

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice A. K. M. Rabiul Hassan

First Appeal No. 312 of 2018

Azahar Uddin Bhuiyan, being dead, his legal heirs, 1(b) Md. Anowarul Salam Bhuiyan and others

... Appellants

-Versus-

Chandraban Bibi and others

... Respondents

Mr. A. K. Rashedul Huq, with

Mr. Md. Shahidul Islam, and

Mr. Md. Tareq, Advocates

... for the appellants

Mr. Md. Selim Reza Chowdhury, Advocate

...for the respondent Nos.1, 2 and 5

Heard on 11.08.2026; 18.08.2026; 19.08.2026; 23.08.2026 and 24.08.2026.

Judgment on 25.08.2026

A. K. M. Rabiul Hassan, J:

This first appeal at the instance of the plaintiffs is directed against the judgment and decree dated 13.10.2015 passed by the Joint District Judge, First Court, Barishal, in Title Suit No. 51 of 2007, decreeing the suit in part.

Upon registering of the first appeal, the appellants filed an application for an injunction to restrain the respondents-defendants from evicting them. After hearing the application, this Court, by order dated 31.05.2008, directed the parties to maintain the status quo in respect of possession and the position of the suit land pending disposal of the appeal.

The facts for disposal of the appeal are that the present appellants, as plaintiffs, instituted Title Suit No.51 of 2007 before the learned Joint District Judge, First Court, Barishal, impleading the present respondents as defendants, seeking a partition of the suit land measuring 1.31 acres, as described in the schedule to the plaint.

Plaintiffs' case is that the suit land described in Schedule 'Ka' to the plaint originally belonged to Arju Bibi and Ayejuddin, in whose names the C.S. Record of Rights was duly prepared. Upon Arju Bibi's death, her only son, Ramjan Hawlader, inherited her share. Following Ramjan Hawlader's death, his legal heirs transferred 1.31 acres of land from C.S. Plot Nos. 252, 253, 254, 255, 256, 266, and 267 to the plaintiffs' predecessor-in-interest. Accordingly, the plaintiffs' predecessor, Abdul Hamed Bhuiya, executed and registered Kabuliy at Deed No. 1999 dated 13.06.1939, in favour of Fazle Karim Hawlader and others. Upon the death of Abdul Hamed Bhuiya, his legal heirs were his wife, Shaburjan Bibi; two sons, Azharuddin Bhuiya (Plaintiff No. 1) and Ataheruddin Bhuiya; and two daughters, Ayesha Khatun and Rabea Khatun (Plaintiff No. 11). Subsequently, Shaburjan Bibi died, leaving the aforementioned heirs. Later, Ayesha Khatun transferred her entire share to her full brothers, Plaintiff No. 1 and Ataheruddin Bhuiya (predecessor to Plaintiff Nos. 3–10), by oral gift, and delivered possession accordingly. Rabea Khatun subsequently transferred 17.50 decimals of land to Plaintiff Nos. 1 and 4–6 by registered Heba Deed No. 8086 dated 10.10.2005. Additionally, Plaintiff No. 1 transferred 0.12 acres (12 decimals) of land to Plaintiff No. 2 by registered Heba Deed No. 6305 dated 11.12.1994.

Plaintiffs further case i that regarding 1.05 acres of land under S.A. Khatian No. 356, Plaintiff Nos. 3–10 instituted Title Suit No. 10 of 1998 against Plaintiff Nos. 1, 11, and Ayesha Khatun, ultimately obtaining a compromise decree on 01.09.1999. Under the terms of this decree, Plaintiff No. 1 was awarded 43.75 decimals, Plaintiff Nos. 3–10 were awarded 43.75 decimals, and Plaintiff No. 11 received 17.50 decimals. However, of the 1.31 acres originally owned by Abdul Hamed Bhuiya, 0.26 acres were erroneously recorded under S.A. Khatian No. 591 in the name of the defendants. The plaintiffs have been in continuous, open, and peaceful possession and enjoyment of the suit land for over twelve years, with the defendants' knowledge, by constructing houses, planting trees, rearing fish in the pond, and cultivating the land. Both the plaintiffs and the defendants have been enjoying joint (*ejmali*) possession of the land within the suit holding. As the court has never formally partitioned the suit holding, frequent disputes have arisen between the parties. Consequently, the plaintiffs requested that the defendants partition the suit land amicably, but on 20.04.2007 the defendants refused. Hence, the plaintiffs filed this suit.

