

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1021 of 2017

Md. Faysal Madbar and others

..... Petitioners

-Versus-

A. Khaleque Sarder and others

..... Opposite-Parties

Mr. Abdullah Al Mubin, Advocate

... For the Petitioners

Mr. Baki Md. Murtoza, Advocate

... For the Opposite Party No. 1

Judgment on 24.11.2025

In this revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 28.09.2016 passed by the learned Senior District Judge, Shariatpur, in Title Appeal No. 70 of 2014 dismissing the appeal and thereby affirming the judgment and decree dated 30.04.2014 (decree signed on 04.05.2014) passed by the learned Senior Assistant Judge, Damudya, Shariatpur, in Title Suit No. 10 of 2012 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioners, as plaintiff, filed Title Suit No. 10 of 2012 against the opposite parties praying for declaration of title and recovery of possession

of the suit land claiming that Akkel Ali Sarder and Others were the owners and possessors of land measuring 10.77 Acres within Police Station-Damudya, District Shariatpur under R.S. Khatian No. 327. In that khatian Akkel Ali Sarder has been described and mentioned in 'Cha' group as owner and possessor in R.S. Plot Nos. 4213, 4234, 4630, 4640, 4801, 4802, 4860 and he was shown as sole possessor of 16 decimals land of RS Plot No. 4883. Akkel Ali Sarder transferred the land measuring 90 decimals including the land measuring 16 decimals under R.S Plot. No. 4883 vide Deed of Sale No. 2350 dated 24.08.1950 to Makdam Ali Madbar. Land measuring 16 decimals under R.S. Plot No. 4883 is the suit land. Land purchased by Makdam Ali Madbar stood recorded in his name in S.A. Khatian No. 364 covering Plot Nos. 4213, 4234, 4640, 4880 and 4883 along with others, but in the remark column against S.A. Plot No. 4883 the name of Kalu Sarder has been wrongly mentioned as possessor.

Makdam Ali Madbar died leaving behind one son namely (i) Ramiz Uddin Madbar and 3 (three) daughters namely (ii) Jahura Bibi, (iii) Chutu Bibi alias Chotni Bibi and (iv) Paglee Bibi alias Amirjaan Bibi as his successors who acquired the land by inheritance and had been in possession. Thereafter Chutu Bibi sold her portion of land measuring 18

decimals vide Deed of Sale No.7181 dated 29.11.1974 to her brother, Ramiz Uddin Madbar. Afterwards, Ramiz Uddin Madbar died leaving behind 4 sons and 4 daughters named (i) Sirajul Haque Madbar, (ii) Shamsul Haque Madbar, (iii) A. Rahman Madbar, (iv) Daulatunnessa, (v) Amena Begum, (vi) Hamida Begum, (vii) Parvin Begum, (viii) Nasima Begum and (ix) Jaynab Bibi wife of late Ramiz Uddin Madbar. On the other hand another successor of late Makdam Ali Madbar namely Amirjaan Bibi died leaving behind only son named Kalu Hawlader as her legal heir. Subsequently, Kalu Hawlader died leaving behind his only son namely Makbul Hossain Hawlader. Another daughter of late Makdam Ali Madbar named Jahura Khatun being the lawful owner of the suit land along with the aforementioned owners has been in peaceful possession of the suit land for years without any hindrance from any corner.

Since the Petitioner's property situated beside a local hat, the Opposite Parties on 19th Paush, 1411 B.S. corresponding to 2nd January, 2005 for their need sought permission from the Petitioner No.1 to build a temporary structure of a shop on a small portion of the suit land. Being requested by the Opposite Parties, the Petitioner No.1 in presence of the witnesses namely (i) A. Hamid Hawlader, (ii) A. Rashid Bepari, (iii)

Salamat Kha verbally permitted the Opposite Parties to build a temporary structure of a shop at the west corner of their property on the condition that the Opposite Parties would vacate their possession as and when asked by the Petitioners. Accordingly, the Opposite Party Nos. 1 to 3 built a temporary structure of a shop on the western side of the suit land. On the middle of Sraban month of 1418 B.S., the Petitioners asked the Opposite Parties to vacate the suit land. But the Opposite Parties denied to vacate the same claiming that the Petitioners are not the owners of the suit land as the S.A. khatian stood recorded in the name of their predecessor Kalu Sarder and others, hence, the present suit for declaration and recovery of possession.

The defendant No. 2 contested the suit by filing written statement denying all the material allegations made in the plaint contending inter alia that Umed Ali Sarder, Sabulla Sarder, Sayed Ali Sarder. Mantazuddin Sarder, Kalai Sarder and Nawab Ali were the C.S. recorded tenants of land measuring 10.81 Acres covered by various C.S. Plots, under C.S. Khatian No.7. Kalai Sarder died leaving his 2(two) brothers namely (i) Mantazuddin Sarder and (ii) Nawab Ali Sarder as his legal heirs. Then Mantazuddin died leaving behind 3 (three) sons namely (i) Kalu Sarder,

(ii) Akkel Ali Sarder and (iii) Kuti Sarder alias Samed Ali Sarder as his legal heirs. While the aforementioned Kalu Sarder and others were in possession of the land their names were duly recorded against various Plot numbers under R.S. Khatian No.327. In 'Cha' group the names of Akkel Ali, Kalu Sarder and Kuti alias Samed Ali Sarder were duly recorded. The entire land measuring 16 decimals under C.S. Plot No. 3308 was wrongly recorded in the name of Akkel Ali instead of recording the names of 03 (three) brothers, Akkel Ali, Kalu Sarder and Kuti alias Samed Ali Sarder. Although land measuring 16 decimals had been recorded in the name of Akkel Ali his brothers namely Kalu Sarder and Kuti alias Samed Ali Sarder were in possession of their respective shares. Accordingly, subsequent S.A. Khatian No. 364 correctly recorded in the names of Kalu Sarder and Others. Kalu Sarder's share in the suit land was 5.75 Decimals. Said Kalu Sarder died leaving behind his sons and daughters namely (i) A Khaleque Sarder, (ii) Hakim Ali Sarder, (iii) Fuljaan Bibi and (iv) Mayful Jaan Bibi.

Thus the Opposite Party No.2 acquired land measuring .133 decimal by way of inheritance and he purchased land measuring 3.00 decimals vide Deed of Sale No.824 dated 28.06.1990 from another son of

late Mantazuddin Sarder named Kuti Sarder alias Samed Ali Sarder. In this way the Opposite Party No.2 acquired total 4.33 decimals land by way of inheritance and purchase. The Opposite Party No. 2 constructed a shop on the land measuring 1 decimal and has been possessing the entire land by planting trees in the rest of the areas. Akkel Ali had no legal right to transfer entire land measuring 16 decimals under S.A. Plot No. 4883. Akkel Ali was only entitled to get 5.75 decimals, as the land is a joint property, hence the suit was liable to be dismissed and the only remedy for the Petitioners to file a partition suit, as such, the suit is not maintainable in law.

