

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 624 of 2019

IN THE MATTER OF:

Lutfur Rahman and others

... Defendant-Appellants

Versus

Md. Lutfur Rahman (Muktijodhya) and others

... Plaintiff-Respondents

Ms. Joya Bhattacharjee, Advocate

... For the Defendant-Appellants

Mr. Mamun Chowdhury with

Mr. Al Reza Md. Amin, Advocates

... For the Plaintiff-Respondent No.1

Judgment on: 07.08.2025

Md. Riaz Uddin Khan, J:

This appeal is directed against the judgment and decree dated 28.08.2019 passed by the Joint District Judge, 2nd Court, Habigonj in Title Suit No. 04 of 2015 decreeing the suit in favour of the Plaintiff-Respondent No. 1 and against the Defendant-Appellant Nos. 1-3 on contest and ex-parte against the Defendant-Appellant No. 4 & Defendant-Pro-Forma Respondent Nos. 2-3.

The brief facts for disposal of this first appeal is that the Respondent No. 1, as Plaintiff, filed Title Suit No. 04 of 2015 praying for (i) declaration of title over the Suit Land, (ii) declaration that the registered sale deed Nos. 61/12 and 62/12 both dated 26.01.2012 executed by the Defendant No. 4 in favour of the Defendant Nos. 1-3 in respect of the Suit Land is illegal, fraudulent, collusive, void and not binding upon the Plaintiff and (iii) for a further declaration that the order dated 19-01-2015 passed

by the Defendant No.7, Full Board of Land Appeal Board in Case no. 2-34/2014(Nam) Hobiganj, is illegal and void.

The plaint case is that by way of an amicable partition with other SA recorded tenants Sanat Kumar Roy, Mrinal Kanti Roy and Provakar Shingha Roy obtained the Suit Land measuring about 5.55 acre out of total 6.35 acre in SA Dag No. 937 under SA Khatain No. 42. Sanat Kumar Roy died leaving behind his son Shisir Kumar Roy as his heir who was succeeded by his son Shyam Sundar Roy. Mrinal Kanti Roy demised leaving behind his son, Mihir Kanti Roy, as heir. Shyam Sundar Roy & Mihir Kanti Roy (who are the heirs of SA record owner Sanat Kumar Roy and Mrinal Kanti Roy respectively) and SA record owner Provakar Singha Roy sold out the Suit Land to Plaintiff-Respondent No.1 vide registered deed No. 775 dated 01-08-1985 before the RS record was finalised and published. After purchase, Plaintiff has been holding peaceful possession over the Suit Land upon converting the Suit Land from Potit to Boro. Plaintiff duly paid the land tax. The plaintiff resides in the USA and during RS operation in his absence, the Suit Land was wrongly recorded in the name of Kattayani Roy, Rashbehari Roy and Sanat Kumar Roy, who did not have any title or possession over the Suit Land and who had died before the liberation war. After publication of the RS record Defendant-Appellant No. 4, Swarup Kanti Roy, claiming himself as the sole legal heir of Kattayani Roy, managed to mutate his name in the RS record and executed sale deed Nos. 61/2012 and 62/2012 in favour of the Defendant-Appellant Nos. 1-3 who also mutated their names in the RS record. Plaintiff challenged the said mutations before the appellate authorities and succeeded up to the single bench of the Land Appeal Board. However, the Defendant No. 7, Full Board of Land Appeal Board passed order against the Plaintiff upholding the orders passed by the A/C Land regarding mutation of the Defendant Nos. 1-4.

The Plaintiff also filed a case before the Land Survey Tribunal, Habigonj, for correction of the disputed RS record, however, the same was dismissed due to pending of this suit regarding the question of title of the Suit Land between the parties, hence the suit.