The defendant Nos. 1–7 contested the suit by filing a joint written statement denying all material allegations in the plaint and, *inter alia*, contending that the suit land originally belonged to Arju Bibi and Ayezuddin and that the C.S. Record of Rights was correctly prepared in their names. Upon Ayezuddin's death, his two sons, Asmat Ali and Mahabbot Ali, as legal heirs, inherited his property. The R.S. Khatian No. 475 and the S.A. Khatian No. 591 were duly prepared in their names in

equal shares. Thereafter, on 19.06.1972, Mahabbot Ali transferred 0.93 acres of land to Belayet Ali (the predecessor-in-interest of Defendant Nos. 1–7) and Chandraban Bibi via registered Kabala (sale deed) No. 6636. Mahabbot Ali further transferred 54.50 decimals of land to his daughter, Chandraban Bibi, via registered Heba Deed No. 935 dated 17.02.1975. Upon Asmat Ali's death, he left behind three sons, Shahadat Ali (alias Sadek Ali), Belayet Ali, and Amjed Ali, and one daughter, Amena Khatun, as his legal heirs. Following Belayet Ali's death, Defendant Nos. 1–7 succeeded him as his legal heirs and have since been in peaceful possession and enjoyment of the suit land. The narrative set out in the plaint is entirely false, baseless, and fabricated. Accordingly, the suit is devoid of merit and liable to be dismissed with costs.

On the pleadings above, the trial court framed the following issues:

1. Whether the suit is maintainable in its present form and prayer.
2. Whether the suit is bad for non-joinder or mis-joinder of necessary and proper parties.
3. Whether the suit is bad for defect of hotchpot due to the non-inclusion of all joint property.
4. Whether the plaintiffs have valid title to, and are in lawful possession of, the suit land.
5. Whether the plaintiffs are entitled to get the decree for partition (and/or other reliefs) as prayed for.

During the trial, on behalf of all plaintiffs, plaintiff No. 1, as PW.1, gave evidence and exhibited the relevant documents marked as Exhibit Nos. 1 to 5. Two other local witnesses gave evidence for the plaintiffs as PW-2 and PW-3. On the other hand, on behalf of the contesting defendants Nos. 1 to 7, defendant No. 2 deposed as D.W.1 and marked the

relevant documents as Exhibit Nos. 'ক' series to 'ঘ' series. Two other local witnesses gave evidence on behalf of the contesting defendants as DW-2 and DW-3.

Upon conclusion of the trial, the trial court decreed the suit, in preliminary form, partially against defendant Nos. 1 to 7 and ex parte against the rest, by its judgment and decree dated 13.10.2015.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 13.10.2015, the plaintiffs, herein appellants, preferred the instant First Appeal No.312 of 2018 before this Court.

During the pendency of the instant appeal, Appellant No. 1 died, leaving Appellant No. 2 and four other legal heirs, who were duly substituted as Appellant Nos. 1(b) to 1(e) by order dated 30.07.2024. Furthermore, the instant appeal has abated as against Respondent No. 17.

Mr. A. K. Rashedul Huq, the learned Advocate appearing for the appellants, submits that the plaintiffs-appellants sought partition of 1.31 acres out of 2.35 acres of land under registered Kabuliyat Deed No. 1999 dated 13.06.1939 [Exhibit-5]. Although 1.05 acres were correctly recorded in the plaintiffs' name in the R.S. and S.A. records, the remaining 0.26 acres were mistakenly recorded under the defendants-respondents. The learned trial court erred in law by granting a preliminary decree for only 1.05 acres, reasoning that title over the disputed 0.26 acres could not be decided in a suit for partition simplicitor without a specific prayer for declaration of title. The Hon'ble Appellate Division has settled that a separate declaration of title is unnecessary in partition suits, as all incidental questions of title must be fully adjudicated therein.

Accordingly, the exclusion of the 0.26 acres constitutes a material legal error. In the interests of justice, the appeal should be allowed, and the decree modified to partition the full 1.31 acres (adding the 0.26 acres to the 1.05 acres).

