evidence and produced documentary evidence, namely, old rent receipts in the name of Gunjari Bewa, the power of attorney executed and registered by Gunjari Bewa in favour of the plaintiff number 3 was re-authenticated and revalidated by proper authority in a miscellaneous case; certified copy of the exchange deed and the CS Khatian. This evidence documentarily proved their title and possession over the suit land. Alongside the plaintiffs' witnesses, some of the DWs also admitted the possession of Gunjari Bewa and recording of her name in the SA record. On the other hand, the defendants claimed title over the suit land by way of purchase from Kulai Mahatoni, gift and sale by Daman Mahato and exchange from the sons of Daman Mahato, but hopelessly failed to prove the same by producing instrument of transfer, and making an absurd claim of oral sale and gift by unregistered deed. The exchange deeds as produced by defendant number 1 are also fictitious and do not raise

any confidence. Learned trial Judge without considering the evidence as produced by the plaintiffs and admission regarding possession of the plaintiffs through Gunjari Bewa and recording of her name in the SA Khatian, dismissed the suit and thereby committed wrong.

Mr. Munsur Habib, learned Advocate appearing for the respondents submits that the plaintiffs are to prove their own case. They cannot take advantage of the weakness of defendants' case. On critical scrutiny of the plaint and evidence of the plaintiffs' witnesses, it clearly appears that Gunjari Bewa was the daughter of Kulai Mahatoni by her second husband. Their marriage took place after the CS operation and the CS record was prepared and published in the name of Kulai Mahatoni, wife of Fakir Mahato. According to Hindu Law, there was no scope on the part of Gunjari Bewa to inherit the property from Kulai Mahatoni but her son Daman Mahato by her first husband Fakir Mahato. So the trial Court rightly dismissed the suit and there is nothing to interfere with.

We have considered the submissions of the learned Advocates, examined the evidence on record and gone through the impugned judgment and decree. According to the plaintiffs, Bandhu Mahato was the original owner of the suit land. He was the second husband of Kulai Mahatoni. Within their wedlock Gunjari Bewa was born. After death of Bandhu Mahato, Gunjari Bewa inherited the land, but Kulai's name was recorded in the CS Khatian though she was not the owner of the land. In the admitted CS Khatian Number 4 (Exhibit-5

= Exhibit-C) the name of Kulai Mahatoni's husband was written as "*late Fakir Mahato*" (her first husband). It means that the CS operation was held after the death of her first husband Fakir Mahato and before her second marriage with Bandhu Mahato. Besides, none of the plaintiffs' witnesses stated as to how Bandhu Mahato acquired the suit land, and no documents in support of Bandhu's title was produced before the court, or referred to in the plaint. DWs 1 and 4 stated that Bandhu Mahato and Kulai Mahatoni got married after the CS operation. Under the circumstances, the preparation of CS record in the name of Kulai Mahatoni as a widow of Bandhu Mahato was simply absurd. It is really difficult to believe that Bandhu Mahato was the owner of the suit land and Gunjari Bewa inherited the land from Bandhu Mahato in the capacity of his daughter. In view of the CS Khatian (Exhibit-5 = Exhibit-C), the most reliable record of right and admitted to both the parties, Kulai Mahatoni appears to be the original owner-in-possession of the suit land in her individual capacity. Admittedly, Daman Mahato and Gunjari Bewa was the son and daughter of Kulai Mahatoni. According to the Hindu law, there is no scope to inherit property by a daughter when a son is alive. The other documents as adduced in evidence by the plaintiffs do not help them establishing the basic title of Gunjari Bewa derived from Bandhu Mahato. Therefore, we do not find that the plaintiffs have been able to prove their title over the suit land derived from Gunjari Bewa and as such the learned trial Judge committed no wrong in dismissing the suit.

At the same time, we notice that defendant number 1 claimed 16 *bighas* of land from defendants number 2-3 by exchanging only four *bighas* and registration of the exchange deeds [vide Exhibits-J and J(1)] in the registry office of another jurisdiction, but he did not prove any document in support of his title and possession over the four *bighas*. None of the defendants number 1-3 produced any rent receipt in support of their possession or that of their predecessors over the exchanged land to support their claim of exchange. Under the circumstances, the story of exchanging 16 *bighas* of land for only four *bighas* is not believable. In the written statement, the defendants stated that Kulai Mahatoni was the owner of the suit land, and her son Daman Mahato left for India in 1971. Exhibit-2 series show that plaintiff number 3 (PW 1) paid rent in the names of Daman Mahato and Gunjari Dasi (Gunjari Bewa) against 8.26 acres of land in Khatian Number 25 from 1959 to 1976. It means that the real owner of the suit land Daman Mahato left for India and was not in the control and management of the land. In such a position, the exchange deeds [Exhibits-J and J (1)] were mere a paper transaction and did not pass any title in favour of defendant number 1.

