Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice A. K. M.Rabiul Hassan

First Appeal No. 721 of 2018

Abdul Rezzaque Bhuiyan and others

… Appellants

-versus-

Abdul Hossain Khan and others

... Respondents

Mr. Taposh Kumar Biswas, with
Mr. Protikar Chakma, and
Md. Tareq, Advocates

... for the appellants

Mr. A. H. M. Mushfiqur Rahman Tuhin, Senior Advocate, with
Md. Golam Noor, Advocate

...for the respondent Nos. 1 to 14

Heard on 01.09.2026; 03.09.2026 and 09.09.2026

Judgment on 10.09.2026

A. K. M. Rabiul Hassan, J:

This First Appeal, filed by the defendants, challenge the judgment and decree dated 08.01.2017 passed by the Joint District Judge, First Court, Munshigonj, in Title Suit No. 187 of 2009 decreeing the suit.

The facts for disposal of the appeal are that the present respondents, as plaintiffs, instituted Title Suit No. 187 of 2009 before the learned Joint District Judge, First Court, Munshigonj, impleading the present appellants along with others as defendants, seeking the following reliefs:

(ক) নালিশী তফসিলে বর্ণিত দাগের ২ ষোল আনা ভূমি সম্পর্কে বাদীগণের বরাবরে বিবাদীগণের বিরুদ্ধে এক স্বত্ব ঘোষণার ডিক্রির আদেশ দিতে;

(ক) (১) নালিশী আর.এস. ১৬৭ নং খতিয়ানে বাদীগণের পূর্ববর্তীগণের নামে লিপিবদ্ধ না হওয়া ভুল ও অশুদ্ধ মর্মে ঘোষণার ডিক্রির আদেশ দিতে;

(ক) (২) বিগত ১১/০৫/১৯১৮ ইং তারিখের অরেজিস্ট্রিকৃত বিক্রয় দলিল। বিগত ১৪/০৫/১৯২০ ইং তারিখের ৩৪৮২ নং কবুলিয়ত দলিল সম্পূর্ণ মিথ্যা, বানোয়াটি, যোগসাজশী, কাল্পনিক, তঞ্চকতাপূর্ণ ও অকার্যকর দলিল এবং অত্র দ্বারা অত্র মোকদ্দমার বাদীগণ বাধ্য নহে মর্মে এক ঘোষণার ডিক্রি দিতে;

(খ) মোকদ্দমার ক্ষতি খরচা বাদীগণের বরাবরে এবং বিবাদীগণের বিরুদ্ধে ডিক্রির আদেশ দিতে;

(গ) বাদীগণ আইন ও ইক্যুইটি মতে আর যে যে বৈধ প্রতিকার পাওয়ার অধিকারী হয় তদমর্মে ডিক্রির আদেশ দিতে।

Plaintiffs' case is that the original owner and possessor of 21 decimals of land, comprising sixteen annas in C.S. Plot No. 1246 under C.S. Khatian No. 77 of the suit schedule, was Isob Kha. While in possession of the suit property, Isob Kha died, leaving 2 sons and 1 daughter, namely Abdul Aziz Kha, Golap Kha, and Aioton Nessa. Accordingly, each son inherited 8.40 decimals and the daughter 4.20 decimals of land in the suit plot. Thereafter, Abdul Aziz Kha died, leaving his only son, Julmat Kha, as his heir. During the S.A. survey, S.A. Plot No. 1246 under S.A. Khatian No. 208 was recorded in the name of Julmat Kha. However, the names of Golap Kha and Aioton Nessa were inadvertently omitted from the S.A. Khatian. Subsequently, Julmat Kha died, leaving 4 sons, namely Abul Hossain Kha, Abul Hashem Kha, Kashem Kha, and Mosharraf Kha, and 3 daughters, namely Lutfa Begum, Nur Jahan, and Shahnaj (Plaintiff Nos. 1-7) each son inheriting 1.53 decimals and each daughter 0.76 decimals of land. Golap Kha died, leaving 3 sons and 1 daughter, namely Abdur Rahman, Abdur Rahim, Kadir Kha, and Moncehara Begum (Plaintiff Nos. 8–11) each son inheriting 2.40 decimals and the daughter 1.20 decimals of land. On the other hand, Aioton Nessa