Mr. Huq further submits that the learned trial court correctly found the registered Kabuliyat [Exhibit-5] to be genuine and acknowledged that it forms the foundation of the Plaintiffs' possession. However, the trial court erred in determining the quantum of land. Upon declaring Exhibit-5 genuine, the trial court should have decreed the full 1.31 acres stipulated in the deed, rather than limiting the decree to 1.05 acres. The remaining 0.26 acres present no complex title issue, rendering the judgment liable to modification.

Mr. Huq further submits that the plaintiffs-appellants specifically pleaded in their plaint and affirmed in testimony that although the 0.26-acre portion was not recorded in their names, they remain in continuous possession of the same. It is a settled principle of law that S.A. and R.S. records of rights do not create or extinguish title, and the registered Kabuliyat dated 13.06.1939 [Exhibit-5] prevails over statutory records until a competent civil court sets it aside or cancels it. The defendants-respondents have never challenged the validity of Exhibit-5 before any court. Indeed, D.W.-1 explicitly admitted in cross-examination: "*We have not sought any remedy anywhere against the Kabuliyat dated 13.06.1939 executed by Abdul Hamed Bhuiyan.*" Consequently, the registered Kabuliyat [Exhibit-5] remains valid and binding in law, and the plaintiffs-

appellants are fully entitled to a decree for the entire 1.31 acres under the said deed.

In support of his submissions, the learned Advocate for the appellants referred to the case of *Cinmoy Chowdhury and another vs. Mridul Chowdhury and others*, reported in 55 DLR (AD) 115, *Sanjib Kumar Bose and another vs. Syed Shamsuddin Ahmed and another*, reported in 33 DLR (AD) 34; *Abdul Mannan Bhuiyan & others vs. Md Nasir Hossain and others*, reported in 18 BLD (AD) 44 and *Chief Engineer, Roads and Highway Directorate, Dhaka vs. Advocate Asad-uz-zaman Siddique and others*, reported in 69 DLR (AD) 440.

Conversely, Md. Selim Reza Chowdhury, learned advocate for respondents Nos. 1, 2 and 5, submits that the suit filed by the plaintiffs-appellants is not maintainable in respect of the disputed 0.26-acre land in the absence of a specific prayer for a declaration of title. The trial court correctly held that complex questions of title cannot be adjudicated in a suit for partition simpliciter without a specific prayer for a declaration of title. Furthermore, the plaintiffs-appellants have failed to establish exclusive possession of the said 0.26-acre portion, as the suit property was not properly demarcated by schedule or boundaries in accordance with Order VII, Rule 3 of the Code of Civil Procedure.

Mr. Chowdhury further submits that a unilateral Kabuliyat is insufficient to establish a binding tenancy or land settlement unless the landlord explicitly acknowledges it, either by issuing a rent receipt (*dakhila*) or by executing a *patta*. In the present case, the plaintiffs-appellants have failed to produce any *dakhila* or evidence of an executed

patta corresponding to the alleged Kabuliyat dated 13.06.1939. The Kabuliyat (Exhibit-5) records a total area of 16½ gandas, equivalent to only 66 decimals. However, the plaintiffs erroneously claim 1.31 acres based on that Kabuliyat. In fact, Arju Bibi owned only 65.50 decimals of the 1.31 acres under Khatian No. 714. Consequently, the plaintiffs' claim is vague, exaggerated, and legally unsustainable.

Mr. Chowdhury further submits that the plaintiffs-appellants have failed to displace the trial court's specific findings on title, possession, and the precise boundaries of the allegedly wrongly recorded 26 decimals of land. Furthermore, the appellants advanced no arguments or raised no grounds concerning possession or identification before this Hon'ble Court. As the plaintiffs' claim of title based on the Kabuliyat was never acted upon in accordance with law, and title remains unproven by any documentary or oral evidence, the appeal is entirely devoid of merit and should be dismissed.

In support of his submissions, the learned Advocate for respondent Nos. 1, 2 and 5 refers to the cases of *Md. Nizamuddin and others vs. People's Republic of Bangladesh*, reported in 15 BLD (AD) 232; *Abdul Jalil vs. Md. A. Samad & others*, reported in 7 DLR 29; *Rezaul Karim and others vs. Shamsuzzoha and others*, reported in 49 DLR (AD) 68; *Noor Mohammad Khan & others vs. Government of the People's Republic of Bangladesh & others*, reported in 42 DLR 434 and *Golzar Ali vs. Saburjan Bewa*, reported in 6 BLC (AD) 41.