The trial court on the basis of pleadings of both the parties framed 5 (five) issues for determination of the matter in dispute between the parties. In course of hearing the plaintiff examined 3 (three) witnesses as P.Ws. and the defendant examined 2 (two) witnesses as D.Ws. Both the parties submitted documents in support of their respective claim which were duly marked as exhibits. The trial court after hearing by its judgment and decree dated 30.04.2014 dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiffs preferred Title Appeal No. 70 of 2014

before the District Judge, Shariatpur who heard the appeal and after hearing by the impugned judgment and decree dated 28.09.2016 dismissed the appeal affirming the judgment and decree of the trial court. At this juncture, the petitioners moved this Court by filing this application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Abdullah Al Mubin, learned Advocate appearing for the petitioners submits that in dismissing the suit and appeal both the courts below wrongly held that the suit property is ejmali property of Akkel Ali Sarder, Kalu Sarder, Samed Ali Sarder and their sisters. Since the property has not been partitioned by metes and bound among the co-sharers, present suit for declaration of title and recovery of possession against a co-sharer by inheritance is not maintainable in law.

He submits that both the courts below failed to consider Sub-Division of R.S. Khatian No. 327 by which the property have been legally partitioned among the co-sharers describing all the tenants by a specific group coupled with their possession and enjoyment. It is also argued that after purchase of the property by Makdam Ali from Akkel Ali Sarder, none of the co-sharers like Kalu Sarder, Samed Ali Sarder or any other

heirs of Montazuddin raised any objection regarding title of Akkel Ali and long possession of Makdam Ali in the purchased property.

He submits that Akkel Ali Sarder transferred total 90 sataks of land covered by 6 plots in their entirety. The suit Plot No. 4883 contain only 16 sataks which exclusively stood recorded in the name of Akkel Ali Sarder in R.S. Khatian No. 327. Referring R.S. Khatian No. 327 (exhibits- '1' and 'Ka-1'), he argued that by R.S. record all the property measuring 10.77 acres was partitioned among the recorded owners describing all the groups as 'Ka', 'Kha', 'Ga', 'Uma', 'Cha', 'Chha' and 'Ja'. Vendor of Makdam Ali belonged to group-'Cha' and in his group other heirs of Montazuddin Sarder has not been included, meaning thereby, Akkel Ali Sarder exclusively got his share from the plot against which his name has been exclusively written and mentioned. Said Akkel Ali along with other non-suited plots sold Plot No. 4883 measuring 16 sataks to Makdam Ali as per record of right (exhibit-1).

He argued that S.A. khatian has no evidentiary value as decided by this Court in various pronouncement, however, S.A. khatian stood recorded in the name of Makdam Ali and others, but wrongly mentioned that the suit plot is in possession of Kalu and in exhibit-Ka-2 mentioned

as Kalu gong. R.S. record has strong evidentiary value, wherein Kalu and others have no right, title and possession in the suit plot.

It is submitted that to prove the case of the plaintiffs, they examined 03 (three) witnesses out of which P.W. 2 is Salamat Kha son of Moyfuljan Bibi daughter of Kalu Sarder who in his examination in chief stated that defendant is a permissive possessor under the plaintiffs and at the time of giving permission to raise a temporary shop he was present and also stated that the defendant Abdul Khalek is his maternal uncle. In cross, the defendant could not shake the evidence of P.W. 1 and 2 which can help the defendant. P.W. 3 Abdul Hamed Howlader also stated that at the request of the P.Ws. 2 and 3, the plaintiff No. 1 agreed to accord permission to the defendant to raise a shop on the suit plot, on the condition that he will surrender vacant possession as and when asked by the plaintiff.

He submits that Makdam Ali purchased the property in the year 1950, no co-sharer of Akkel Ali during their life time raised any objection. Since purchase Makdam Ali, then his sons and daughters and then the plaintiffs have been possessing the suit land and the plaintiffs also purchased some property by sale deed No. 7181 dated 29.11.1974.

The plaintiff's father Ramizuddin has purchased the land from Chuto Bibi @ Chotni Bibi. Both the trial court and the appellate court misread the evidence led by the plaintiffs and the defendants and failed to find that nowhere in the oral evidence, the corroborative witnesses uttered a single word that the suit property is ejmali property, as such, both the courts below committed illegality and error of law in the decision occasioning failure of justice.

Mr. Baki Md. Murtoza, learned Advocate appearing for the opposite parties submits that as per C.S. Khatian No. 7 (exhibit-'Ka') property measuring 10 acres 81 sataks belonged to Montazuddin Sarder and others as mentioned in the khatian. Montazuddin was owner of 2 annas 13 gondas 1 kora 1 kranti in the khatian and died leaving 3 (three) sons Akkel Ali Sarder, Kalu Sarder, Samed Ali Sarder, daughter Chutu Bibi, wife Rezia Khatun and another daughter Julekha Bibi, they by inheritance got the property, accordingly, R.S. Khatian No. 327 (exhibit-'Ka-1') stood recorded in their names mentioning their respective share.

He submits that though against some plots exclusive possession of Akkel Ali has been mentioned there was no partition among the heirs of Montazuddin and they used to possess the suit property along with other

non-suited property left by Montazuddin in ejmali. Akkel Ali one of the son of Montazuddin transferred the suit Plot No. 4883 along with 5 other plots to the predecessor of the plaintiffs in the year 1950, but Akkel Ali had no right, title to transfer entire suit plot measuring 16 sataks which also belonged to Kalu Sarder, Samed Ali Sarder and Chutu Bibi.

He submits that Kalu Sarder died leaving Abdul Khalek Sarder, Hakim Ali Sarder, Fuljan Bibi. Defendant No. 2 got .133 decimals of land from Plot No. 4883 by inheritance and he purchased 3 decimals of land by deed No. 824 dated 28.06.1990 from one son of Montazuddin Sarder named Kuti Sarder and Jalal Sarder, Nurul Islam Sarder, both sons of Kalu Sarder. Thus he acquired 4.33 decimals of land by inheritance and purchase. He has been possessing the land by raising shop house on one decimal land and planting various types of trees in the rest land. Akkel Ali Sarder was entitled to get 5.75 decimals, but by the deed of the year 1950, he transferred 16 sataks land of Plot No. 4883. As such, the trial court and the appellate court rightly held and observed that the plaintiffs ought to have filed a suit for partition seeking saham of their purchased land making all the recorded owners as defendants in the suit.