The Defendant's case is that according to the SA record, Kattayani Roy, Rashbihari Roy, Sanat Kumar Roy, and 6 others were the owners of the Suit khatian Land. Through a family partition, Kattayani Roy, Rashbihari Roy and Sanat Kumar Roy became owners of the Suit Land, and the RS record was duly published in their names. Rashbihari Roy did not have any children, and Kattayani Roy is the sister of Rashbihari Roy, who died, leaving behind Kattayani Roy as his sole heir. Kattayani Roy also became the owner of Sanat Kumar Roy's share of land through a mutual partition, and thereby Kattayani Roy became 100% owner of the Suit Land. Kattayani Roy died, leaving behind her only son Rajendra Kumar Roy, who died, leaving behind two daughters, namely Kanon Bala Roy and Doli Rani Roy. Doli Rani Roy did not have any son. Kanon Bala Roy died, leaving behind her only son Swarup Kanti Roy (Defendant No. 4). Subsequently, vide Namjari case No. 375/11-12, Swarup Kanti Roy mutated his name in the RS record and sold the Suit Land to the Defendant Nos. 1-3 who also mutated their names in the suit land and paying land tax as such the suit is liable to be dismissed.

The plaintiff and defendants both adduced 3 witnesses each and both sides produced exhibited documents to prove their respective claims. After conclusion of trial, considering the evidence on record, the trial court decreed the suit by the impugned judgment and decree.

Ms. Joya Bhattacharjee, the learned advocate appearing on behalf of the defendant-appellants submits that the plaintiff did not challenge the R.S. Khatian No. 111 which was published in the names of Kattayani Roy, Rashbihari Roy

and Sanat Kumar Roy and did not challenge the Khatian No. 111/2 which was published in the name of Swarup kanti Roy. The claim of death of Kattayani and Rashbihari Roy before liberation war is vague, because no specific date, year was given in the plaint as well as alleged death certificate submitted by the plaintiff.

The learned advocate then submits that the date of knowledge of alleged wrong record and cause of action regarding the notice to the plaintiff is not believable as this notice was issued in the name of Md. Lutfor Rahman but no mutation was made in his name rather Rent was paid in the name of Sanat Kumar Roy and no signature of issuing authority was there in the said notice.

The learned advocate casting doubt on the purchase deed of the plaintiff submits that no genealogy is stated regarding the S.A. recorded owner, Shyam Sundar Roy and Mihir Kanti Roy were not S.A. recorded owners and how they got and sold the said land, no explanation was given, nothing about the title and possession of the vendors of plaintiff and no boundary is given in the purchased deed.

The learned advocate further submits that the plaintiff claimed amicable partition amongst the SA recorded owners but no partition deed was submitted and plaintiffs have failed to prove it by adducing oral and documentary evidence. The plaintiff even did not mutate his name in the suit land.

Ms. Bhattacharjee emphatically submits that the defendants purchased the land from Swarup Kanti Roy the successor of latest recorded owners, i.e. RS recorded owners Kattayani Roy, Rashbihari Roy and Sanat Kumar Roy from RS Khatian no.111 and Swarup Kanti Roy mutated his name vide Namjari Case No. 375/2011-2012, Namjari Khatian No. 111/2. Defendant-appellants paid rent to the government after mutating their names vide Khatian No. 111/4 and 111/5. The plaintiff did not file any objection against the

R.S. Khatian No. 111, Namjari Khatian Nos. 111/2, 111/4 and 111/5 in any court. Though plaintiff's deed is earlier than defendants but plaintiff did not mutate his name vide any namjari case from 1985-2012. The trial Court has failed to consider all these aspects of the case hence the appeal should to be allowed.

The learned advocate for the defendant-appellants finally submits that the plaintiff's suit for declaration simpliciter is not maintainable without praying for further or consequential relief and the trial court has failed to consider this aspect of the suit, hence the judgment and decree passed by the trial court is liable to be set aside.

Per contra Mr. Mamun Chowdhury, the learned advocate appearing on behalf of the plaintiff-respondent No. 1 submits that the plaintiff obtained a valid title and possession over the suit land through purchase. The Plaintiff has proved that Shyam Sundar Roy & Mihir Kanti Roy, (who are the heirs of SA record owner Sanat Kumar Roy and Mihir Kanti Roy respectively) and SA record owner Provakar Singha Roy obtained the Suit Land through a mutual partition; thereafter they sold out the Suit Land to the Plaintiff vide registered deed No. 775 dated 01-08-1985 long before the finalization and publication of RS record; Plaintiff has been holding title and possession over the Suit Land through purchase by a registered deed and paying land tax and other SA record owners or their successor never challenged the said sale deed, title and possession of the Plaintiff.