We heard the learned advocates for both parties and perused the materials on the record; the following points fall to be determined in this appeal:

1. Whether the trial court erred in law in holding that the suit for partition in respect of 0.26 acres was not maintainable without an express prayer for a declaration of title.
2. Whether Order VII, Rule 3 of the Code of Civil Procedure (CPC) bars the decreeing of the partition of 0.26 acres when C.S. plot numbers and boundaries clearly identify the entire plot of 1.31 acres.
3. Whether the plaintiffs-appellants successfully proved their title and entitlement to partition of the entire 1.31 acres.

Findings and Deliberation:

- **Point No. 1:**

The record shows that S.A. Khatian No. 356 correctly records an area of 1.05 acres in the plaintiffs' name. During cross-examination, D.W. 1 explicitly admitted the plaintiffs' physical possession of the said 1.05 acres of land. Under Section 58 of the Evidence Act, 1872, admitted facts need not be proved; hence, this clear judicial admission operates as conclusive proof against the defendants. Consequently, the plaintiffs' title to and physical possession of the 1.05 acres are legally established without further proof.

It is undisputed that the learned trial court decreed the suit for partition in favour of the plaintiffs to the extent of 1.05 acres under S.A. Khatian No. 356.

However, the trial court held that, because S.A. Khatian No. 591 was prepared in the defendants' names for 0.26 acres, the plaintiffs could not seek partition without first obtaining a formal declaration of title. This Court finds this reasoning legally flawed. A Khatian (Record of Rights) is merely an administrative record prepared for revenue purposes; it neither creates nor extinguishes title. An erroneous entry in a Khatian does not confer absolute ownership on the party recorded therein if the underlying substantive title lies elsewhere.

Upon careful consideration of the evidence on record, this Court finds that the plaintiffs have established an unbroken chain of title originating from C.S. Khatian No. 714, duly supported by the registered Kabuliyat Deed No. 1999 dated 13.06.1939 (Exhibit-5). It is a well-settled principle of law that, in a suit for partition, where a party relies on valid and subsisting registered title deeds, the Court is fully competent to adjudicate the question of title as an incidental issue to determine the respective joint shares of the co-sharers. In *Cinmoy Chowdhury and another vs. Mridul Chowdhury and others*, reported in 55 DLR (AD) 115, it was observed that in a suit for partition, all incidental questions of title, however complicated, can be decided and finally disposed of.

Significantly, D.W.-1 admitted during cross-examination that the defendants have never challenged, impeached, or sought any legal remedy against the plaintiffs' registered *Kabuliyat* Deed of 1939 before any competent forum. As the fundamental document of title (Exhibit-5) remains unimpeached, legally intact, and unchallenged, a mere erroneous entry in S.A. Khatian No. 591 cannot divest or defeat the plaintiffs' substantive ownership. Consequently, a separate and formal prayer for a declaration of title was not a mandatory prerequisite to maintaining the present suit for partition of the joint property.

- **Point No. 2:**

The trial court further erred in applying Order VII, Rule 3 of the Code of Civil Procedure (CPC) to bar partition of the 0.26-acre fraction.

Order VII, Rule 3 of the CPC requires that, where the subject matter of a suit is immovable property, the plaint must contain a description sufficient to identify it. The primary objective of this rule is to ensure that a court decree can be executed without ambiguity or visual confusion.

In the instant case:

- The entire joint property, measuring 1.31 acres, was fully described in Schedule 'Ka' of the plaint, including C.S. Plot Nos. 252, 253, 254, 255, 256, 266, and 267, together with its outer boundary limits.

- In a suit for the partition of joint (*ejmali*) land, co-sharers seek to divide an undivided joint unit. Requiring separate metes-and-bounds boundary descriptions for an unpartitioned 0.26-acre fraction within a larger joint plot before a preliminary decree is passed contradicts the fundamental nature of a partition action.
- Demarcation of specific physical boundaries is strictly the function of the Advocate Commissioner appointed during the final decree proceedings, who carries out the partition on the ground by physical measurement.

Thus, the suit property was sufficiently identified, and Order VII, Rule 3 CPC does not bar a decree for partition of the entire area.

