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

First Appeal No. 603 of 2019

In the matter of:

Md. Azmot Ali, son of late Haji Rohiz Uddin of Village- Tekibari Chanpur, Police Station- Kaliakoir, District- Gazipur and others.

… Appellants

-Versus-

Nil Roton Sorkar being dead his legal heirs 1(a) Nirmal Sarkar (Son) and 1(b) Basona Rani Sarker (wife) of Village- Kathaltoli, Post Office- Kaliakoir-1750, Police Station- Kaliakoir, District- Gazipur and others.

…Respondents.

Mr. Abdus Salam Mamun, Senior Advocate with
Mr. Md. Mosabbir Hasan Bhuiyan, Advocate

…For the appellant

Mr. Mukunda Chandra Debnath with
Mr. Tapan Kumar Biswas, Advocates

…For the respondent no. 1

Heard on 19.02.2025, 26.02.2025 and 05.03.2025.
Judgment on 05.03.2025.

Present:

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

Md. Mozibur Rahman Miah, J.

This matter has been referred by the Hon'ble Chief Justice of Bangladesh by his order dated 14.01.2025.

At the instance of the defendant nos. 4, 7-10 in Title Suit No. 104 of 2018, this appeal is directed against the judgment and decree dated 30.06.2019 passed by the learned Joint District Judge, 2nd Court, Gazipur in the said suit decreeing the same on contest against the defendant nos. 1, 3-5, 7-10 and *ex parte* against the rest.

The precise facts leading to preferring this appeal are:

The predecessor of the present respondent nos. 1(a) to 1(b), Nil Roton Sorkar as plaintiff filed the aforesaid suit seeking following reliefs:

> *"(ক) কালিয়াকৈর সাব রেজিষ্ট্রি অফিসে রেজিষ্ট্রিকৃত বিগত ০৬.০৪.১০ ইং তারিখে ৪২৩৩ নং ব্যাপক আম-মোক্তার নামা দলিলটি তঞ্চকতাপূর্ণ, যোগসাজসী, প্রতারণামূলক, ফল বলহীন, কাগজী, অবৈধ দলিল বিধায় দলিলটি এবং উক্ত দলিল হইতে উদ্ভূত বিগত ৩১.০৮.১০ ইং তারিখে ১০৮৮০ নং সাব কবলা দলিল, ২৭.০৯.১০ ইং তারিখে ১১৬৩৭ নং সাব কবলা দলিল, ২৮.০৯.১০ ইং তারিখে ১১৭০৭ নং সাব কবলা দলিল ও ২৪.১১.১০ ইং তারিখে ১৪১৫৮ নং বিগত ১১.০১.২০১১ ইং তারিখের ৪৬০ নং আম-মোক্তার নামা দলিল, বিগত ৩১.১২.১২ ইং তারিখের সাফ কবলা দলিল নং ১৬৬২৬ ও বিগত ০৮.০১.১৩ ইং তারিখে ৩২৬ নং সাব কবলা দলিলগুলি তঞ্চকতাপূর্ণ, যোগসাজসী, প্রতারণামূলক, ফল বলহীন, কাগজী, অবৈধ দলিল বিধায় দলিলগুলি অকার্যকর ও বাদীপক্ষের উপর বাধ্যকর নহে মর্মে বাদীপক্ষের অনুকূলে এক ডিক্রি দিতে,*

(ক-১) নালিশী সম্পত্তিতে বাদীপক্ষ ষোল আনা স্বত্বের মালিক মর্মে এক ঘোষণা দিতে,

(খ) মোকদ্দমার যাবতীয় ব্যয় বাদীপক্ষের অনুকূলে এবং বিবাদীপক্ষের প্রতিকূলে ডিক্রি দিয়া সুবিচার করিতে মর্জি হয়।

(গ) বাদীপক্ষ বৈধ প্রকারে ও ন্যায় বিচারে আর যে যে প্রতিকার পাওয়ার হকদার তাহাও ডিক্রি দিয়া সুবিচার করিতে মর্জি হয়।''

