IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Appeal No. 113 of 2003

In the matter of:

Additional Deputy Commissioner (Revenue), Narail and another.

… Appellants

-Versus-

Due to the death of Shirana Begum her heirs: 1(a). Shaikh Shariful Alam (Tipu) and others.

…Respondents.

Mr. S. M. Munir, Additional Attorney General with
Mr. Arobindo Kumar Roy, DAG,
Mr. Mohammad Abbas Uddin and
Ms. Shamsun Nahar (Laizu), AAG

…For the appellant

Mr. Md. Hamidur Rahman, Advocate

…For the respondent nos. 1(a), 1(e), 1(f), 1(g) and 1(h)

Heard on 11.03.2024, 21.03.2024, 09.05.2024 and 16.05.2024.
Judgment on 15.07.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the plaintiffs in Title Suit No. 02 of 1997, this appeal is directed against the judgment and decree dated 28.09.2002 passed

by the learned Joint District Judge, 2nd Court, Narail in that Title Suit dismissing the same.

The salient facts leading to preferring the appeal are:

The present appellants and two others as plaintiffs filed the aforesaid suit seeking following reliefs:

> *"(ক) আরজি বর্ণিত মতে ১ নং বিবাদী বাদী হইয়া বাদীপক্ষকে বিবাদী করিয়া নড়াইল বিজ্ঞ মুনসেফী আদালতে ১৭৬/৭৩ নং declaration মোকদ্দমা করিয়া গত ইং ২৭/১১/৭৩ তারিখে একপক্ষ সুরত রায় এবং ইং ২২/১২/৭৩ তারিখ একপক্ষ সুরত ডিক্রি হাসিল করিয়াছেন। উক্ত ডিক্রি তঞ্চকী, যোগসাজসী, ক্ষমতাবর্হিভূত, অকার্যকর বাদীর নিকট বাধ্যকর না থাকা অকর্মন্য malafide উহা void declare করিয়া রদ ও রহিত করিবার বিবাদীর বিরুদ্ধে ডিক্রি দিতে মর্জি হয়।*
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> *(খ) আদালতের ন্যায় বিচার এবং উভয় পক্ষের প্রিসিডিং দৃষ্টে বাদী অন্য যে, কোন প্রতিকার পাইবে বিবেচিত হইলে তাহারও ডিক্রি দিতে মর্জি হয়।*
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> *(গ) সমস্ত আদালত ব্যায় বিবাদীগণ এর বিরুদ্ধে ডিক্রী হয়।"*

The case of the plaintiffs so figured in the plaint in brief are:

The lands appertaining to C.S. Plot Nos. 15, 727, 782, 13, 800 and 798 was originally belonged to one, Snehalota Biswas and others and subsequently S.A record was also prepared in their name. However, soon after the partition of India and Pakistan in the year 1947 said Snehalota Biswas left the country and embraced citizenship of India. Thereafter, in the event of India-Pakistan war, the property so left by Snehalota Biswas at first became the enemy property under the Defence of Pakistan Rules, 1965

and then vested property after our war of independence in 1971 and the government started enjoying title and possession over the suit property left by Snehalota Biswas by giving lease to different lessees. It has further been stated that, the defendant no. 2 who is the husband of the defendant no. 1, Most. Shirana Begum (since deceased) got several certificate cases filed and upon practicing fraud, purchased properties including the schedule land through auction sale in several certificate cases in the name of his wife, Shirana Begum. Subsequently, the government filed application under section 54 of the Public Demands Recovery Act, 1913 for setting aside the sales held through certificate cases which was allowed on contest against the certificate holders that is, the defendant no. 1 and the auction sales was ultimately set aside. Then, the defendant no. 1 filed a suit being Title Suit No. 84 of 1967 in the 2nd court of Munsif, Narail though the said suit was dismissed on 12.08.1967. Thereafter, the defendant no. 1 by challenging the order setting aside the certificate sales filed a suit being Title Suit No. 176 of 1973 before the then 2nd court of Munsif, Narail but without serving summons upon the defendants of the suit (different government apparatuses) and practicing fraud upon the court, the defendant no. 1 got an *ex parte* decree on 27.11.1973. It has further been stated that, the defendant no. 1 (the plaintiff of that suit) had also filed a suit being Title Suit No. 05 of 1983 for permanent injunction against the government as defendants and got an *ex parte* decree. Against that decree, the defendant of the suit also filed a Miscellaneous Case being Miscellaneous Case No. 11 of 1985 under order IX, rule 13 of the Code of Civil Procedure and the said Miscellaneous Case was also dismissed when the government filed a Miscellaneous