- **Point No. 3:**

The record shows that the trial court accepted Exhibit 5 (the registered Kabuliyat Deed No. 1999 dated 13.06.1939) as genuine and legally valid. This deed covers the entire 1.31 acres under C.S. Khatian No. 714. Regarding the quantum of land covered by the Kabuliyat, the respondents' learned advocate submitted that the deed comprises 66.50 decimals, asserting that 16.50 *ganda* equals 66.50 decimals. However, upon proper perusal of Exhibit 5 (registered Kabuliyat Deed No. 1999 dated 13.06.1939), the trial court observed that the document explicitly records 1.31 acres of land. Furthermore, the defendants failed to produce any evidence to rebut the deed's recitals regarding the land area. Consequently, the

respondents' learned advocate's submissions regarding the quantum of land under the Kabuliyat cannot be accepted.

The 1939 Kabuliyat appears to be nearly 90 years old. D.W. 1 admitted during cross-examination that the defendants never instituted any suit to cancel or declare the 1939 *Kabuliyat* deed void under Section 31 or 39 of the Specific Relief Act, 1877. Under Section 31 of the Specific Relief Act, 1877, if a party claims that an instrument is void or illegal, they must seek its cancellation. By failing to challenge or seek a declaration against the 1939 registered deed, the defendants severely undermined their standing to dismiss it orally as "illegal" during cross-examination. In the case of *Additional Deputy Commissioner (Revenue) vs. Md. Reazuddin Pk and others*, reported in 5 BLC (AD) 76, it was held that once a document older than 30 years is produced from proper custody, Section 90 of the Evidence Act entitles the Court to presume its genuineness. As a registered document over 30 years old, produced from proper custody, the court presumes the execution and attestation of the 1939 Kabuliyat to be genuine. Accordingly, this Court finds that an unchallenged, ancient registered title deed cannot be invalidated merely by oral denial in cross-examination.

Where a registered document is established to be genuine and nothing to the contrary is found by a court of law, there is no scope to disbelieve its contents. In the present case, the trial court categorically observed that the 1939 Kabuliyat is genuine;

therefore, there is no scope to disbelieve the quantity of land described therein as owned by the plaintiffs' predecessor-in-interest.

The learned advocate for the respondents contended that a unilateral *Kabuliyat* is insufficient to create a binding tenancy or land settlement without the landlord's explicit acknowledgement, whether by executing a corresponding *patta* or by issuing rent receipts (*dakhilas*). We find no merit in this contention. The record shows that the respondents never challenged the genuineness of the 1939 *Kabuliyatin* in an appropriate civil court, and the learned trial court explicitly found the registered *Kabuliyat* to be a genuine document of title. Once a registered deed of such antiquity remains unassailed and its execution is established, it carries a presumption of correctness that cannot be brushed aside by mere oral arguments. Consequently, the learned advocate's submissions on this point are unmeritorious and are not accepted.

Regarding physical possession:

- The trial court observed that the defendants' witnesses, D.W.-1, D.W.-2, and D.W.-3, explicitly admitted during cross-examination that the plaintiffs are in physical possession of the suit land.
- In law, possession by one co-sharer of joint property is deemed possession on behalf of all co-sharers (possession of one is possession of all), unless the adverse party explicitly pleads and proves complete ouster. No such ouster was established here.

Since the 1939 Kabuliyat deed covers the entire 1.31 acres of land, and possession by one co-sharer of joint property is deemed in law to be possession on behalf of all co-sharers, the plaintiffs have established both title to and possession of the entire 1.31 acres. Consequently, the trial court acted arbitrarily and illegally in reducing the plaintiffs' share from 1.31 acres to 1.05 acres.

Admissions made by a witness during cross-examination or in pleadings constitute the best evidence against them. In the present case, the testimony of D.W. 1 contains fatal admissions, including an explicit concession that the plaintiffs hold physical possession of 1.05 acres, an admission that the defendants' own Plot Index links the C.S. plots of the 1939 Kabuliyat to the present S.A. plots, and an acknowledgement that a previous suit filed by their uncle concerning S.A. Khatian 591, namely Title Suit No. 43 of 1999, against the plaintiffs' predecessors-in-interest, was ultimately dismissed for default. It is a settled principle of law that when a suit challenging property rights is dismissed for default and not subsequently restored, the plaintiff in that former suit, as well as their legal heirs, is precluded under Order IX, Rule 9 of the Code of Civil Procedure from filing a fresh suit or asserting the same cause of action defensively to defeat a registered title holder.