It is argued that the plaintiffs utterly failed to prove that the defendant No. 2 got possession of the suit property as permissive possessor under the plaintiff No. 1 rather the defendant could able to prove that he has been possessing the part of suit plot as heir of Kalu Sarder and rest 3 decimal of land by purchase in the year 1990. The plaintiffs claimed that the defendant was inducted in the suit plot and constructed shop house with permission of the plaintiff in the year 2005, whereas, the defendant No. 2 purchased part of the property in the year 1990 before 15 years of alleged permission, as such, in both counts i.e. title of the plaintiffs as well as possession of the plaintiff in the suit property failed, consequently, both the courts below dismissed the suit and appeal observing that without filing a suit for partition the suit is not maintainable in its present form. Moreover, the plaintiff as P.W. 1 in cross unequivocally admitted that there was no legal partition among the heirs of Montazuddin Sarder. In the absence of any legal partition, the present suit for declaration of title and recovery of possession against an admitted co-sharer is not maintainable.

Heard the learned Advocates of both the sides, have gone through the revisional application under section 115(1) of the Code of Civil

Procedure, plaint in suit, written statement, evidence both oral and documentary and the impugned judgment and decree of both the courts below.

As per C.S. Khatian No. 7 (exhibit-‘Ka’) the suit plot along with many other plots stood recorded in the name of predecessor of the defendant No. 2 Montazuddin Sarder and others as per their share mentioned in the khatian. Montazuddin Sarder died leaving 3 sons, Akkel Ali Sarder, Kalu Sarder, Samed Ali Sarder, daughter Chutu Bibi, wife Rezia Khatun and another Julekha Bibi wife of Hossen Ali Sarder. R.S. Khatian No. 327 stood recorded in the name of heirs of Montazuddin Sarder mentioning their respective share against their names, status of all the tenants are permanent raiyat. The name of tenants in R.S. Khatian No. 327 have been recorded specifying their share in different group like ‘Ka’, ‘Kha’, ‘Ga’, ‘Uma’, ‘Cha’, ‘Chha’ and ‘Ja’ which is not denied by both the parties. Had it been so, R.S. khatian shows that Akkel Ali Sarder is owner of 8 gondas, 1 kora, 2 kranti, 16 danto and his name stood recorded independently in ‘Cha’ group having no other co-sharers with him like groups ‘Ka’, ‘Kha’, ‘Ga’, ‘Uma’, ‘Chha’ and ‘Ja’. All the tenants name

as a recorded in R.S. khatian has been specifically mentioned against each plot mentioning who owns the plot as owner and possessor.

Because of mentioning the name of tenant against each plot it can be easily presumed and construed that respective plot as mentioned in the khatian was in possession of that person by amicable partition or arrangement among the co-sharers. As per R.S. record Akkel Ali Sarder exclusively got some plots in his share and only Plot No. 4480 having 8 annas share with his brother Kalu Sarder and others measuring 10 sataks. He transferred the property measuring 90 sataks including suit plot measuring 16 sataks to Makdam Ali Sarder by a registered deed No. 2350 dated 24.08.1950, original of which has been filed by the plaintiff as exhibit-‘2Ka’. As per claim of the plaintiff Makdam Ali after purchase got possession from Akkel Ali Sarder and had been possessing the same with the knowledge of other brothers of Akkel Ali Sarder, but none of them raised any objection against the sale by Akkel Ali Sarder and possession of Makdam Ali Matbar.

In S.A. khatian name of Makdam Ali Matbar has been correctly recorded, but share of the tenants has not been mentioned as the khatian was prepared without any field survey. The plaintiffs claimed that

Makdam Ali, then his sons were in possession of the suit plot, but said wrong was not in the knowledge of the plaintiffs. The suit property is located beside a local hat. The defendant No. 2 on 19th Poush 1411 B.S. corresponding to 02.01.2005 along with P.W. 2 Salamat Kha and P.W. 3 Abdul Hamed Hawlader requested the plaintiff to allow defendant No. 2 to build a temporary structure of a shop on the suit land. The plaintiff at the request of witnesses permitted the defendant No. 2 to build a temporary structure of a shop on the suit plot measuring 12 feet \times 8 feet, on the condition that he will vacate possession as and when asked by the plaintiff, accordingly, the defendant No. 2 raised a shop house on the south-western side of the suit land and used to possess the same as permissive possessor.

At the middle of Srabon 1418 B.S. the plaintiffs asked the defendant to vacate the possession of suit land, but he denied claiming that the plaintiffs are not the owners of the suit land and disclosed that in S.A. khatian their predecessors name appearing. The defendant No. 2 claimed that he as heir of Kalu Sarder inherited .133 decimals of land and he purchased 3 decimals of land from Kuti Sarder son of Montazuddin

and his brothers by a registered deed No. 824 dated 28.06.1990, thus he acquired 4.33 decimals of land by inheritance and by purchase.

He claimed that he never took permission from the plaintiffs to build a shop house on the western corner of the suit plot. Rather he has been possessing the suit property right from R.S. record through his predecessor Kalu Sarder and his uncle and then presently the defendant No. 2 himself. The story of taking permissive possession from plaintiff No.1 is false and fabricated. It is also claimed that the plaintiff filed Miscellaneous Petition Case No. 372 of 2010 against the defendant before the ADM, Shariatpur under Section 145 of the Code of Criminal Procedure, wherein, the property was physically enquired by Union Land Assistant Officer, Puneshor Union Land Office, Damudya who furnished report finding that the defendant No. 2 is in possession of a shop measuring 1 satak and in that report it has been stated that the defendant is in possession of the suit property since 10-15 years which clearly proves that the defendant No. 2 was in possession of the suit property by dint of inheritance and by purchase not by taking permission from the plaintiffs as alleged. After receipt of report learned ADM, Shariatpur by order dated 21.12.2011 filed the case directing defendant No. 2 not to enter into the

property under possession of the plaintiffs. Therefore, the plaintiff has no cause of action for filing the suit as the evidences established that the defendant No. 2 possessing the suit land by inheritance and purchase not with the permission of the plaintiff as permissive possessor.

The trial court while dismissing the suit put importance on the evidence of plaintiff who stated that the property left by Montazuddin Sarder inherited by his heirs, among them no legal partition has been done, as such, the defendant being a co-sharer by inheritance in the property cannot be evicted without bringing a suit for partition making all the recorded tenants as defendants in suit. The appellate court also concurred the observation made by the trial court in toto and dismissed the appeal only on the point of maintainability of the suit without a suit for partition.