Similarly defendants number 4-5 claimed 1.91 acres and 14 decimals of land derived from their grandfather Buddhu Mahato stating that he had purchased the land from Kulai Mahatoni, but they did not describe about the mode of transfer in the written statement. In the oral evidence, DW 1 stated that the sale was without any written instrument. Under the facts and circumstances of the present

case, and in view of the prevailing culture of grabbing minority's property in our rural area, it is difficult to believe the story of transfer to Buddhu Mahato without any written instrument. For the same reason, the story of gift of 35 decimals of land to DW 5 Laxmi Narayan Misra without any registered instrument, and oral sale of 2.08 acres of land to Shibu Mahato (father of Behari Lal Mahato) without any registered deed is unbelievable. We, however, find that defendant number 6 Haripada Mahato (DW 3) adduced the original sale deed executed and registered by Daman Mahato transferring 10 *kathas* of land in his favour. He also adduced the rent receipts showing payment of rent against his land. We thus hold that the defendants except defendant number 6 Haripada Mahato have no lawful title over the suit land.

It is our common experience that on a contradictory claim of title on land between the plaintiff and defendant, if the plaintiff fails, everyone thinks that the claimant-defendant is the owner of the suit land. It is absolutely a wrong notion and misconceived social psychology. A plaintiff's failure never means that the defendant is the lawful owner of the subject matter. In a case like the present one where the defendants, besides resisting the plaintiffs' claim, fail to establish their lawful title over the suit land, they should not be allowed to continue with the possession, if any, over the same.

It appears from the rent receipts (Exhibit-2 series) that Daman Mahato and Gunjari Bewa were in joint possession over the suit land. Subsequently, plaintiff number 3 paid rent in their names. In

cross-examination, DW 1 also stated that he heard the plaintiffs had exchanged land with Gunjari Bewa but could not say about the area of land and admitted “*she resided at the homestead of her husband.*” Similarly in the cross-examination of DW 2, he could not reply if the plaintiffs got the suit land by way of exchange from Gunjari Bewa. DW 5 Laxmi Narayan Misra clearly stated that he owned and possessed 35 decimals of land in plot number 133 by way of gift from Daman Mahato and Gunjari Mahato. DW 8 Bhupendra Nath Mahato, son of Daman Mahato and grandson of Kulai Mahatoni, in his cross-examination, could not say whether the SA Khatian was prepared in the name of his father and aunt (Gunjari Bewa). If the above mentioned evidences are critically assessed and considered with Exhibit-2 series, it will be clear that Daman Mahato and Gunjari Bewa were in joint possession over the suit property and some of the defendants were under the notion that she (Gunjari Bewa) was one of the two owners of the suit land, and the plaintiffs got possession over a part of the suit land through her. It, however, does not appear that the defendants took any step for their dispossession from that part of the suit land. Thus it can be presumed that the defendants contested the suit as chance litigants.

In view of the above, it prima-facie appears that the rightful owner of the suit property is unavailable for a long period. Under the circumstances, the Deputy Commissioner of Rajshahi is to commence an inquiry into whether any rightful owner of the suit property is available or not. The Deputy Commissioner will also

follow the procedure as laid down in Subsection (3) of Section 92 of the State Acquisition and Tenancy Act, 1950 read with rule 6, Subrules (2) and (3) of the Tenancy Rules, 1954. If no rightful owner is available, the suit land except the share of defendant number 6 (Haripada Mahato) to the extent of 10 *kathas* in plot number 133 would vest in the Government under Article 143 (1) (c) of the Constitution read with Section 92 (3) of the State Acquisition and Tenancy Act.

Accordingly, the first appeal is dismissed with modification of the impugned judgment and decree with direction upon the Deputy Commissioner of Rajshahi to commence an inquiry in the manner stated above.

Send down the lower court's record. Communicate a copy of the judgment to the Deputy Commissioner of Rajshahi.

*Kazi Ebadoth Hossain, J:*

I agree.