died, leaving 3 sons, namely Latif Molla, Based Molla, and Hashem Molla (Plaintiff Nos. 12–14), each inheriting 1.40 decimals of land. Thereafter, Plaintiff Nos. 1–14 have been in peaceful possession of the land as homestead and, cultivating seasonal crops. In early 2008, when the plaintiffs approached the local Tahsil office for Namjari (mutation) and separation of accounts, they came to know that R.S. Khatian No. 167 was partially recorded in the name of Julmat Kha and the names of the predecessors of Plaintiff Nos. 8–14 were omitted; consequently, mutation and rent payment could not be allowed in their names. On 18.08.2008, the plaintiffs obtained a certified copy of R.S. Khatian No. 167 and confirmed the error. As the erroneous R.S. record cast a cloud over their title, the plaintiffs filed this suit for a declaration of title.

Plaintiffs' further case is that upon the filing of the defendants' written statement, the plaintiffs amended their plaint, further asserting that the defendants' claim that Isob Kha sold 21 decimals of land in C.S. Plot No. 1246 to Amir Bhuiyan, alias Phelu Bhuiyan, via an unregistered deed dated 11.05.1918 for Tk. 85/- was false, as Isob Kha never executed such a deed. They therefore claim it is forged and fabricated. The plaintiffs also denied the defendants' assertions that Phelu Bhuiyan mortgaged the suit land to Kedareswar Mukhopadhyay under Deed No. 3482 dated 14.05.1920 and subsequently cultivated it under Kabuliyat Deed No. 4996 dated 03.07.1926. Under these circumstances, the plaintiffs prayed for a decree declaring their title and declaring the documents produced by the defendants as forged, fraudulent, fabricated, and not binding upon the plaintiffs.

Thereafter, the defendant Nos. 1–4 contested the suit by filing a joint written statement denying all material allegations in the plaint contending *inter alia*, that C.S. Plot No. 1246, measuring 21.00 decimals under C.S. Khatian No. 77, belonged to Isob Kha. In the non-suit Plot No. 967 of the same Khatian, measuring 19.00 decimals, the predecessor of these defendants purchased specific shares, which were correctly recorded in the remarks column of C.S. Khatian No. 77 and finally published. While owning the suit land in C.S. Plot No. 1246 (21.00 decimals), Isob Kha, due to family needs and an urgent need for cash, offered to sell the entire 21.00 decimals. The predecessor of these defendants, Sheikh Phelu Bhuiyan, alias Amir Bhuiyan, agreed to purchase the same for a maximum consideration of Tk. 85/-. Having received the full consideration money, Isob Kha executed an unregistered deed of sale on 29th Chaitra, 1324 B.S. (corresponding to 11.05.1918 A.D.) and delivered absolute physical possession of the suit land to Amir Bhuiyan, alias Phelu Bhuiyan. After purchasing 21.00 decimals in C.S. Plot No. 1246 under the unregistered deed dated 11.05.1918, Amir Bhuiyan, alias Phelu Bhuiyan, remained in continuous physical possession, cultivating seasonal crops. Later, he mortgaged 30.00 decimals of non-suit land and 21.00 decimals of suit land to Kedareswar Mukhopadhyay under a registered Mortgage Deed dated 06.05.1920. As the mortgagee, Kedareswar Mukhopadhyay could not cultivate the mortgaged land himself, and the mortgagor, Phelu Bhuiyan, failed to repay the mortgage debt. Accordingly, Phelu Bhuiyan executed a registered Kabuliyat Deed No. 4996 dated 03.07.1926 in favour of Kedareswar Mukhopadhyay for an annual rent of Tk. 18/-, thereby