It is a cardinal principle of jurisprudence that a Record-of-Rights (Khatian) neither creates nor extinguishes title, but merely raises a rebuttable presumption of possession. The trial court erred in giving precedence to the survey entry in S.A. Khatian No. 591 over the unassailed, registered Kabuliyat of 1939. Once the root of title to the

entire 1.31 acres is duly established and remains unchallenged by any suit, a mere erroneous entry in the Record-of-Rights cannot divest the plaintiffs of their lawful co-ownership rights.

It appears that the trial court erred in holding that the plaintiffs were out of possession of the 26 decimals of land, having completely ignored the oral evidence establishing joint possession (*ejmali*) of the garden, pond, and arable land within the disputed parcel.

The learned advocate for the respondents submits that, under C.S. Khatian No. 714, the plaintiffs' predecessor, Arju Bibi, and another held the entire 1.31 acres of land, whereas the plaintiffs claim that their predecessor, Arju Bibi, held only the entire 1.31 acres of land. By contrast, the learned advocate for the appellants submits that, under C.S. Khatian No. 714 (Exhibit-1), Munir Uddin and Arju Bibi were recorded as owners, each holding an 8-anna share, whereas the plaintiffs claimed only a 1-anna share in the name of Arju Bibi under the said Khatian. However, the record shows that the defendants-respondents themselves admitted in their written statement that the total area of 2.62 acres was recorded in C.S. Khatian No. 714, of which 1.31 acres, representing her full 8-anna share, was correctly recorded in the name of Arju Bibi.

We find merit in the submissions of the learned Advocate for the appellants. For clarity, paragraph 23 of the written statement is reproduced below in full in its entirety:

“২৩. আরজির তপছিল বিরোধীয় ভূমি সম্পর্কে প্রকৃত বৃত্তান্ত এই যে, জিলা বরিশাল স্টেশন সদর কোতয়ালী মোতালক সাবেক ২০২৫নং বগুরা অলেকান্দা মৌজার পূর্বে সি.এস. ২৫৬নং খতিয়ানের সাবেক ২৫২/ ২৫৩/ ২৫৪/ ২৫৫/ ২৬৬ ও ২৬৭নং দাগের সম্যক ২.৬২ শতাংশ

ভূমি সাবেক ৭১৪নং খতিয়ানে হিস্যা ৮ আনা অংশে ১.৩১ একর ভূমি সাবেক রেকর্ডীয় আরজু বিবি নামে এবং বক্রী হিস্যা ৮ আনা অংশের ১.৩১ একর ভূমি সহ সাবেক ২৫৬ দাগের হিস্যা ২ আনী অংশের ১০ একর সাবেক ৫৪০ দাগের হিস্যা ৪ আনী অংশের ১৬ একর ও সাবেক ৫৪২ দাগের হিস্যা ৪ আনী অংশের ২০ একর ভূমি নিয়া একুনে ১.৭৬ একর ভূমি সম্পর্কে সাবেক ২৫৬নং কর্ষা খতিয়ানে সাবেক রেকর্ডীয় আয়েজুদ্দিনের নামে শুদ্ধ মতে সাবেক রেকর্ড প্রস্তুত হয়। অতঃপর সাবেক রেকর্ডীয় আয়েজুদ্দিনের লোকান্তরে ২ পুত্র আসমত আলী ও মহব্বত আলী ওয়ারিশ নিযুক্ত থাকেন।"