Appeal being No. 13 of 1989 and that very appeal was allowed and the Title Suit No. 05 of 1983 was restored and on transfer the same was renumbered as Title Suit No. 62 of 1993 but sensing defeat in the suit, the defendant no. 1 then on 30.11.1993 withdrawn the said suit. However, the plaintiff came to know about the *ex parte* judgment and decree passed in Title Suit No. 176 of 1973 only on 02.05.1994 and upon obtaining certificate copy of the same on 11.05.1994 filed the suit.

On the contrary, the predecessor of the present respondent nos. 1(a), 1(e), 1(f), 1(g) and 1(h) namely, Ms. Shirana Begum contested the said suit by filing a written statement denying all the material averments so made in the plaint contending *inter alia* that, the suit property originally belonged to one, Snehalota Biswas and others whose name S.A record was finally prepared and during enjoying title and possession over the suit land by that Snehalota Biswas, the rent in respect of the suit land and other lands became due and the government then initiated several certificate cases against Snehalota Biswas and the notice of those certificate cases issued under sections 7 and 46 of the Act were duly served upon the certificate-debtor namely, Snehalota Biswas and ultimately the defendant no. 1 auction purchased the suit land and other lands and got sale certificates and handed over possession following issuance of writ of possession. Subsequently, some vested quarters who had enmity with the defendant no. 1 got the certificate sales set aside by the government on 09.09.1966 through filing several Miscellaneous Cases. Having learned about the orders setting aside sale on 25.09.1973, the defendant no. 1 as plaintiff then filed Title Suit No. 176 of 1973 and got an *ex parte* decree on 27.11.1973

serving summons duly upon the defendants of the suit herein the government. Thereafter, for setting aside the said judgment and decree dated 27.11.1973, the present plaintiffs filed a Miscellaneous Case being No. 147 of 1974 under order IX, rule 13 of the Code of Civil Procedure which was also dismissed for default. Subsequently, in order to restore the suit, the plaintiff also filed an application under section 151 of the Code of Civil Procedure and it was also dismissed on 11.07.1977 and therefore, no step was taken by the plaintiffs. It has also been stated that, the defendant no. 1 has been enjoying title and possession over the suit property by erecting a building and by planting different kind of trees thereon. Subsequently, since the defendant no. 1 had been threatened of dispossession, she also filed a suit being Title Suit No. 05 of 1983 praying for permanent injunction where on 24.01.1983 an ad-interim order of injunction was passed and eventually on 05.05.1984, the suit was decreed *ex parte*. However, challenging the said judgment and decree passed *ex parte*, the plaintiffs (the defendants of the said suit) then filed a Miscellaneous Case being Miscellaneous Case No. 11 of 1985 which was also dismissed on 22.08.1988. Against the said order, a Miscellaneous Appeal being Miscellaneous Appeal No. 13 of 1989 was also preferred by the plaintiffs and it was allowed however the said Title Suit No. 05 of 1983 was subsequently renumbered as Title Suit No. 62 of 1993 but ultimately it was withdrawn. In the meantime, upon coming to know about the enlistment of the suit land as vested property, the defendant filed an application for releasing the property from the list of vested property on which the then Sub-divisional Officer on 02.12.1982 made a

recommendation to release the property from the list of vested property and ultimately the said property was released from the list of vested property on 28.04.1984. It has also been stated that, after acquiring title and possession over the suit property, the defendant no. 1 also transferred some of the lands elsewhere and 10 decimals of land appertaining to plot no. 1241 was also given to the government for running a *Tahshil* office there. It has lastly been stated that, since the plaintiffs have got no title and possession over the suit property, so the same is liable to be dismissed.

In order to dispose of the suit, the trial court framed as many as 7(seven) different issues and the plaintiff examined a sole witness while the defendant no. 1 examined two witnesses in support of their respective cases. Aside from that, the plaintiffs also produced several documents which were marked an exhibit-'1-7' series. On the contrary, the defendant no. 1 also produced several documents which were also marked as exhibit nos. 'ka' to 'ba(3)'.