retaining personal cultivation and possession. After long, continuous possession, upon the abolition of the Zamindari system under the State Acquisition and Tenancy Act, 1950, S.A. Khatian No. 208 was correctly and finally published in the name of the defendants' predecessor, Amir Bhuiyan, alias Phelu Bhuiyan, along with other co-sharers. During the lifetime of the original C.S. record-holder, Isob Kha, his son, Abdul Aziz Kha, passed away. Thereupon, during his lifetime, Isob Kha transferred properties, including non-suit Plot Nos. 1134, 1145, 1138 (homestead), 1139, 1249, and 1245 under Khatian No. 77 of Mouza Sukhbaspur No. 60, in favour of his deceased son Abdul Aziz Kha's son, Julmat Kha, and his surviving son, Golap Kha, by executing a registered *Heba-bil-Ewaz* bearing Deed No. 2826, dated 05.04.1924, registered at the Munshiganj Sub-Registry Office. Therefore, the plaintiffs' claim in the plaint that Isob Kha died leaving behind 2 sons and 1 daughter (Abdul Aziz Kha, Golap Kha, and Aioton Nessa) as his heirs is entirely false.

Defendant Nos. 1 to 4's further case is that the S. A. recorded owner, Amir Bhuiyan, alias Phelu Bhuiyan, remained in continuous possession of the suit land throughout his lifetime. Upon his death, he left 4 sons and 1 daughter, namely Abdul Razzak Bhuiyan, Abdul Awal, Abu Taher Bhuiyan, Khorshed Alam Bhuiyan, and Safia Begum, who inherited his estate. Accordingly, based on their title and possession, the R. S. survey correctly and finally recorded R. S. Khatian No. 167 in their names. Although Safia Begum's name was inadvertently omitted from R. S. Khatian No. 167, she remains a lawful co-owner by inheritance. The suit land is agricultural (*nal*) land. These defendants have been in peaceful,

uninterrupted, and open physical possession of the suit land through ancestral inheritance, to the knowledge of the entire locality. However, due to the recent surge in land value, the plaintiffs noticed Isob Kha's name in the old C. S. Khatian No. 77 and, driven by greed, attempted to dispossess these Defendants. When the plaintiffs attempted to enter the land forcibly, defendant No. 1 (Abdul Razzak Bhuiyan) filed a proceeding under Section 145 of the Code of Criminal Procedure before the learned Additional District Magistrate, Munshiganj (Miscellaneous Case No. 728P/2008 dated 09.11.2008). In that proceeding, the learned Additional District Magistrate directed the Assistant Commissioner (Land), Munshiganj Sadar, to conduct a field inquiry into actual physical possession. Pursuant to that order, the Union Land Assistant Officer conducted an on-the-spot investigation and submitted a field report on 12.02.2009. Thereafter, the Assistant Commissioner (Land), Munshiganj Sadar, submitted an official inquiry report on 01.03.2009, explicitly confirming that these answering defendants are in actual physical possession of the suit land. Having failed to seize the land forcibly, and after the official inquiry report in the Section 145 Code of Criminal Procedure proceeding went against them, the plaintiffs manufactured a false cause of action dated 18.08.2008 and instituted this false declaratory suit. As the answering defendants have been in continuous ancestral possession for decades and the plaintiffs have no possession in C.S. Plot No. 1246, this suit for mere declaration without possession is liable to be dismissed with costs.

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

1. Whether the plaintiffs have title, interest, and possession in the suit land?
2. Whether the *Kabuliyat* Deed No. 3482 dated 14.05.1920 is forged, false, fabricated, collusive, fraudulent, and not binding upon the plaintiffs?
3. Whether the plaintiffs are entitled to the decree of declaration as prayed for?