The learned advocate then submits that Sanat Kumar Roy, Mrinal Kanti Roy and Provakar Shingha Roy were enjoying about 5.55 acres in SA Dag No. 937 under SA Khatin No. 42 through a mutual partition and thereafter SA recorded tenant Provakar Shingha Roy along with Shyam Sundar Roy and Mihir Kanti Roy (both heirs of SA recorded owner Sanat Kumar and Mrinal Kanti respectively) sold the

Suit Land i.e. 4.56 acre out of 5.55 acres in SA Dag No. 937 under SA Khatin No. 42 through sale deed No. 775 dated 01-08-1985. In his deposition PW-2, Shyam Shundar Roy, the legal heir of SA record owner Sanat Kumar Roy and one of the executants of the registered deed No. 775 dated 01-08-1985, confirmed the execution and registration of that sale deed. PW-2 also confirmed mutual partition among the SA record owners, and possession of the Plaintiff over the Suit Land. PW-2 further confirmed that he himself and the other two sellers are the legal heirs of the SA/RS record owners. The defendants did not claim themselves as *bona fide* purchaser of the Suit Land without notice rather their case is that the Plaintiff's sale deed No. 775 dated 01.08.1985 is false, fabricated, illegal, void. However, the Defendant No. 4 (who is the vendor of the Defendant Nos. 1-3) or his alleged predecessors never challenged that sale deed and the Defendants also failed to prove that the sale deed No. 775 is false and fabricated by producing any credible evidence.

The learned advocate next submits that the Plaintiff had paid land tax of the Suit Land for the year 1379 BS-1417 BS i.e. 38 years long before execution of the purported sale Deed Nos. 61/2012 and 62/2012 both dated 26.01.2012 in favour of the defendants. DW-1 also admitted in his cross that Kattayani Roy did not pay any land tax of the Suit Land and as such the Plaintiff has obtained a valid title and possession of the Suit Land through purchase by a registered sale deed and by payment of land tax for long 38 years.

Refuting the defendants case, Mr. Chowdhury submits that it is not true that Rashbihari Roy did not have any children and Kattayani Roy was the sister of Rashbihari Roy. It is also not true that Kattayani Roy became the owner of Sanat Kumar Roy's share of land through a mutual partition. He refers SA Khatain Nos. 80, 20 and 2 to show

that Rashbihari Roy @ Brozo Behari Roy had a son, namely Bono Behari Roy. He also refers Namjari Prarthona Potra 1887-88 (Exhibit-7) and Application for Partition 1891/92 to show that Dol Gobinda Roy had 2 sons namely Krishna Gobindo Roy and Surjo Moni Roy. Krishna Gobindo Roy had a son namely Boikuntho Nath Roy and Surjo Moni Roy had a son namely Rashbihari Roy. Therefore, Rashbihari Roy and Boikuntho Nath Roy (who is the husband of Kattayani Roy) are cousins and therefore it is not true that Rashbihari Roy is the full brother of Kattayani Roy. In the year 1985, PW-2, as the legal heir of Sanat Kumar Roy, sold the Suit Land to the Plaintiff, and therefore there was no scope for Kattayani Roy to become the owner of Sanat Kumar Roy's portion of Suit Land through a mutual partition. So, Kattayani Roy was not the legal heir of Rashbihari Roy and there was no mutual partition in between Kattayani Roy and Sanat Kumar Roy and therefore the Defendants failed to prove the fact that Kattayani Roy had become 100% owner of the Suit Land through a mutual partition.