Now the question before us, whether R.S. recorded tenant Akkel Ali Sarder owned the property transferred to Makdam Ali exclusively without legal partition among all the heirs of Montazuddin Sarder. Parties to the proceeding unequivocally admitted that Akkel Ali one of the sons of Montazuddin who sold the same to Makdam Ali Sarder. The question raised by the defendant is that since the suit plot is ejmali property of all

the heirs of Montazuddin Sarder, Akkel Ali Sarder had no right or title to transfer entire 16 sataks of land under Plot No. 4883 to Makdam Ali, but other plots also transferred by Akkel Ali in their entirety which has not been challenged by the predecessor of the defendants named Kalu Sarder, Samed Ali or any other brother and sisters. It is also not the case of defendant that though Makdam Ali purchased the property from Akkel Ali in the year 1950, Makdam Ali Sarder never delivered with possession of the property purchased by him. Except the suit plot, the defendants kept them silent about other property transferred by Akkel Ali Sarder.

To appreciate the fact, whether Akkel Ali had title and possession in the plots under R.S. Khatian No. 327 mentioned against his name and transferred to Makdam Ali. R.S. Khatian No. 327 (exhibit-‘1’) and (exhibit-‘Ka-1’) shows that in ‘Ka’ group Omed Ali Sarder, in ‘Kha’ group Hatem Ali and others, in ‘Ga’ group Kabil Sarder and others in ‘Uma’ group Kalu Sarder and other heirs of Montazuddin and in ‘Cha’ group only Akkel Ali Sarder, in ‘Chha’ group Nawab Ali Sarder and ‘Ja’ group Khadem Ali Sarder. As per their group, possession has been mentioned against the plot who is owner and possessor of the property. Suit Plot No. 4883 measuring 16 sataks along with other plots have been

specifically mentioned under exclusive possession of Akkel Ali Sarder. Having no other co-sharer in this particular suit plot like Plot No. 4480 mentioning separate group connotes that the property covered by all the plots have been amicably partitioned among the tenants giving different group and mentioning their names against each plot. Though the property has not been partitioned by any deed of partition or a partition decree of the court but the record of right itself partitioned the property separating all the tenants from each other. Since Akkel Ali as per record in 'Cha' group mentioning his name against some plots, his other brothers or sisters are not co-sharer in that plot, that is why, after transfer of the property by Akkel Ali Sarder in favour of Makdam Ali his brothers, sisters or mother raised no objection against the said transfer. After purchase Makdam Ali was in possession of the purchased land, accordingly, S.A. Khatian No. 364 stood recorded in his name along with other co-sharers without mentioning their respective share, it does not mean that because of not mentioning his name against plot in S.A. khatian, transfer made by Akkel Ali Sarder lost its validity.

Evidence led by defendant No. 2 himself and D.W. 2 coupled with report furnished by the inquiry officer in Miscellaneous Petition No. 372

of 2010, the defendant No. 2 is in possession of 1 satak land only which is claimed by the plaintiff. The defendant No. 2 though claimed that he purchased 3 sataks of land from sons of Kalu Sarder and others in the year 1990, but could not establish his possession in purchased property by any evidence except a deed of sale of the year 1990. Had the defendant No. 2 purchased the property in the year 1990 and got delivery of possession at that time. He would not have built a shop measuring 12 feet \times 8 feet at the western corner of the suit plot. Except the defendant No. 2 none of the heirs of Kalu Sarder or other heirs claimed the property from the plaintiff. P.W. 2 is nephew of defendant No. 2 who on oath stated that at the request of P.Ws. 2 and 3 the plaintiff gave permission to the defendant No. 2 to build a temporary shop at the west corner of the suit plot. By cross examination nothing could bring adverse to the evidence led by P.Ws. 1-3 to establish that the defendant No. 2 entered into possession or have been possessing the suit plot by inheritance or by purchase from one of the heirs of Samed Ali.

Moreover, S.A. khatian stood recorded independently for specific portion of the property in the name of Akkel Ali, Makdam Ali and predecessor of defendant No. 2 Kalu Sarder and others as son of Omed

Ali. The defendant could not explain or raise any objection that Kalu Sarder, Samed Ali are not sons of Omed Ali, but they are sons of Montazuddin Sarder. Both the parties to the proceeding kept them mum about this anomalies in the khatian. If I consider that Kalu Sarder, Samed Ali are sons of Omed Ali the case of the defendant as made out in the defense has no basis as they are claiming the property through Montazuddin Sarder whose name is totally absent in S.A. khatian. Now it is settled principle of law that if a person entered into any property as tenant or as permissive possessor or with the consent of the owner of the property claims title in the property is to surrender possession to the plaintiff first. In the present case had the defendant No. 2 acquired title in the property by inheritance and by purchase he is to surrender the possession to the plaintiff first and then he can come with his claim of title by filing properly constituted suit as the defendant No. 2 failed to establish that he is in possession of the property through his predecessor Kalu Sarder or by purchase from heirs of Samed Ali. In claiming so the defendant No. 2 is to prove first that Kalu Sarder was one of the owner of the property as per record of right and to prove that Akkel Ali was not owner of the entire plot and there was no partition.

Unless the R.S. record of right stands now is corrected or otherwise proved incorrect, I find that Akkel Ali being exclusive owner in possession of plot No. 4883 had every right to transfer the same to Makdam Ali. Apart from this a co-sharer of a joint property if transfers any property from any particular plot and delivered possession not exceeding his share is a valid transfer and in that case the claimant who challenged the transfers is to come with a suit for partition. Both the courts below failed to appreciate the oral evidence, documentary evidence as well as evidence led by defendant No. 2 and superficially observed that unless a suit for partition is filed by the plaintiff, present suit is not maintainable. As such, both the courts below in dismissing the suit and disallowing the appeal committed illegality and error of law in the decision occasioning failure of justice, as they have failed to appreciate the status of the tenants in different groups as recorded in R.S. Khatian No. 327.

It is to be noted here that in Mufassil District when the learned Advocates drafting plaint or written statement usually mentioned the date month and Bengali year without mentioning corresponding date, month and English year which sometime create confusion in deciding the the

dispute between the parties. Moreover, almost in every cases the Mufassil's learned Advocates mentioned the plaintiff as “সায়েল” “মজহর” and the defendant as “তরফসানি” (Tarafsani). Nowadays all those terms creates confusion in identifying the parties. Because of modernization and for easy understanding it is advised not to use such terms in drafting plaint and petition in miscellaneous cases describing the petitioner, opposite party, plaintiff and defendant with the aforesaid words “সায়েল”, “মজহর”, “তরফসানি” (Tarafsani). Because of this situation, I am inclined to direct the Registrar General to issue a circular for all the Mufassil District Bar Association and the concern District Judge informing them to comply with the order of this Court describing the petitioner and opposite parties in all miscellaneous cases and plaintiff and defendant in original suits or original proceeding as “Petitioner”, “Opposite Party”, “Plaintiff” “Defendant” respectively to avoid confusion regarding identity of the parties to the suit and to mention date month and year in the plaint and written statement as per English Calendar.