During the trial, on behalf of all plaintiffs, plaintiff No. 4, as PW.1, gave evidence and exhibited the relevant documents marked as Exhibit Nos. 1, 1(ক) and 1(খ). Two other witnesses gave evidence for the plaintiffs as PW-2 and PW-3 (the cousin of PW-2). On the other hand, on behalf of the contesting defendants Nos. 1 to 4, defendant No. 2 deposed as D.W.1 and marked the relevant documents as Exhibit Nos. ক, ক-১, ক-২, ক-৩, খ, খ-১, গ, ঘ, ঙ, চ, ছ and জ. Four other witnesses gave evidence on behalf of the contesting defendants as DW-2, DW-3, DW-4 and DW-5.

Upon conclusion of the trial, the trial court decreed the suit in favour of the plaintiffs against defendant Nos. 1 to 4 and, by its judgment and decree dated 08.01.2017, passed an ex parte decree against the rest.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 08.01.2017, the plaintiffs, herein appellants, preferred the present First Appeal No. 721 of 2018 before this Court.

Mr. Taposh Kumar Biswas, the learned advocate appearing for the appellants, submits that the learned trial court erred in both law and fact by decreeing the suit for declaration of title without properly evaluating the record, the appellants' prima facie title, and their peaceful, unhindered possession of the suit property. Particularly, the trial court misconstrued the evidence by disregarding an unregistered sale deed dated 29th Chaitra 1324

and erred in holding that, despite proving the registration of Deed No. 3482 via volume call, the defendants failed to prove its execution in accordance with law ("দলিল নং ৩৪৮২ বিষয়ে ভলিউম তলবের মাধ্যমে এর রেজিষ্ট্রেশন প্রমাণ করলেও এর সম্পাদন বিবাদীপক্ষ বিধি মোতাবেক প্রমাণ করেননি"). Furthermore, the trial court failed to consider that the plaintiff-respondents came with unclean hands, whereas the defendant-appellants duly adduced witness testimonies and documentary evidence establishing ownership.

Mr. Biswas further submits that since 1918, defendants' predecessors-in-interest have been in continuous, peaceful possession of the disputed land, measuring 21 decimals, in Plot No. 1246 under C.S. Khatian No. 77, by virtue of an unregistered deed dated 11.05.1918 and multiple registered deeds dated 06.05.1920 (Deed No. 3482), 05.04.1924 (Deed No. 2826), and 03.07.1926 (Deed No. 4996). Consequently, S.A. Khatian No. 208 and R.S. Khatian No. 167 were properly recorded in their names, and they have consistently paid land development tax to the government. The suit is inherently unmaintainable under Section 42 of the Specific Relief Act because the plaintiffs failed to seek recovery of possession, despite the appellants' established possession.

Mr. Biswas further submits that the trial court passed a perverse judgment by ignoring critical evidence, namely, DW-4 and DW-5 (official record-keepers) produced the original volume books (*balam books*), which proved that the deeds matched official records and were genuine (Exhibits ঙ, চ, and ছ), while DW-1, DW-2, and DW-3 corroborated the defendant-appellants' long-standing possession. The trial court further erred in law by shifting the burden of proof, thereby violating the settled principle that a

plaintiff must stand on the strength of their own case rather than on the alleged weakness of the defendants. The suit, filed after a delay of nearly 90 years, is severely barred by limitation, and the trial court failed to accord the statutory presumption of genuineness to these century-old documents under Section 90 of the Evidence Act, rendering the impugned judgment and decree unsustainable in law and liable to be set aside for the ends of justice.