The learned advocate strenuously submits that Plaintiff has proved that he has been holding possession over the Suit Land by oral and documentary evidence. Plaintiff claimed that Suit Land was Potit and after purchase he changed the nature and character of the Suit Land and converted the Suit Land from Potit to Boro. SA Khatain No. 42 described the nature of the Suit Land as Layek Potit but RS Khatian No. 111 (Exhibit-5/1) as well as RS Mutation Khatian 111/2 (Exhibit Ga/2), Sale Deed No. 61/2012 (Exhibit-Ka) and Sale Deed No. 62/2012 (Exhibit Ka/1) show that the nature of the Suit Land is "Boro". Moreover, the Sale Deed No. 62/2012 shows that the Plaintiff has land on the north side of the land purportedly sold to the Defendants vide sale deed No. 62/2012 the Sale Deed No. 61/2012 shows that Plaintiff's father (Israil Miah) has land on the East side of the land

purportedly sold to the Defendants vide sale deed No. 61/2012. Therefore, it is the Defendants purported sale deeds have also confirmed the possession of the Plaintiff over the Suit Land.

Learned advocate for the plaintiff-respondent further submits that it is not disputed that Plaintiff is an expatriate and resides in the USA and was not present in Bangladesh during the RS operation and as such Plaintiff could not record his name in RS Khatian. On the other hand Shyam Sundar Roy & Mihir Kanti Roy (who are the heirs of SA recorded owner Sanat Kumar Roy and Mrinal Kanti Roy respectively) and SA record owner Provakar Singha Roy in the year 1985, sold the Suit Land to the Plaintiff by a registered sale deed, and therefore there was no scope under law to record the same in RS Khatain in the names of Kattayani Roy, Sanat Kumar Roy and Rashbihari Roy and as such RS Khatin No. 111 was wrongly published in their names. DW-1 in cross-examination could not state the exact date of death of Kattayani Roy, nor could he submit any document that they were alive at the time of preparing the RS record. Further the Defendants failed to produce any documentary evidence showing that Rajendra Kumar Roy was only son of Kattayani Roy and Defendant No.4 Swarup is the grandson of Rajendra Kumar Roy. The Defendant Nos. 1-3 failed to produce their vendor i.e. Defendant No. 4, Swarup Kumar or any other person who were made witness in the purported sale Deed No. 61/2012 and 62/2012 to prove the genealogy of their alleged vendor. Defendants failed to produce any rent receipt showing that their vendor i.e. Defendant No. 4. Swarup or his alleged predecessor Kattayani Roy had paid land tax of the Suit Land. Regarding the time of death of Kattayani Roy, DW-1 in his cross-examination, stated that Kattayani Roy died 16/17 years back, but the Chairman might issue a certificate stating that Kattayani Roy and others had died before 1971. The

Defendant-Appellant No. 4, who is the sole vendor of Defendant Nos. 1-3 who purportedly claim himself as sole legal heir of the SA and RS record owners did not contest the suit and even did not file any written statement and also did not give any deposition before the trial court in support of the Defendant Nos. 1-3's case as well as his own case. Therefore, according to section 114(g) of the Evidence Act it should be presumed that the case of the Defendants is not true and believable and Defendant No. 4 had no valid title and possession over the Suit Land to sell the same to the Defendant Nos. 1-3. The trial court also found that Defendant Nos. 1-3 failed to establish the lineage and genealogy of their alleged vendor i.e. Defendant No. 4, to connect him with any reliable, credible evidence, to the original owners of the land, as averred in their written statement.

Controverting the submission of the appellants regarding the maintainability Mr. Chowdhury submits the plaintiff filed the suit not only praying for declaration of title over the Suit Land but also for declaration that the registered sale deed Nos. 61/12 and 62/12 both dated 26.01.2012 executed by the Defendant No.4 in favour of the Defendant Nos. 1-3 in respect of the Suit Land is illegal, fraudulent, collusive, void and not binding upon him with for further declaration that the order dated 19-01-2015 passed by the Full Board of Land Appeal Board in Case no. 2-34/2014(Nam) Hobiganj, is illegal and void. The plaintiff has filed the suit for declaration of his title on assertion that the Suit Land is in his possession and the RS record is erroneous and by adducing evidence he successfully proved it, therefore, Plaintiff's suit is very much maintainable. In support of his submissions the learned advocate cited the decisions passed in the case of Nurul Haque and another Vs Lutfur Rahman and others reported in 2002 (X) BLT (AD) 173; Divisional Forest

Officer Vs Md. Shahabuddin and others, 12(2007) BLC (AD) 138 and Hemayet Uddin & others Vs Md. Rustam Ali & others reported in 4 LM (AD) 2018, Page 228.