Taking into consideration the above, I find merit in the rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is made absolute, however, without any order as to costs.

Judgment and decree of both the courts below are hereby set aside. The suit is decreed against the defendant No. 2 on contest and ex parte against the rest. The defendant No. 2 is hereby directed to hand over vacant possession of the suit land to the plaintiffs within 30 days from date failing which the plaintiffs shall be entitled to get possession of the suit land through court.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.

Present:-

Mr. Justice Mahmudul Hoque

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of the suit land claiming that Akkel Ali Sarder and Others were the owners and possessors of land measuring 10.77 Acres within Police Station-Damudya, District Shariatpur under R.S. Khatian No. 327. In that khatian Akkel Ali Sarder has been described and mentioned in 'Cha' group as owner and possessor in R.S. Plot Nos. 4213, 4234, 4630, 4640, 4801, 4802, 4860 and he was shown as sole possessor of 16 decimals land of RS Plot No. 4883. Akkel Ali Sarder transferred the land measuring 90 decimals including the land measuring 16 decimals under R.S Plot. No. 4883 vide Deed of Sale No. 2350 dated 24.08.1950 to Makdam Ali Madbar. Land measuring 16 decimals under R.S. Plot No. 4883 is the suit land. Land purchased by Makdam Ali Madbar stood recorded in his name in S.A. Khatian No. 364 covering Plot Nos. 4213, 4234, 4640, 4880 and 4883 along with others, but in the remark column against S.A. Plot No. 4883 the name of Kalu Sarder has been wrongly mentioned as possessor.

Makdam Ali Madbar died leaving behind one son namely (i) Ramiz Uddin Madbar and 3 (three) daughters namely (ii) Jahura Bibi, (iii) Chutu Bibi alias Chotni Bibi and (iv) Paglee Bibi alias Amirjaan Bibi as his successors who acquired the land by inheritance and had been in possession. Thereafter Chutu Bibi sold her portion of land measuring 18

decimals vide Deed of Sale No.7181 dated 29.11.1974 to her brother, Ramiz Uddin Madbar. Afterwards, Ramiz Uddin Madbar died leaving behind 4 sons and 4 daughters named (i) Sirajul Haque Madbar, (ii) Shamsul Haque Madbar, (iii) A. Rahman Madbar, (iv) Daulatunnessa, (v) Amena Begum, (vi) Hamida Begum, (vii) Parvin Begum, (viii) Nasima Begum and (ix) Jaynab Bibi wife of late Ramiz Uddin Madbar. On the other hand another successor of late Makdam Ali Madbar namely Amirjaan Bibi died leaving behind only son named Kalu Hawlader as her legal heir. Subsequently, Kalu Hawlader died leaving behind his only son namely Makbul Hossain Hawlader. Another daughter of late Makdam Ali Madbar named Jahura Khatun being the lawful owner of the suit land along with the aforementioned owners has been in peaceful possession of the suit land for years without any hindrance from any corner.

Since the Petitioner's property situated beside a local hat, the Opposite Parties on 19th Paush, 1411 B.S. corresponding to 2nd January, 2005 for their need sought permission from the Petitioner No.1 to build a temporary structure of a shop on a small portion of the suit land. Being requested by the Opposite Parties, the Petitioner No.1 in presence of the witnesses namely (i) A. Hamid Hawlader, (ii) A. Rashid Bepari, (iii)

Salamat Kha verbally permitted the Opposite Parties to build a temporary structure of a shop at the west corner of their property on the condition that the Opposite Parties would vacate their possession as and when asked by the Petitioners. Accordingly, the Opposite Party Nos. 1 to 3 built a temporary structure of a shop on the western side of the suit land. On the middle of Sraban month of 1418 B.S., the Petitioners asked the Opposite Parties to vacate the suit land. But the Opposite Parties denied to vacate the same claiming that the Petitioners are not the owners of the suit land as the S.A. khatian stood recorded in the name of their predecessor Kalu Sarder and others, hence, the present suit for declaration and recovery of possession.

The defendant No. 2 contested the suit by filing written statement denying all the material allegations made in the plaint contending inter alia that Umed Ali Sarder, Sabulla Sarder, Sayed Ali Sarder. Mantazuddin Sarder, Kalai Sarder and Nawab Ali were the C.S. recorded tenants of land measuring 10.81 Acres covered by various C.S. Plots, under C.S. Khatian No.7. Kalai Sarder died leaving his 2(two) brothers namely (i) Mantazuddin Sarder and (ii) Nawab Ali Sarder as his legal heirs. Then Mantazuddin died leaving behind 3 (three) sons namely (i) Kalu Sarder,

(ii) Akkel Ali Sarder and (iii) Kuti Sarder alias Samed Ali Sarder as his legal heirs. While the aforementioned Kalu Sarder and others were in possession of the land their names were duly recorded against various Plot numbers under R.S. Khatian No.327. In 'Cha' group the names of Akkel Ali, Kalu Sarder and Kuti alias Samed Ali Sarder were duly recorded. The entire land measuring 16 decimals under C.S. Plot No. 3308 was wrongly recorded in the name of Akkel Ali instead of recording the names of 03 (three) brothers, Akkel Ali, Kalu Sarder and Kuti alias Samed Ali Sarder. Although land measuring 16 decimals had been recorded in the name of Akkel Ali his brothers namely Kalu Sarder and Kuti alias Samed Ali Sarder were in possession of their respective shares. Accordingly, subsequent S.A. Khatian No. 364 correctly recorded in the names of Kalu Sarder and Others. Kalu Sarder's share in the suit land was 5.75 Decimals. Said Kalu Sarder died leaving behind his sons and daughters namely (i) A Khaleque Sarder, (ii) Hakim Ali Sarder, (iii) Fuljaan Bibi and (iv) Mayful Jaan Bibi.

Thus the Opposite Party No.2 acquired land measuring .133 decimal by way of inheritance and he purchased land measuring 3.00 decimals vide Deed of Sale No.824 dated 28.06.1990 from another son of

late Mantazuddin Sarder named Kuti Sarder alias Samed Ali Sarder. In this way the Opposite Party No.2 acquired total 4.33 decimals land by way of inheritance and purchase. The Opposite Party No. 2 constructed a shop on the land measuring 1 decimal and has been possessing the entire land by planting trees in the rest of the areas. Akkel Ali had no legal right to transfer entire land measuring 16 decimals under S.A. Plot No. 4883. Akkel Ali was only entitled to get 5.75 decimals, as the land is a joint property, hence the suit was liable to be dismissed and the only remedy for the Petitioners to file a partition suit, as such, the suit is not maintainable in law.