Conversely, Mr. A.H.M. Mushfiqur Rahman Tuhin, learned Senior Advocate, with Mr. Md. Golam Noor Torun, learned advocate for respondents Nos. 1 to 14, submit that the trial court rightly decreed the suit after properly evaluating both oral and documentary evidence establishing their absolute title and possession in accordance with law. The respondents established that their predecessor, Isob Khan, was the original owner in possession of 21 decimals of land in Plot No. 1246 under C.S. Khatian No. 77, leaving upon his death two sons, Abdul Aziz Khan and Gulap Khan, and a daughter, Noyoton Nesa. Abdul Aziz inherited 8.40 decimals and, upon his death, left his sole son Julmat Khan, whose name was correctly recorded in S.A. Khatian No. 208 and R.S. Khatian No. 167 [Exhibits 1(ka) and 1(kha)], though the remaining heirs were inadvertently omitted during survey operations. Conversely, the appellants' claim rests entirely on an alleged unregistered sale deed dated 11.05.1918 (Exhibit 'জ') purportedly executed by Isob Khan to Sheikh Felu Bhuiyan @ Amir Bhuiyan for Taka 85/-.

Mr. Tuhin further submits that a perusal of Exhibit 'জ' reveals fatal inconsistencies, namely that 11.05.1918 corresponds to 28th Boishakh

1325 B.S., not 29th Chaitra 1324 B.S. as claimed, together with severe erasures and discrepancies regarding the purchaser's name, date, and address on the reverse of the stamp paper, thereby proving the document to be a fraudulent fabrication. Because the root document of 1918 is fraudulent, the subsequent mortgage deed No. 3482 dated 14.05.1920 and the *Kabuliyat* deed No. 4996 dated 03.07.1926 naturally lose all legal force and foundation. Accordingly, the trial court passed a well-reasoned and sound judgment declaring the contested deeds void and not binding upon the respondents, which warrants no interference by this Hon'ble Court. The appeal is liable to be dismissed with costs.

In support of his submissions, the learned advocates for respondent Nos. 1 to 14 refer to the cases of *Shahin Reza (Md.) vs Nasiruddin Howlader and others,* reported in 67 DLR (AD) 243; *Mst. Gola Bewa and others vs. Md. Abdur Rashid and others*, reported in 4 MLR (AD) 420, and *Sabera Khatun and others vs. Sena Kalyan Sangstha and others*, reported in 18 BLC 782.

We heard learned advocates for both parties and perused the materials on record.

The Plaintiffs claim title by intestate inheritance from Isob Kha, who is recorded in C.S. Khatian No. 77. The plaintiffs contend that Isob Kha died leaving Abdul Aziz Kha, Gulap Kha, and Noyton Nessa. However, the defendants produced Exhibit 'ঙ', a certified copy of registered *Heba-bil-Ewaj* Deed No. 2826 dated 05.04.1924. This registered instrument of 1924 establishes that Abdul Aziz Kha died during the lifetime of his father, Isob

Kha, and that Isob Kha directly gifted certain other properties to his surviving son, Gulap Kha, and his grandson, Julmat Kha.

Under the principles of Islamic Law of Inheritance applicable before the Muslim Family Laws Ordinance, 1961, a grandchild whose father predeceases the grandfather is excluded from direct intestate inheritance. Since Abdul Aziz Kha died before 1924, JulmatKha could not have inherited any share directly from Isob Kha upon Isob Kha's subsequent death. Accordingly, the genealogy and chain of devolution set out by plaintiff Nos. 1–7 in the plaint collapse in the face of registered public documentary evidence.

Defendant Nos. 1–4 produced Exhibits 'জ' (Unregistered Sale Deed dated 11.05.1918), 'চ' (Registered Mortgage Deed No. 3482 dated 14.05.1920), and 'ছ' (Registered *Kabuliyat* Deed No. 4996 dated 03.07.1926). Under Section 54 of the Transfer of Property Act, 1882 (as it stood before the mandatory registration amendments), a transfer of tangible immovable property valued at less than Tk. 100/- could be validly effected by either a registered instrument or delivery of possession. In the present case, Exhibit 'চ' records the consideration for the 1918 sale as Tk. 85/-, which falls below the mandatory registration threshold of Tk. 100/-. The transaction was perfected by the immediate delivery of physical possession to Amir Hossain Bhuiyan @ Phelu Bhuiyan. Once possession is delivered in a sale under Tk. 100/-, the transfer of title is complete in law, irrespective of registration.