The learned advocate for the plaintiff-respondent supporting the judgment of the trial court finally submits that considering all the facts and evidence on record the trial court rightly decreed the suit.

We have heard the arguments advanced at the bar, perused the memorandum of appeal, lower court records including the plaint, written statement, depositions and the exhibited documents. We have also examined the judgment passed by the trial court.

From the plaint and written statement it turns out that there are some undisputed facts. According to both parties under SA Khatain No. 42 (Exhibit-5), 93.17-acre of land including the land measuring about 5.55 acres in disputed SA Dag No. 937 was jointly owned by Kattayani Roy, Rashbiharai Roy, Sanat Kumar Roy, Monomohon Roy, Kamollesh Roy, Mrinal Kanti Roy, Poritosh Roy, Provakar Shingha Roy and Debobroto Roy. It is also an undisputed fact that the total share of Sanat Kumar Roy, Mrinal Kanti Roy and Provakar Shingha Roy in SA Khatain No. 42 was 93.75 Ggonda out of total share of 320 Gonda (or 16 ana), and therefore, they jointly owned 27.29 acre of land out of the total 93.17-acre in the said SA Khatian. According to the plaintiff Sanat Kumar Roy, Mrinal Kanti Roy and Provakar Shingha Roy were enjoying about 5.55 acre of land including the Suit Land i.e. 4.56 acre in SA Dag No. 937 under SA Khatin No. 42 through a mutual partition. On the death of Sanat Kumar his grandson Shyam Sundar Roy owned his share while on the death of Mrinal Kanti his son Mihir Kanti owned his share. Thereafter, SA recorded tenant Provakar Singha Roy along with Shyam Sundar and Mihir Kanti transferred the suit land by executing the sale deed No. 775 dated 01-08-1985 to the plaintiff and handed over

possession. Then the plaintiff by developing the land from Potit to Boro made it cultivable. The plaintiff paid land tax from the year 1379 BS to 1408 BS and 1409 to 1417 BS on 05.06.2001 and 28.11.2010 respectively. The plaintiff's further case is that during RS operation he was in the USA as an expatriate for which in his absence RS record was wrongly published in the names of SA recorded tenants some of whom were already dead before 1971. On the strength of wrong RS record the defendant no.4 claiming himself as sole heir of SA recorded tenants sold the suit land to the defendant nos.1-3 by executing two disputed sale deeds both dated 26.01.2012, having no valid title.

To prove the case the plaintiff examined 3 witnesses including himself as PW-1. PW-1 deposed in support of his plaint case. PW-2, Shyam Shundar Roy, the legal heir of SA recorded owner Sanat Kumar Roy and one of the executants of the registered deed No. 775 dated 01-08-1985, confirmed the execution and registration of that sale deed. PW-2 also confirmed mutual partition among the SA recorded owners, and possession of the Plaintiff over the Suit Land. PW-2 further confirmed that he himself and the other two sellers were the legal heirs of the SA/RS recorded owners. PW-3 also supported the possession of the plaintiff over the suit land. From two rent receipts dated 05.06.2001 and 28.11.2010 [Exhibits-3 and 3(Ka)] it appears that the Plaintiff had paid land tax of the Suit Land for the year 1379 BS to 1408 BS and 1409 BS to 1417 BS respectively. Defendant No.1 as DW-1 also admitted in his cross-examination that Kattayani Roy did not pay any land tax of the Suit Land. It is already noticed that defendant no.4 sold the suit land to the defendant nos.1-3 through the sale Deed Nos. 61/2012 and 62/2012 both dated 26.01.2012. The defendants could not produce any rent receipts before 2012. It is consistent view of our superior Courts that rent receipts are evidence of possession and may be used as