After conclusion of the trial, the learned Judge of the trial court dismissed the suit by impugned judgment and decree dated 28.09.2002 finding that, the plaintiffs have utterly failed to prove title and possession over the suit property and the suit is hopelessly barred by limitation.

It is at that stage, the plaintiff no. 1 and 2 as appellants preferred this appeal.

It is worthwhile to mention here that, after exhaustive hearing of the parties to the appeal, the matter was posted for passing judgment making it CAV on 16.05.2024. Today, when we are about to pass the judgment, Mr. S. M. Munir, the learned Additional Attorney-General submitted a

supplementary-affidavit contending that, he wanted to assert some facts in favour of the appellant. On going through the record (order book of this appeal), we find that on 16.05.2024 we made the matter for CAV after wrapping up the hearing of both the appellant and respondent. Yet the said supplementary-affidavit was filed on 23.05.2024 (affidavit sworn-in). Since the matter was extensively heard on several occasions so there has been no scope to entertain the supplementary-affidavit right at this moment which rather exemplifies utter negligence of the appellant in conducting the matter. Accordingly, the supplementary-affidavit so filed today is rejected.

Mr. Arobinda Kumar Roy, the learned Deputy Attorney General appearing for the appellant upon taking us to the memorandum of appeal and all other documents so appended with the Paper Book at the very outset submits that, the learned Judge of the trial court erred in law innot considering the fact that in the suit, the plaintiffs sought relief for declaration essentially to the effect that, the judgment and decree passed in Title Suit No. 176 of 1973 is illegal, void and not binding upon the plaintiffs and for that obvious reason, court fee of taka 200/- has rightly been paid having no scope to pay the advolarem court fee over such declaratory prayer and therefore, the learned Judge committed an error of law in finding that the plaintiff-appellant is required to pay advolarem court fee which cannot be sustained.

The learned Deputy Attorney General further submits that, the trial court erred in law in holding that, the government started certificate cases against Snehalota Biswas and others in the year 1964 and therefore, it is presumed that, Snehalota Biswas and others were the nationals of this

country in the year 1963-1964 without considering that those certificate cases were fraudulently created by the defendants to grab the government's vested property and therefore, there is no reason to hold that Snehalota Biswas and others were the nationals of this country in 1963-64.

The learned Deputy Attorney General goes on to submit that, the trial court misconceively found that the notice of the alleged certificate cases were served upon the certificate-debtor that is, Snehalota Biswas and since the alleged auction money was for very small amount so it can easily be presumed that, those certificate cases were fraudulently created for which subsequently all the certificate cases were lawfully cancelled by the concerned revenue officer having no scope to affirm the title of the defendant no. 1 in the suit land by entertaining and decreeing Title Suit No. 176 of 1973 by the learned Judge of the trial court.

The learned Deputy Attorney General further submits that, the trial court erred in law and fact in holding that, the concerned certificate officer wrongly cancelled the certificate cases where it is clear from the finding of the trial court that, notices under sections 54 and 7 of the Public Demands Recovery Act were not served upon the certificate-debtor, Snehalota Biswas and therefore, the certificate officer lawfully cancelled the certificate sales of the certificate cases having no scope to interfere those in Title Suit No. 176 of 1973 so initiated by the defendant no. 1.

The learned Deputy Attorney General next submits that, the learned Judge of the trial court after considering the evidence on record found that, the suit property has been released from the category of vested property on 28.04.1994 by the Deputy Commissioner, Narail and therefore, it is proved

that, since suit property has been enlisted in the census list as of enemy property (subsequently vested property), the defendants prayed for releasing the same from the category of the vested property however, the Deputy Commissioner cannot release the vested property and from the list of the vested property, the suit land has still been enlisted as vested property but that very important fact has not been taken into consideration by the learned Judge of the trial court while dismissing the suit.

The learned Deputy Attorney General finally submits that, the trial court erred in law in not holding that, the summons of Title Suit No. 176 of 1973 has not been served upon the defendants of the suit and the plaintiff of the suit managed to obtain the *ex parte* decree in that suit suppressing the summons and notice fraudulently and therefore, the judgment and decree passed *ex parte* in Title Suit No. 176 of 1973 cannot be sustained in law but the learned Judge of the trial court committed error of law innot taking into consideration of that very vital fact and finally prays for allowing the appeal on setting aside the impugned judgment and decree.