Moreover, the DW-1, in his testimony stated that "আমি অত্র মোকদ্দমার ২নং বিবাদী। ১নং বিবাদী আমার মা, ৩-৭নং বিবাদী ভাই-বোন। আমি সকলের পক্ষে জবান বন্দি দিচ্ছি। বিরোধী জমি বরিশাল সদর কোতয়ালীর অন্তর্গত। সাবেক ২০-২৫নং বগুড়া আলেকান্দা মৌজার সাবেক ৭৫৬নং খতিয়ানের ২৫২, ২৫৩, ২৫৪, ২৫৫, ২৬৬, ২৬৭ দাগের সম্যক ১৬খানা অংশের ২৬২ শতক ভূমি সাবেক ৭১৪নং খতিয়ানের হিস্যা। I. আনা অংশের ১৩১ শতাংশ ভূমি রেকর্ডীয় আরজু বিবির নামে এবং বক্রী II. অংশে ১৩১ শতাংশ ভূমি সহ সাবেক ২৫৬ দাগের হিস্যা ১৬ আনা অংশের ১০ শতাংশ, সাবেক ৫৪০নং দাগের হিস্যা I. আনা অংশে ১৬ শতাংশ, সাবেক ৫৪২ দাগের I. আনা হিস্যে ১০ শতাংশ একুনে ১.৭৬ একর ভূমি সম্পর্কে সাবেক ২৫৬নং কর্ষা খতিয়ানে সাবেক রেকর্ডীয় আয়েজুদ্দীন এর নামে শুদ্ধ মতে সাবেক রেকর্ড প্রস্তুত হয়। আয়েজুদ্দীন মারা গেলে ২ পুত্র আছমত এবং মোহাব্বত আলী ওয়ারিশ থাকে।"

Based on the above optical and documentary evidence on record, it appears that the plaintiffs trace their claim to the partible land from their predecessor-in-interest, Arju Bibi. Conversely, Defendant Nos. 1 to 7 base their chain of title on Ayejuddin, thereby demonstrating that the respective chains of title asserted by the plaintiffs and the defendants are distinct. Furthermore, Defendant Nos. 1 to 7 have not claimed any *saham* in the suit land.

Moreover, it appears that the contesting defendants-respondents did not file any appeal or cross-objection against the impugned judgment and decree in Title Suit No. 51 of 2007. Consequently, they are deemed to

have accepted the finding that the plaintiffs are entitled to a *saham* of at least 1.05 acres under C.S. Khatian No. 714, based on the root of title derived from the 1939 Kabuliyat.

In the case of *Hachina Begum and others vs. Abdul Mannan and others*, reported in 30 BLD 628, the present Hon'ble Presiding Judge, who was the author Judge of the case, observed that a registered kabala is evidence of title which will prevail over other records of rights unless and until such kabala/kabuliyat is cancelled on a specific allegation of fraud by any civil court in an appropriate civil suit.

In the case of *Abdul Mannan Bhuiyan & others vs. Md. Nasir Hossain and others*, reported in 18 BLD (AD) 44, it was observed that S.A. and R.S. records were not an evidence of title and that a registered document would prevail upon the record of rights and that the registered document would remain in enforce unless the same was cancelled by an appropriate civil court.

In *Guru Charan Mondol & Others vs. Sree Bhaba Sindhu Sarkar & Others*, reported in 13 MLR (AD) 6, it was observed that records of rights in S.A. and R.S. Khatian do not confer title; the kabala deed prevails over the record of rights. It was further observed that, in case of conflict between the Kabala and Khatian, the earlier registered Kabala prevails over the subsequent record of rights in R.S. Khatian and S.A. Khatian.

Decision and Order:

On consideration of the above facts, the circumstances of the case, cited decisions and the evidence on record, we hold that the learned Joint District Judge, First Court, Barishal, utterly failed to appreciate the facts,

circumstances, and evidence on record and, most illegally, decreed the above suit in part, which is not tenable in law.

Accordingly, the instant first appeal succeeds. The findings of the trial court disallowing partition in respect of 0.26 acres are hereby set aside.

It is ordered:

That First Appeal No. 312 of 2018 is allowed on contest against Respondent Nos. 1–7 and *ex parte* against the rest, without costs.

The judgment and preliminary decree dated 13.10.2015 passed by the Joint District Judge, First Court, Barishal, in Title Suit No. 51 of 2007 are modified as follows:

1. The suit is decreed in preliminary form in full for the entire 1.31 acres of Schedule 'Ka' suit land as prayed for.
2. The plaintiffs-appellants are entitled to a separate allotment (*saham*) for their full proportionate share of the entire 1.31 acres of suit land.
3. The parties are directed to effect an amicable partition within 45 (forty-five) days from today. Failing which, any party shall be at liberty to apply to the trial court for the appointment of an Advocate Commissioner to prepare a final decree demarcating their respective *saham* on the ground in accordance with law.

Send down the Lower Court Records (LCR) along with a copy of this judgment forthwith.

Sheikh Abdul Awal, J

I agree.