collateral evidence of title. Plaintiff claimed that Suit Land was Potit and after purchase he changed the nature of the Suit Land and converted it from Potit to Boro. The defendant also claimed the same. SA Khatain No. 42 (Exhibit-5) described that the nature of the Suit Land is Layek Potit but RS Khatian No. 111 (Exhibit-5/1) as well as RS Mutation Khatian 111/2 (Exhibit Ga/2), Sale Deed No. 61/2012 (Exhibit-Ka) and Sale Deed No. 62/2012 (Exhibit Ka/1) show that the nature of the Suit Land is Boro. Therefore, the evidence given by the Plaintiff in respect of the nature of the Suit Land and his possession on the Suit Land has been corroborated by above mentioned documentary evidence and on the other hands the evidence of the DW-1 on the same issue was proved to be wrong by documentary evidence. Moreover, it is evident from the boundary of land described in Sale Deed No. 62/2012 that the Plaintiff has land on the north side of the land purportedly sold to the Defendants vide sale deed No. 62/2012. It is also evident from the boundary of land described in the Sale Deed No. 61/2012 that Israil Miah, Plaintiff's father has land on the East side of the land sold to the Defendants vide sale deed No. 61/2012. Therefore, by the Defendants sale deeds have also confirmed the claim of the Plaintiff regarding the Suit Land. The above-mentioned facts and circumstances *ifso facto* suggest that during SA record the nature of the Suit Land was Potit and Plaintiff after purchase took possession of the Suit Land and converted the same from Potit to Boro. On the other hand, as the Defendants purchased the suit land after publication of RS Khatian hence their claim is proved to be wrong as the land was already Boro land. So, the plaintiff's possession is also confirmed by documentary evidence besides the oral evidence. In this regard the trial court found that "*On meticulous consideration of the documentary evidence, it appears from the Ext.5/Gha(1)*

certified copies of disputed S.A. khatian no. 42 that Kattayani Roy and others had been original owners of the land and through amicable family arrangement among them, disputed land having been obtained by S.A. recorded owner Sanat Kumar Roy and others. Sanat Kumar died leaving behind Shisir Kumar Roy as son. while his son Shyam Sundar Roy succeeded him. S.A. recorded owner Mrinal Kanti Roy demised leaving behind son Mihir Kanti Roy as heir. Accordingly Shyam Sundar Roy, Mihir Kanti Roy and Provakar Singha Roy, who himself is one of the S.A. recorded owners sold out the disputed land to plaintiff vide registered deed no.775 dated: 01-08-1985 A.D. viz. Ext. 2, delivering the possession to him. As the plaintiff has been possessing the suit land, (i.e. SA dag No. 937) since 1985, it is quite difficult to understand how the same land being again recorded in R.S. recorded right in the name of Kattayani Roy and 2 others through Ext. Gha, which has turned out to be without any basis, as that land has already been sold out to the plaintiff by the original S.A. recorded owners and their heirs after due partition among them, and so far, no one has challenged the age-old registered deed of title owned by the plaintiff. As a result, it cannot be said that being failed to mutate the land his name or R.S. record of right being made erroneously, the plaintiff lost his title, possession over suit land which being possessed by him for more than thirty years through paying Govt. revenue. Accordingly, the defendants have got no title or legal possession through subsequent deeds of the defendants i.e. Ext. Ka series and Mutation in the name of defendants viz. Ga series. As a result, Rent receipts, Ext. Kha series in 2015 A.D. are not going to help the defendant in any way, in the presence of previously registered deeds and rent receipts owned by the plaintiff party.” In our view, the findings of the trial court are correct.