The trial court on the basis of pleadings of both the parties framed 5 (five) issues for determination of the matter in dispute between the parties. In course of hearing the plaintiff examined 3 (three) witnesses as P.Ws. and the defendant examined 2 (two) witnesses as D.Ws. Both the parties submitted documents in support of their respective claim which were duly marked as exhibits. The trial court after hearing by its judgment and decree dated 30.04.2014 dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiffs preferred Title Appeal No. 70 of 2014

before the District Judge, Shariatpur who heard the appeal and after hearing by the impugned judgment and decree dated 28.09.2016 dismissed the appeal affirming the judgment and decree of the trial court. At this juncture, the petitioners moved this Court by filing this application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Abdullah Al Mubin, learned Advocate appearing for the petitioners submits that in dismissing the suit and appeal both the courts below wrongly held that the suit property is ejmali property of Akkel Ali Sarder, Kalu Sarder, Samed Ali Sarder and their sisters. Since the property has not been partitioned by metes and bound among the co-sharers, present suit for declaration of title and recovery of possession against a co-sharer by inheritance is not maintainable in law.

He submits that both the courts below failed to consider Sub-Division of R.S. Khatian No. 327 by which the property have been legally partitioned among the co-sharers describing all the tenants by a specific group coupled with their possession and enjoyment. It is also argued that after purchase of the property by Makdam Ali from Akkel Ali Sarder, none of the co-sharers like Kalu Sarder, Samed Ali Sarder or any other

heirs of Montazuddin raised any objection regarding title of Akkel Ali and long possession of Makdam Ali in the purchased property.

He submits that Akkel Ali Sarder transferred total 90 sataks of land covered by 6 plots in their entirety. The suit Plot No. 4883 contain only 16 sataks which exclusively stood recorded in the name of Akkel Ali Sarder in R.S. Khatian No. 327. Referring R.S. Khatian No. 327 (exhibits- '1' and 'Ka-1'), he argued that by R.S. record all the property measuring 10.77 acres was partitioned among the recorded owners describing all the groups as 'Ka', 'Kha', 'Ga', 'Uma', 'Cha', 'Chha' and 'Ja'. Vendor of Makdam Ali belonged to group-'Cha' and in his group other heirs of Montazuddin Sarder has not been included, meaning thereby, Akkel Ali Sarder exclusively got his share from the plot against which his name has been exclusively written and mentioned. Said Akkel Ali along with other non-suited plots sold Plot No. 4883 measuring 16 sataks to Makdam Ali as per record of right (exhibit-1).

He argued that S.A. khatian has no evidentiary value as decided by this Court in various pronouncement, however, S.A. khatian stood recorded in the name of Makdam Ali and others, but wrongly mentioned that the suit plot is in possession of Kalu and in exhibit-Ka-2 mentioned

as Kalu gong. R.S. record has strong evidentiary value, wherein Kalu and others have no right, title and possession in the suit plot.

It is submitted that to prove the case of the plaintiffs, they examined 03 (three) witnesses out of which P.W. 2 is Salamat Kha son of Moyfuljan Bibi daughter of Kalu Sarder who in his examination in chief stated that defendant is a permissive possessor under the plaintiffs and at the time of giving permission to raise a temporary shop he was present and also stated that the defendant Abdul Khalek is his maternal uncle. In cross, the defendant could not shake the evidence of P.W. 1 and 2 which can help the defendant. P.W. 3 Abdul Hamed Howlader also stated that at the request of the P.Ws. 2 and 3, the plaintiff No. 1 agreed to accord permission to the defendant to raise a shop on the suit plot, on the condition that he will surrender vacant possession as and when asked by the plaintiff.

He submits that Makdam Ali purchased the property in the year 1950, no co-sharer of Akkel Ali during their life time raised any objection. Since purchase Makdam Ali, then his sons and daughters and then the plaintiffs have been possessing the suit land and the plaintiffs also purchased some property by sale deed No. 7181 dated 29.11.1974.

The plaintiff's father Ramizuddin has purchased the land from Chuto Bibi @ Chotni Bibi. Both the trial court and the appellate court misread the evidence led by the plaintiffs and the defendants and failed to find that nowhere in the oral evidence, the corroborative witnesses uttered a single word that the suit property is ejmali property, as such, both the courts below committed illegality and error of law in the decision occasioning failure of justice.

Mr. Baki Md. Murtoza, learned Advocate appearing for the opposite parties submits that as per C.S. Khatian No. 7 (exhibit-'Ka') property measuring 10 acres 81 sataks belonged to Montazuddin Sarder and others as mentioned in the khatian. Montazuddin was owner of 2 annas 13 gondas 1 kora 1 kranti in the khatian and died leaving 3 (three) sons Akkel Ali Sarder, Kalu Sarder, Samed Ali Sarder, daughter Chutu Bibi, wife Rezia Khatun and another daughter Julekha Bibi, they by inheritance got the property, accordingly, R.S. Khatian No. 327 (exhibit-'Ka-1') stood recorded in their names mentioning their respective share.

He submits that though against some plots exclusive possession of Akkel Ali has been mentioned there was no partition among the heirs of Montazuddin and they used to possess the suit property along with other

non-suited property left by Montazuddin in ejmali. Akkel Ali one of the son of Montazuddin transferred the suit Plot No. 4883 along with 5 other plots to the predecessor of the plaintiffs in the year 1950, but Akkel Ali had no right, title to transfer entire suit plot measuring 16 sataks which also belonged to Kalu Sarder, Samed Ali Sarder and Chutu Bibi.

He submits that Kalu Sarder died leaving Abdul Khalek Sarder, Hakim Ali Sarder, Fuljan Bibi. Defendant No. 2 got .133 decimals of land from Plot No. 4883 by inheritance and he purchased 3 decimals of land by deed No. 824 dated 28.06.1990 from one son of Montazuddin Sarder named Kuti Sarder and Jalal Sarder, Nurul Islam Sarder, both sons of Kalu Sarder. Thus he acquired 4.33 decimals of land by inheritance and purchase. He has been possessing the land by raising shop house on one decimal land and planting various types of trees in the rest land. Akkel Ali Sarder was entitled to get 5.75 decimals, but by the deed of the year 1950, he transferred 16 sataks land of Plot No. 4883. As such, the trial court and the appellate court rightly held and observed that the plaintiffs ought to have filed a suit for partition seeking saham of their purchased land making all the recorded owners as defendants in the suit.

It is argued that the plaintiffs utterly failed to prove that the defendant No. 2 got possession of the suit property as permissive possessor under the plaintiff No. 1 rather the defendant could able to prove that he has been possessing the part of suit plot as heir of Kalu Sarder and rest 3 decimal of land by purchase in the year 1990. The plaintiffs claimed that the defendant was inducted in the suit plot and constructed shop house with permission of the plaintiff in the year 2005, whereas, the defendant No. 2 purchased part of the property in the year 1990 before 15 years of alleged permission, as such, in both counts i.e. title of the plaintiffs as well as possession of the plaintiff in the suit property failed, consequently, both the courts below dismissed the suit and appeal observing that without filing a suit for partition the suit is not maintainable in its present form. Moreover, the plaintiff as P.W. 1 in cross unequivocally admitted that there was no legal partition among the heirs of Montazuddin Sarder. In the absence of any legal partition, the present suit for declaration of title and recovery of possession against an admitted co-sharer is not maintainable.