Furthermore, these documents are more than thirty years old and were produced from proper custody. Under Section 90 of the Evidence Act,

1872, the Court draws a statutory presumption as to the genuineness of the execution and attestation of documents thirty years old. 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. Accordingly, for a registered document over 30 years old, produced from proper custody, the Court presumes the execution and attestation of the said deeds to be genuine. Because delivery of possession accompanied the transaction, and the document is over 30 years old and produced from proper custody, title validly passed to Phelu Bhuiyan. Consequently, the subsequent Mortgage Deed of 1920 (Exhibit 'চ') and the Kabuliyat Deed of 1926 (Exhibit 'ছ') are lawful exercises of ownership.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. Therefore, the plaintiffs failed to adduce cogent affirmative evidence to rebut this presumption or to prove fraud.

Section 144A of the State Acquisition and Tenancy Act, 1950, confers a statutory presumption of correctness on finally published Khatians. R.S. Khatian No. 167 (Exhibit 'ঘ') records the possession and title of the defendants' predecessors. The plaintiffs have failed to produce convincing evidence to rebut the presumption attaching to R.S. Khatian No. 167.

Under the proviso to Section 42 of the Specific Relief Act, 1877, no Court shall make a declaration where the plaintiff, being able to seek

further relief (such as recovery of possession), omits to do so. Since the plaintiffs are out of possession and failed to pray for recovery of possession, the suit, in its present form, is hit by the proviso to Section 42 of the Specific Relief Act and is legally unmaintainable.

This Court finds that the learned trial court erred in failing to consider the applicable principles of Islamic law governing succession before the promulgation of the Muslim Family Laws Ordinance, 1961. Since Abdul Aziz Kha predeceased his father, Ichhab Kha, his son Julmat Kha was excluded from direct inheritance under the unamended personal law of succession. Furthermore, with respect to the title claimed under the 1918 unregistered sale deed executed for a consideration of Tk. 85/-, the transaction was validly concluded under Section 54 of the Transfer of Property Act, 1882, as it was accompanied by delivery of possession. The document, being over thirty years old and produced from proper custody, attracts the presumption of genuineness and due execution under Section 90 of the Evidence Act, 1872.

In response to the plaintiffs-respondents' submissions regarding the alleged calendar discrepancy, there appears to be a minor variance between the English date (11.05.1918) and the Bengali calendar date (29th Chaitra 1324 B.S.) in Exhibit 'জ'. This is a hyper-technical point that does not rebut the statutory presumption under Section 90 of the Evidence Act. The subject unregistered sale deed, together with the registered mortgage deed (Deed No. 3482 dated 14.05.1920) and the Kabuliyat (Deed No. 4996 dated 03.07.1926), are ancient documents, well over 30 years old, and were produced from proper custody. Significantly, DW-4 and DW-5 (official

record-keepers) produced the official registration Volume Books (Balam books), confirming that the registered deeds match the public records [Exhibits ঙ (deed No.2826), চ (deed No. 3832), and ছ (deed No. 4996)]. A clerical date-conversion variance on century-old stamp paper cannot override the statutory presumption of due execution and authenticity afforded by Section 90, nor does it establish fraudulent fabrication without strict, affirmative proof from the plaintiff-respondents.

The trial court's finding that, although the registration of Deed No. 3482 was proved by inspecting the registry volume, its execution was not proved in accordance with law, is contrary to settled legal principles. The challenged instruments date back 90 to 100 years, were produced from natural and proper custody, and match the public records produced by official record-keepers (DW-4 and DW-5) from the Sub-Registry Volume Books (*Balam* books) for Deed No. 3482 and Kabuliyat No. 4996 (Exhibits ঙ, চ, and ছ). Under Section 90 of the Evidence Act, 1872, documents over 30 years old, produced from proper custody, carry a statutory presumption of due execution and attestation, thereby dispensing with the need for formal proof through attesting witnesses.