It is the case of the Plaintiff that he is an expatriate and resides in the USA and was not present in Bangladesh during the RS operation and as such Plaintiff could not record his name in RS Khatian. On the other hand Shyam Sundar Roy & Mihir Kanti Roy (who are the heirs of SA recorded owner Sanat Kumar Roy and Mrinal Kanti Roy respectively) and SA recorded owner Provakar Singha Roy in the year 1985, sold the Suit Land measuring about 4.56 acre out of 5.55 acre under SA Dag No. 937 in SA Khatian No. 42 to the Plaintiff by a registered sale deed, and therefore there is no scope under law to record the same in RS Khatain in the names of Kattayani Roy, Sanat Kumar Roy and Rashbihari Roy and as such RS Khatin No. 111 was wrongly published in the names of Kattayani Roy, Sanat Kumar Roy and Rashbihari Roy instead of the Plaintiff while they were already dead. Plaintiff filed photocopy of the death certificate stating that Kattayani Roy, Sanat Kumar Roy and Rashbihari Roy died before 1971. On the other hand DW-1 in cross-examination could not state the exact date of death of Kattayani Roy, nor could he submit any document that they were alive at the time of preparing the RS record. Further the Defendants failed to produce any documentary evidence showing that Rajendra Kumar Roy was only son of Kattayani Roy and Defendant No.4 Swarup is the grandson of Rajendra Kumar Roy. Significantly, the Defendant Nos. 1-3 failed to produce their vendor i.e. Defendant No. 4, Swarup Kanti Roy or any other person who were made witness in the purported sale Deed No. 61/2012 and 62/2012 to prove the genealogy of their alleged vendor. Defendants failed to produce any rent receipt showing that their vendor i.e. Defendant No. 4. Swarup Kanti or his alleged predecessor Kattayani Roy had paid land tax of the Suit Land. Regarding the time of death of Kattayani Roy, DW-1 in his cross-examination, stated that Kattayani Roy died 16/17 years back, but the Chairman might issue a certificate stating

that Kattayani Roy and others had died before 1971. The Defendant-Appellant No. 4, who is the sole vendor of Defendant Nos. 1-3 who purportedly claim himself as sole legal heir of the SA and RS recorded owners did not contest the suit by filing any written statement and also did not give any deposition before the trial court in support of the case of Defendant Nos. 1-3 as well as of his own case. Therefore, the submission of the learned advocate for the plaintiff-respondent that according to section 114(g) of the Evidence Act it should be presumed that the case of the Defendants is not true and believable and Defendant No. 4 had no valid title and possession over the Suit Land to sell the same to the Defendant Nos. 1-3 has substance. The trial court also found that Defendant Nos. 1-3 failed to establish the lineage and genealogy of their alleged vendor i.e. Defendant No. 4 to connect him with any reliable, credible evidence, to the original owners of the land, as averred in their written statement, in the presence of the deed of the Plaintiff back in 1985.

Now, how far the claim of the defendants that Rashbihari Roy did not have any children and Kattayani Roy as the sister of Rashbihari Roy got his share after his death and further Kattayani Roy became the owner of Sanat Kumar Roy's share of land through a mutual partition is true? It is an admitted fact that nickname of Rashbihari Roy was Brozo Behari Roy and it is evident from SA Khatain Nos. 80, 20 and 2 [Exhibits-6, 6(Ka) and 6(Kha)] that Rashbihari Roy @ Brozo Behari Roy had a son, namely Bono Behari Roy. It is evident from Namjari Prarthona Potra 1887-88 (Exhibit-7) and Application for Partition 1891/92 (original document filed by the Plaintiff on 21.11.2017 before the trial court and are lying with the LCR) that Dol Gobinda Roy had 2 sons namely Krishna Gobindo Roy and Surjo Moni Roy. Krishna Gobindo Roy had a son namely Boikuntho Nath Roy. On the other hand, Surjo Moni Roy had one son

namely Rashbihari Roy. Therefore, Rashbihari Roy and Boikuntho Nath Roy (who is the husband of Kattayani Roy) are cousin and as such it is not true that Rashbihari Roy was the full brother of Kattayani Roy rather was brother-in-law. Plaintiff as PW-1 in his cross examination categorically denied that Rashbihari Roy did not have any children or Kattayani Roy and Rashbihari Roy were brother & sister. Shyam Sundar Roy, PW-2, as the legal heir (grand son) of Sanat Kumar Roy, sold the Suit Land to the Plaintiff by a registered sale deed in 1985, much earlier of publication of RS Khatian and therefore there was no scope for Kattayani Roy to become the owner of Sanat Kumar Roy's share of Suit Land through a mutual partition. So, from the evidence on record as stated above it is crystal clear that Kattayani Roy was not the legal heir of Rashbihari Roy and there was no mutual partition in between Kattayani Roy and Sanat Kumar Roy and as such the Defendants failed to prove the fact that Kattayani Roy had become sole owner of the Suit Land through a mutual partition and therefore, the purported transfer of Suit Land by the Defendant No. 4 claiming as sole legal heir of Kattayani Roy to the Defendant Nos. 1-3 through the sale Deed Nos. 61/2012 and 62/2012 are invalid passing no title.