Heard the learned Advocates of both the sides, have gone through the revisional application under section 115(1) of the Code of Civil

Procedure, plaint in suit, written statement, evidence both oral and documentary and the impugned judgment and decree of both the courts below.

As per C.S. Khatian No. 7 (exhibit-‘Ka’) the suit plot along with many other plots stood recorded in the name of predecessor of the defendant No. 2 Montazuddin Sarder and others as per their share mentioned in the khatian. Montazuddin Sarder died leaving 3 sons, Akkel Ali Sarder, Kalu Sarder, Samed Ali Sarder, daughter Chutu Bibi, wife Rezia Khatun and another Julekha Bibi wife of Hossen Ali Sarder. R.S. Khatian No. 327 stood recorded in the name of heirs of Montazuddin Sarder mentioning their respective share against their names, status of all the tenants are permanent raiyat. The name of tenants in R.S. Khatian No. 327 have been recorded specifying their share in different group like ‘Ka’, ‘Kha’, ‘Ga’, ‘Uma’, ‘Cha’, ‘Chha’ and ‘Ja’ which is not denied by both the parties. Had it been so, R.S. khatian shows that Akkel Ali Sarder is owner of 8 gondas, 1 kora, 2 kranti, 16 danto and his name stood recorded independently in ‘Cha’ group having no other co-sharers with him like groups ‘Ka’, ‘Kha’, ‘Ga’, ‘Uma’, ‘Chha’ and ‘Ja’. All the tenants name

as a recorded in R.S. khatian has been specifically mentioned against each plot mentioning who owns the plot as owner and possessor.

Because of mentioning the name of tenant against each plot it can be easily presumed and construed that respective plot as mentioned in the khatian was in possession of that person by amicable partition or arrangement among the co-sharers. As per R.S. record Akkel Ali Sarder exclusively got some plots in his share and only Plot No. 4480 having 8 annas share with his brother Kalu Sarder and others measuring 10 sataks. He transferred the property measuring 90 sataks including suit plot measuring 16 sataks to Makdam Ali Sarder by a registered deed No. 2350 dated 24.08.1950, original of which has been filed by the plaintiff as exhibit-‘2Ka’. As per claim of the plaintiff Makdam Ali after purchase got possession from Akkel Ali Sarder and had been possessing the same with the knowledge of other brothers of Akkel Ali Sarder, but none of them raised any objection against the sale by Akkel Ali Sarder and possession of Makdam Ali Matbar.

In S.A. khatian name of Makdam Ali Matbar has been correctly recorded, but share of the tenants has not been mentioned as the khatian was prepared without any field survey. The plaintiffs claimed that

Makdam Ali, then his sons were in possession of the suit plot, but said wrong was not in the knowledge of the plaintiffs. The suit property is located beside a local hat. The defendant No. 2 on 19th Poush 1411 B.S. corresponding to 02.01.2005 along with P.W. 2 Salamat Kha and P.W. 3 Abdul Hamed Hawlader requested the plaintiff to allow defendant No. 2 to build a temporary structure of a shop on the suit land. The plaintiff at the request of witnesses permitted the defendant No. 2 to build a temporary structure of a shop on the suit plot measuring 12 feet \times 8 feet, on the condition that he will vacate possession as and when asked by the plaintiff, accordingly, the defendant No. 2 raised a shop house on the south-western side of the suit land and used to possess the same as permissive possessor.

At the middle of Srabon 1418 B.S. the plaintiffs asked the defendant to vacate the possession of suit land, but he denied claiming that the plaintiffs are not the owners of the suit land and disclosed that in S.A. khatian their predecessors name appearing. The defendant No. 2 claimed that he as heir of Kalu Sarder inherited .133 decimals of land and he purchased 3 decimals of land from Kuti Sarder son of Montazuddin

and his brothers by a registered deed No. 824 dated 28.06.1990, thus he acquired 4.33 decimals of land by inheritance and by purchase.

He claimed that he never took permission from the plaintiffs to build a shop house on the western corner of the suit plot. Rather he has been possessing the suit property right from R.S. record through his predecessor Kalu Sarder and his uncle and then presently the defendant No. 2 himself. The story of taking permissive possession from plaintiff No.1 is false and fabricated. It is also claimed that the plaintiff filed Miscellaneous Petition Case No. 372 of 2010 against the defendant before the ADM, Shariatpur under Section 145 of the Code of Criminal Procedure, wherein, the property was physically enquired by Union Land Assistant Officer, Puneshor Union Land Office, Damudya who furnished report finding that the defendant No. 2 is in possession of a shop measuring 1 satak and in that report it has been stated that the defendant is in possession of the suit property since 10-15 years which clearly proves that the defendant No. 2 was in possession of the suit property by dint of inheritance and by purchase not by taking permission from the plaintiffs as alleged. After receipt of report learned ADM, Shariatpur by order dated 21.12.2011 filed the case directing defendant No. 2 not to enter into the

property under possession of the plaintiffs. Therefore, the plaintiff has no cause of action for filing the suit as the evidences established that the defendant No. 2 possessing the suit land by inheritance and purchase not with the permission of the plaintiff as permissive possessor.

The trial court while dismissing the suit put importance on the evidence of plaintiff who stated that the property left by Montazuddin Sarder inherited by his heirs, among them no legal partition has been done, as such, the defendant being a co-sharer by inheritance in the property cannot be evicted without bringing a suit for partition making all the recorded tenants as defendants in suit. The appellate court also concurred the observation made by the trial court in toto and dismissed the appeal only on the point of maintainability of the suit without a suit for partition.

Now the question before us, whether R.S. recorded tenant Akkel Ali Sarder owned the property transferred to Makdam Ali exclusively without legal partition among all the heirs of Montazuddin Sarder. Parties to the proceeding unequivocally admitted that Akkel Ali one of the sons of Montazuddin who sold the same to Makdam Ali Sarder. The question raised by the defendant is that since the suit plot is ejmali property of all

the heirs of Montazuddin Sarder, Akkel Ali Sarder had no right or title to transfer entire 16 sataks of land under Plot No. 4883 to Makdam Ali, but other plots also transferred by Akkel Ali in their entirety which has not been challenged by the predecessor of the defendants named Kalu Sarder, Samed Ali or any other brother and sisters. It is also not the case of defendant that though Makdam Ali purchased the property from Akkel Ali in the year 1950, Makdam Ali Sarder never delivered with possession of the property purchased by him. Except the suit plot, the defendants kept them silent about other property transferred by Akkel Ali Sarder.