By filing a supplementary-affidavit dated 27.06.2018, the appellant also produced the list of the properties which have been enlisted in ‘ka’ and ‘kha’ list specifying the suit plot nos. 835, 1237, 1241, 1183 therein and the learned Deputy Attorney General prayed that, since those properties have already been enlisted in ‘ka’ and ‘kha’ list so it construe that, the suit property has still been a vested property of the government having no scope to claim title and possession by the defendant over the same.

On the contrary, Mr. Md. Hamidur Rahman, the learned counsel appearing for the respondent nos. 1(a), 1(e), 1(f), 1(g) and 1(h) vehemently

opposes the contention so taken by the learned Deputy Attorney General for the appellant and submits that the learned Judge of the trial court upon exhaustive discussion of the material facts and point of law and taking into consideration of the evidence of the parties to the suit has rightly passed the impugned judgment and decree which is liable to be sustained.

The learned counsel further contends that, since the plaintiff could not prove that the sale certificates have been obtained by practicing fraud or suppressing the notice and summons of the certificate proceedings upon the certificate-debtor so the suit property has rightly been acquired by the predecessor of the present respondents namely, Most. Shirana Begum by serving notice duly upon the certificate-debtor having no scope not to sustain the certificate proceeding even though the government filed an application under section 54 of the Public Demands Recovery Act for setting aside the certificate sales but since the certificate cases had been unlawfully cancelled, the defendant no. 1 was compelled to file Title Suit No. 176 of 1973 and since the learned Judge of the trial court found that the summons of the suit has duly been served upon the defendants-government herein the present plaintiffs and thus the suit was decreed *ex parte* having no occasion to find that any fraud has been committed upon the court in obtaining the said decree.

The learned counsel further submits that, since challenging the judgment and decree passed in Title Suit No. 176 of 1973 several Miscellaneous Case was filed by the plaintiffs under order IX, rule 13 and section 151 of the Code of Civil Procedure and those were ended in dismissal so it clearly construe that, the plaintiffs have got every

knowledge about the judgment and decree passed *ex parte* in favour of the defendant no. 1-respondnet so the date of knowledge so have been mentioned in the suit dated 11.04.1994 cannot be sustained and the learned Judge of the trial court in the fag-end of the judgment has rightly found that the suit is hopelessly barred by limitation.

The learned counsel also contends that, since it has also been proved that the suit property which was earlier listed as vested property of the government was ultimately released as evident from exhibit-'৭' which was also marked without any objection from the plaintiffs so it cannot be said at that stage that, the property has still been enlisted as vested property and therefore, the plaintiffs have got no occasion to claim the suit property as vested property of the government.

The learned counsel further contends that, it is the definite case of the plaintiffs that soon after partition of 1947, the predecessor of the defendant nos. 1 and 2, Snehalota Biswas left this county and embraced citizenship of India and started living there when that very vital facts cannot be proved by adducing and producing any evidence and the learned Judge has rightly found so in the impugned judgment which is liable to be sustained.

The learned counsel next contends that, it is also the definite case of the plaintiffs that soon after the war between Pakistan and India in 1965, the Defence of Pakistan Rules, 1965 was promulgated on which the property so left by Snehalota Biswas became the enemy property and subsequently upon liberation of our country, it became vested property of the government but fact remains, the said certificate proceedings was

initiated long before the said Defence of Pakistan Rules came into being because the certificate sales have been confirmed and the writ of possession was issued in favour of the defendant no. 1 all in the year 1964 so no question can at all arise that the property became enemy property of the government.

The learned counsel also contends that, since it the case of the plaintiffs that Snehalota Biswas left the country soon after the partition in 1947 but that very proposition cannot sustain because had that very assertion sustained the S.A record would not have prepared in the name of Snehalota Biswas when the plaintiff's witness no. 1 has clearly asserted in his examination-in-chief that, the S.A record was rightly prepared in the name of Snehalota Biswas which also disproved the case of the plaintiffs that, Snehalota Biswas left the country in the year 1947 and has been living there permanently.