The defendants did not claim themselves as *bona fide* purchaser of the Suit Land without notice of the registered sale deed No. 775 dated 01-08-1985 rather their case is that the Plaintiff's sale deed No. 775 dated 01.08.1985 is false, fabricated, illegal and void. However, the Defendant No. 4 (who is the vendor of the Defendant Nos. 1-3) or his alleged predecessors never challenged that sale deed and the Defendants also failed to prove that the sale deed No. 775 is false and fabricated by producing any credible evidence. If we read together the sections 101 to 103 of the Evidence Act then it is clear that the onus or burden of proof lies on him who claims/alleges some facts, be

plaintiff or defendant. If doubt or fraud of genuineness or authenticity of a registered document is claimed or challenged as one being product of fraud or forged and no evidence is led to prove the fact of fraud/forgery, such document cannot be held to be fraudulent or not genuine. It is also the consistent view of our apex Court that registered document prevails upon record of rights and the record of rights are not an evidence of title but possession which is rebuttable by clear evidence and that the registered documents would remain in force unless the same is cancelled by an appropriate civil Court.

Let us now consider the submission of the learned advocate for the defendant-appellants regarding the maintainability of the suit being a suit for declaration simpliciter. In the case of Nurul Haque and another Vs. Lutfur Rahman and others reported in 2002 (X) BLT (AD) 173 our Supreme Court, Appellate Division observed: "*The plaintiff has filed the suit for declaration of title on assertion that the suit land is in their possession and the recording in CS., RS. and S.A. are wrong. Section 42 of the Specific Relief Act provides that a suit for mere declaration of any legal character or any right to property is maintainable and in view of the evidence of possession in favour of the plaintiff, the plaintiff need not ask for any further relief and the object of the proviso is only to avoid multiplicity of the suit where further relief can be sought for at the time of the institution of the suit. Considering the facts and circumstances of the present suit we hold that the present suit for mere declaration is maintainable.*" In the case of Divisional Forest Officer Vs Md. Shahabuddin and others reported in 12(2007) BLC (AD) 138 it is held: "*A suit for declaration is maintainable under section 42 of the Specific Relief Act as to any legal character or to any right at to any property of the plaintiff if the defendant denies or is interested to deny*

his title to such character or right. If the above conditions are satisfied, the plaintiff need not ask for any further relief than a mere declaration. But such suit would not be competent and maintainable and the court shall not make such declaration if he, being able to seek further relief than mere declaration to the above effect, omits to do so by way of consequential relief. Whether any other prayer by way of consequential relief is required to be made is determined with reference to the scope of the plaint i.e the allegations made in the plaint, and not with reference to the allegations in the written statement."

Similar view was taken by our apex Court in the case of Hemayet Uddin & others Vs Md. Rustam Ali & others reported in 4 LM (AD) 2018, Page 228 declaring that *"The Learned Judge of the High Court Division has resolved the points as regards title and possession of suit land in favour of the plaintiff in accordance with law. In view of the conflicting evidence the parties with regard to possession the possession should be found with the party having the title and when the possession is found in favour of the plaintiff, the suit for declaration simpliciter is maintainable."*

In the light of the above catena of decisions whether the present suit is maintainable? We have already noticed that the plaintiff has filed the instant suit for declaration of his title on assertion that the Suit Land is in his possession and the RS record is erroneous. We have elaborately discussed that how the plaintiff by adducing evidence, both oral and documentary, successfully proved his title and possession over the suit land. The trial court also categorically found both title and possession of the plaintiff over the suit land. In such view of the facts and circumstances of the case as well as position of law therefore, Plaintiff's suit is very much maintainable.

The facts and circumstances of the case along with the evidence on record and position of law as discussed above, we are of the considered view, the plaintiff has successfully proved his title and possession over the suit property, as such the instant appeal being devoid of merit destined to fail. Considering all these aspects, we do not find any reason to interfere with the judgment and decree passed by the trial court.

Consequently, the appeal is **dismissed** with cost.

Send down the Lower Court Records along with the copy of this judgment at once.

Md. Iqbal Kabir, J:

I agree.