Furthermore, upon perusal of Exhibit 'জ', it appears that the trial court did not clearly consider the execution date of the unregistered sale deed (Exhibit – 'জ'). This Court finds that the execution date of the said unregistered sale deed was 11.04.1918, not 11.05.1918, and accordingly, the Bengali year would be 28th or 29th Chaitra 1324, as acknowledged by the Senior Advocate for the respondents.

The trial court further observed that on the reverse side of the stamp paper, the purchaser's name, address, and purchase date were overwritten in black ink over blue ink. Additionally, the stamp purchase date of February 10, 1918, corresponds to 28th Magh, 1324 B.S., whereas it was erroneously recorded as 27th Magh. Generally, a stamp vendor writes the purchaser's name and purchase date on the back of a stamp paper; this is not the act of either the seller or the purchaser of the property. Therefore, we think such a discrepancy is irrelevant to the execution of the deed itself, and it cannot be said that the deed is fabricated merely because of these minor calendar translation variances in an ancient document. Consequently, the trial court's observation is incorrect and not free from doubt.

The trial court's finding that subsequent registered transactions must fail because of the alleged invalidity of the root document is unsustainable in law. The appellants' title is supported not only by Exhibit "ঙ", but also by independent, subsequent registered instruments, duly verified through official Volume inspection, together with verified S.A. and R.S. Khatians. The plaintiffs cannot dislodge century-old registered instruments and public record entries by relying on minor clerical errors; the burden rests strictly on the plaintiffs to succeed on the strength of their own title, independently, rather than by exploiting alleged technical flaws in ancient defendants' documents.

The respondents admit that S.A. Khatian No. 208 and R.S. Khatian No. 167 were recorded only in the name of Julmat Khan (their predecessor), while acknowledging that the appellants have been in physical possession of the suit property. DW-1, DW-2, and DW-3

unequivocally proved the appellants' unbroken, peaceful possession since 1918, supported by continuous payments of land development tax. Despite having been out of possession for nearly a century, the respondents filed Title Suit No. 187 of 2009 for a mere declaration of title, without seeking the consequential relief of recovery of possession. Under the mandatory proviso to Section 42 of the Specific Relief Act, a suit for bare declaration, where the plaintiff is out of possession and omits to seek recovery of possession, is legally unmaintainable.

The trial Court erred in holding that "the mortgagor-mortgagee relationship prevented the property from reverting to Amir Hossain Bhuiyan @ Phelu Bhuiyan. Upon acquiring rent-receiving interests under the 1950 Act, Amir Hossain Bhuiyan @ Phelu Bhuiyan, being in actual physical possession as a tenant/cultivator, retained statutory tenant rights, thereby justifying the issuance of S.A. Khatian No. 208 in his name".

It further appears that the trial court erred by improperly shifting the burden of proof onto the defendants. It is a foundational principle of law that a plaintiff must succeed solely on the strength of their own title and cannot rely on alleged technical flaws or weaknesses in the defendants' ancient instruments.

It further appears that the plaintiffs instituted Title Suit No. 187 of 2009 to challenge registered deeds executed in 1918 and 1920 after an inordinate and unexplained delay of nearly 90 years. Such a prolonged, unexcused delay renders the suit barred by the law of limitation and the doctrine of laches, thereby precluding the Plaintiffs from seeking any equitable relief against these ancient transactions.

On consideration of the above facts, the circumstances of the case, and the evidence on record, we hold that the learned Joint District Judge, First Court, Munshigonj, failed to appreciate the facts, circumstances, and evidence on record and, most illegally, decreed the above suit, which is not tenable in law.

Accordingly, the instant first appeal succeeds.

That First Appeal No. 721 of 2018 is allowed on contest against respondent Nos. 1–14 and *ex parte* against the rest, without costs.

The judgment and decree dated 08.01.2017, passed by the Joint District Judge, First Court, Munshigonj, in Title Suit No. 187 of 2009, are set aside.

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

Sheikh Abdul Awal, J

I agree.