Insofar as regards to the possession claimed by the plaintiffs that the plaintiffs have been possessing the suit property by leasing out the same to different lessees but not a single lessee has been adduced by the plaintiffs to prove the same and therefore, the plaintiffs have got no possession over the suit property and if the claim of possession is not sustained then mere declaration that the judgment and decree passed in Title Suit No. 176 of 1973 cannot sustain because it is the settle proposition of law that possession follows title and since the plaintiffs have utterly failed to prove possession, the learned Judge has rightly came to a decision that the suit so filed by the plaintiffs cannot sustain in law by relying upon a decision

reported in 13 DLR (HCD) 70. On those scores, the learned counsel finally prays for dismissing the appeal.

We have considered the submission so advanced by the learned Deputy Attorney General for the appellant and that of the learned counsel for the respondent nos. 1(a), 1(e), 1(f), 1(g) and 1(h) vis-à-vis perused the impugned judgment and decree including the documents appended in the Paper Book.

In the first instance, we would like to examine the prayer coupled with the schedule describe in Title Suit No. 176 of 1973 which runs as follows:

> *"(a) That the court will be pleased to decree the suit by declaring that the order passed by the defendant no. 4 for setting aside the certificate sale on 07.09.1966 of the schedule certificate is illegal, ultra vires, void abinitio and plaintiff's right has not been affected by the said impugned orders.*
>
> *(b) An order of perpetual injunction may kindly be issued against defendant restraining them not to interfere possession of the plaintiff.*
>
> *(c) All cost be decreed against the defendants.*
>
> ***Schedule***
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> 1. *C.C. No. 3000A/1963-64…Misc. Case No. 94/66*
> 2. *C.C. No. 3001A/1963-64…Misc. Case No. 95/66*
> 3. *C.C. No. 3004A/1963-64…Misc. Case No. 98/66*
> 4. *C.C. No. 3005A/1963-64…Misc. Case No. 99/66*
> 5. *C.C. No. 3006A/1963-64…Misc. Case No. 100/66*

6. *C.C. No. 3007A/1963-64…Misc. Case No. 101/66*
7. *C.C. No. 3008A/1963-64…Misc. Case No. 102/66*
8. *C.C. No. 3009A/1963-64…Misc. Case No. 103/66*
9. *C.C. No. 3010A/1963-64…Misc. Case No. 104/66*
10. *C.C. No. 3011A/1963-64…Misc. Case No. 105/66.*"

On going through the prayer of the suit, we find that, the propriety of the judgment and order passed by the defendant no. 4 (by canceling the certificate sale dated 07.09.1966 which was passed in as many as 10 certificate cases (supra)) has been called in question in the title suit. It has not been proved by the plaintiff-appellant by producing order sheets (though record of the suit was called for as P.W-1 in his chief asserted that, মুল ডিক্রী এবং দেওয়ানী ১৭৬/৭৩ মোকদ্দমার নথি তলব দেয়া আছে। page 106 of the Paper Book) of that title suit or through evidence adduced and produced by the plaintiff in Title Suit No. 02 of 1997 that summons of Title Suit No. 176 of 1973 had not been served upon the plaintiff-appellant (defendants of that suit) so there has been no occasion to hold that, the judgment and decree under challenge was obtained by the present defendant-respondents by practicing fraud upon the court. Moreover, from the entire testimony of the P.W-1, we don't find he has ever asserted that, the summons had not been served upon the plaintiffs who were the defendants in that suit. So the chief allegation of the plaintiffs-appellants that the judgment and decree in Title Suit No. 176 of 1973 was obtained by the defendant no. 1 present respondnets by practicing fraud upon the court does not stand at all.

Insofar as regards to the claim of the plaintiffs that the suit property is vested property but we find from exhibit-'ণ' (page 135 of the Paper Book)

that the said property which was alleged to have vested in the government was released vide order of the then Deputy Commissioner, Narail dated 28.04.1994 under V.P. Case No. 4ka/89 which was also marked as exhibit-'ণ' even without any objection from the plaintiffs. That very vital facts have also been asserted in the plaint (at page 64 of the Paper Book) but though it is found from there that a recommendation was made to set aside that release order but nothing contrary to that has been done and the said order still remains valid.