To appreciate the fact, whether Akkel Ali had title and possession in the plots under R.S. Khatian No. 327 mentioned against his name and transferred to Makdam Ali. R.S. Khatian No. 327 (exhibit-‘1’) and (exhibit-‘Ka-1’) shows that in ‘Ka’ group Omed Ali Sarder, in ‘Kha’ group Hatem Ali and others, in ‘Ga’ group Kabil Sarder and others in ‘Uma’ group Kalu Sarder and other heirs of Montazuddin and in ‘Cha’ group only Akkel Ali Sarder, in ‘Chha’ group Nawab Ali Sarder and ‘Ja’ group Khadem Ali Sarder. As per their group, possession has been mentioned against the plot who is owner and possessor of the property. Suit Plot No. 4883 measuring 16 sataks along with other plots have been

specifically mentioned under exclusive possession of Akkel Ali Sarder. Having no other co-sharer in this particular suit plot like Plot No. 4480 mentioning separate group connotes that the property covered by all the plots have been amicably partitioned among the tenants giving different group and mentioning their names against each plot. Though the property has not been partitioned by any deed of partition or a partition decree of the court but the record of right itself partitioned the property separating all the tenants from each other. Since Akkel Ali as per record in 'Cha' group mentioning his name against some plots, his other brothers or sisters are not co-sharer in that plot, that is why, after transfer of the property by Akkel Ali Sarder in favour of Makdam Ali his brothers, sisters or mother raised no objection against the said transfer. After purchase Makdam Ali was in possession of the purchased land, accordingly, S.A. Khatian No. 364 stood recorded in his name along with other co-sharers without mentioning their respective share, it does not mean that because of not mentioning his name against plot in S.A. khatian, transfer made by Akkel Ali Sarder lost its validity.

Evidence led by defendant No. 2 himself and D.W. 2 coupled with report furnished by the inquiry officer in Miscellaneous Petition No. 372

of 2010, the defendant No. 2 is in possession of 1 satak land only which is claimed by the plaintiff. The defendant No. 2 though claimed that he purchased 3 sataks of land from sons of Kalu Sarder and others in the year 1990, but could not establish his possession in purchased property by any evidence except a deed of sale of the year 1990. Had the defendant No. 2 purchased the property in the year 1990 and got delivery of possession at that time. He would not have built a shop measuring 12 feet \times 8 feet at the western corner of the suit plot. Except the defendant No. 2 none of the heirs of Kalu Sarder or other heirs claimed the property from the plaintiff. P.W. 2 is nephew of defendant No. 2 who on oath stated that at the request of P.Ws. 2 and 3 the plaintiff gave permission to the defendant No. 2 to build a temporary shop at the west corner of the suit plot. By cross examination nothing could bring adverse to the evidence led by P.Ws. 1-3 to establish that the defendant No. 2 entered into possession or have been possessing the suit plot by inheritance or by purchase from one of the heirs of Samed Ali.

Moreover, S.A. khatian stood recorded independently for specific portion of the property in the name of Akkel Ali, Makdam Ali and predecessor of defendant No. 2 Kalu Sarder and others as son of Omed

Ali. The defendant could not explain or raise any objection that Kalu Sarder, Samed Ali are not sons of Omed Ali, but they are sons of Montazuddin Sarder. Both the parties to the proceeding kept them mum about this anomalies in the khatian. If I consider that Kalu Sarder, Samed Ali are sons of Omed Ali the case of the defendant as made out in the defense has no basis as they are claiming the property through Montazuddin Sarder whose name is totally absent in S.A. khatian. Now it is settled principle of law that if a person entered into any property as tenant or as permissive possessor or with the consent of the owner of the property claims title in the property is to surrender possession to the plaintiff first. In the present case had the defendant No. 2 acquired title in the property by inheritance and by purchase he is to surrender the possession to the plaintiff first and then he can come with his claim of title by filing properly constituted suit as the defendant No. 2 failed to establish that he is in possession of the property through his predecessor Kalu Sarder or by purchase from heirs of Samed Ali. In claiming so the defendant No. 2 is to prove first that Kalu Sarder was one of the owner of the property as per record of right and to prove that Akkel Ali was not owner of the entire plot and there was no partition.

Unless the R.S. record of right stands now is corrected or otherwise proved incorrect, I find that Akkel Ali being exclusive owner in possession of plot No. 4883 had every right to transfer the same to Makdam Ali. Apart from this a co-sharer of a joint property if transfers any property from any particular plot and delivered possession not exceeding his share is a valid transfer and in that case the claimant who challenged the transfers is to come with a suit for partition. Both the courts below failed to appreciate the oral evidence, documentary evidence as well as evidence led by defendant No. 2 and superficially observed that unless a suit for partition is filed by the plaintiff, present suit is not maintainable. As such, both the courts below in dismissing the suit and disallowing the appeal committed illegality and error of law in the decision occasioning failure of justice, as they have failed to appreciate the status of the tenants in different groups as recorded in R.S. Khatian No. 327.

It is to be noted here that in Mufassil District when the learned Advocates drafting plaint or written statement usually mentioned the date month and Bengali year without mentioning corresponding date, month and English year which sometime create confusion in deciding the the

dispute between the parties. Moreover, almost in every cases the Mufassil's learned Advocates mentioned the plaintiff as “সায়েল” “মজহর” and the defendant as “তরফসানি” (Tarafsani). Nowadays all those terms creates confusion in identifying the parties. Because of modernization and for easy understanding it is advised not to use such terms in drafting plaint and petition in miscellaneous cases describing the petitioner, opposite party, plaintiff and defendant with the aforesaid words “সায়েল”, “মজহর”, “তরফসানি” (Tarafsani). Because of this situation, I am inclined to direct the Registrar General to issue a circular for all the Mufassil District Bar Association and the concern District Judge informing them to comply with the order of this Court describing the petitioner and opposite parties in all miscellaneous cases and plaintiff and defendant in original suits or original proceeding as “Petitioner”, “Opposite Party”, “Plaintiff” “Defendant” respectively to avoid confusion regarding identity of the parties to the suit and to mention date month and year in the plaint and written statement as per English Calendar.

Taking into consideration the above, I find merit in the rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is made absolute, however, without any order as to costs.

Judgment and decree of both the courts below are hereby set aside. The suit is decreed against the defendant No. 2 on contest and ex parte against the rest. The defendant No. 2 is hereby directed to hand over vacant possession of the suit land to the plaintiffs within 30 days from date failing which the plaintiffs shall be entitled to get possession of the suit land through court.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.