In this regard, what we find from the deposition of P.W-1 which is as follows:

> *''সাক্ষীকে জেলা প্রশাসক নড়াইল কার্য্যালয়ের স্মারক নং ১৫৯ তারিখ ২৮/০৪/৯৪ ইং মূলে পত্র দেখানো হলে সে উহা জেলা প্রশাসক কর্তৃক সাক্ষরিত এবং উহা কালিয়া রাজস্ব অফিসার বরাবর কপি প্রেরন করা হয় মর্মে বলে।''*

Though the Title Suit No. 176 of 1973 was decreed *ex parte* but the validity of the said release order is still in effect and could not be invalidated by the plaintiffs through the evidence made by P.W-1. So if the property had released from the list of vested property there would have no scope to assert that, the defendant no. 1 has got no title and possession over the suit property when she acquired suit land through certificate sales which were eventually established through judgment and decree of Title Suit No. 176 of 1973.

Furthermore, as we have earlier found that, the plaintiffs have utterly failed to prove that after partition, the predecessor of the defendants Snehalota Biswas whose name S.A. record was prepared embraced

citizenship of India and following Indo-Pak war in the year 1965, the said suit property was enlisted as enemy property and after emergence of Bangladesh in 1971, the same was enlisted as vested property but all those pivotal factums could not be proved by the plaintiffs through any sort of evidence leaving the suit so filed by the plaintiffs-appellants totally unintertainable.

The plaintiffs-appellants are now crying havoc by emphasizing that, the suit property have been enlisted in 'ka' and 'kha' list under Arpitta Shampatty Prottorpan Ain, 2001 by filing supplementary-affidavit annexing 'ka' and 'kha' list therewith to have an impression upon us that, the suit property is still in the domain of the plaintiffs. But such allegation totally runs counter to the the pleadings as it has neither been asserted in the plaint nor led any evidence to that effect let alone giving any opportunity to the defendants to make a defence case thereagainst having no scope to take into account of such third case now. On top of that, the prayer of the suit reveals that, the plaintiffs sought declaration essentially to the effect that, the judgment and decree passed in Title Suit No. 176 of 1973 is illegal, void and not binding upon them (page 65-66 in the Paper Book). Since the suit was filed for declaration with a very specific prayer and some specific assertion so the plaintiffs are duty bound to prove their case up to the hilt without depending upon any weakness of the defendant's case which is a universal legal proposition but despite of the facts that the defendant no. 1 adduced two witnesses and produced several documents when those documents were all marked as exhibits proving acquiring title and possession in the suit properties.

It is also on the record that, the plaintiffs-appellants had earlier filed Miscellaneous Case being No. 147 of 1974 for setting aside the judgment and decree passed *ex parte* in Title Suit No. 176 of 1973 which was dismissed on 09.08.1975 (Annexure-'6' at page 118 of the Paper Book) so the date of knowledge so have asserted in the plaint by the plaintiffs claiming it to be on 02.05.1994 as well as 12.05.1994 (page 64 of the Paper Book) are found to be totally untrue and cannot be sustained in law and since it has proved that the plaintiffs have got every knowledge about the decree passed in Title Suit No. 176 of 1973 and thus the trial court has rightly dismissed the suit finding it barred by limitation which is perfectly justified.

Furthermore, the learned Judge of the trial court at the fag-end of the judgment has also rightly held that, since the plaintiffs have failed to prove their possession in the suit property so no decree can be passed in their favour until and unless, a consequential relief is claimed in the suit and then placed his reliance in the decision reported in 13 DLR (HCD) 70 which is squarely applicable in the facts and circumstances of the instant case. Because though it is the definite case of the plaintiffs that, they have been enjoying title and possession over the suit property by leasing out the same to different lessees but fact remains none of any lessee has been adduced by the plaintiffs to prove that the suit property is being leased out and since possession has not been proved in favour of the plaintiffs so the suit in the form of declaration cannot be sustained in law. Though it has been canvassed by the plaintiffs that a '*Tahshil* Office' is located in 10 decimals of land out of plot no. 1241 but from the written statement of the

defendant no. 1, we find it to be permissive possession under defendant no. 1 which remained uncontroverted by cross-examining the defendant's witnesses nor it has ever been asserted by the P.W-1 in his testimony.

Given the above facts and circumstances and material evidence on record, we don't find any iota of illegality or impropriety in the impugned judgment and decree which is liable to be sustained.

Accordingly, the appeal is dismissed however without any order as to costs.

Let a copy of this judgment along with the lower court records be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.

Abdul Kuddus/**B.O**.