The case of the plaintiff in short is that, the suit lands in C.S Khatian Nos. 26, 136, 154 and 174 along with other lands originally belonged to one, Gadu Nomodas who died intestate leaving behind his three daughters, namely, (i) Radha Rani Sorkar @ Radhika, (ii) Krishno Moni Sorkar and (iii) Kumudini Sorkar. Then Radha Rani Sorkar died leaving behind two sons, Mohadeb Sorkar and Ponchonondo Sarkar when Krishno Moni Sorkar died leaving behind three sons, namely, Dodhi Ram Sorkar, Ponchonondo Sorkar and Nil Roton Sorkar (the plaintiff-predecessor of respondent nos. 1(a)-1(b)). Then Kumudini Sarker died leaving behind one son and four daughters, namely, Monoranjan Sarker (son), Chandraboli Sarker @ Aamodini Sarker, Golapi Rani Sarker, Hiramoti Sarker and Vongorani Sarker (daughters). Subsequently, the lands in C.S Khatain were recorded in S.A Khatian Nos. 73, 300, 347, 326 and 318 in the name of Mohadeb Sorkar, Ponchonondo Sorkar, Dodhi Ram Sorkar, Ponchonondo Sorkar, Nil Roton Sorkar and Monoranjan Sorkar. Thereafter, R.S Khatian being R.S Khatian Nos. 118, 119, 121, 122, 124 and 125 was prepared in the name of Krishno Moni Sorkar and Kumudini Sorkar as of life-interest.

However, after the death of the three daughters of Gadu Nomodas, their above mentioned 6(six) sons became the owner of the suit land in equal shares which is 147.50 decimals of land each and had been in possession of the same. Thereafter, Monoranjan Sarkar, the only son of Kumudini Sarkar while being the owner of 147.50 decimals of land by way of inheritance along with some other lands by way of purchase, sold out 100 decimals of land on 24.03.1991 vide deed no. 164 and 155.50 decimals of land on 04.11.1991 vide deed no. 6174 to the plaintiff, Nil Roton Sorkar and then the plaintiff became the owner of 147.50 decimals of land by way of inheritance and 255.50 decimals of land by way of purchase from Monoranjan Sorkar. It has further been stated that, the deed of power of attorney being no. 4233 dated 06.04.2010 in relation to selling the suit land executed by the defendant no. 2, Amudini Sorkar @ Chondraboli Sorkar in favour of the defendant no. 1, Toruni Sorkar and all the following sale deeds and transactions arising out of the aforesaid power of attorney no. 4233 and sale deed no. 10880 dated 31.08.2010 by which defendant no. 1 sold out 25 decimals of land to Md. Azizur Rahman, sale deed no. 11637 dated 27.09.2010 by which defendant no. 1 sold out 73.50 decimals of land to Md. Azmot Ali, sale deed no. 11707 dated 28.09.2010 by which defendant no. 1 sold out 25 decimals of land to Hashem Sikdar, sale deed no. 14158 dated 24.11.2010 by which defendant no. 1 sold out 25 decimals of land to Azizur Rahman, sale deed no. 326 dated 08.01.2013 by why defendant no. 5 Hashem Sikder sold his previously purchased 25 decimals of land to Abdul Hamid Dewan are all null and void. It has also been stated in the plaint that the power of attorney being no. 460 dated 11.01.2011 in

relation to selling the suit land executed by the defendant no. 2, Amudini Sorkar @ Chondraboli Sorkar in favour of the defendant no. 1, Toruni Sorkar comprising a total area of 194 decimal of lands vide sale deed no. 16626 dated 31.12.2012 by which the defendant no. 1 sold out 100 decimals of lands to Abdul Hamid Dewan are also null and void and hence the suit.

On the other hand, the defendant no. 1, Toruni Sorkar independently and defendant nos. 4 and 5 jointly filed their written statements contending *inter alia* that the suit lands were originally owned by Gadu Nomodas who died intestate leaving 739 decimals of land to be enjoyed by his three daughters, Radha Rani Sorkar @ Radhika, Krishno Moni Sorkar and Kumudini Sorkar who got 246.333 decimals of lands each and accordingly, R.S Khatain nos. 118, 121, 122, 124 and 125 were prepared in the name of Krishno Moni Sorkar and Kumudini Sorkar having eight *anna* share each as Radha Rani Sorkar died unmarried. The only son of Kumudini Sorkar that is, Monoranjan Sorkar left the country for India around 40-42 years back and never came back to Bangladesh and he is not the citizen of Bangladesh and thus Kumudini Sorkar died leaving behind her only living daughters Chondraboli Sorkar @ Amudini Sorkar and other three daughters. However, Chondraboli Sorkar @ Amudini Sorkar upon inheriting her mother's property executed a registered power of attorney being no. 4233 in favour of Toruni Sorkar, the defendant no. 1 on 06.04.2010 and transferred 147 decimals of land to the defendant no. 1. Then vide power of attorney no. 4233, the defendant no. 1, Toruni Sorkar executed a sale deed being no. 11637 dated 23.09.2010 by which he sold out 73.50 decimals of

land to one, Md. Azmot Ali. Then by sale deed being no. 11707 dated 28.09.2010 the defendant no. 1 sold out 25 decimals of land to Hashem Sikder. Thereafter, by sale deed being no. 14158 dated 24.11.2010, the defendant no. 1 sold out 25 decimals of land to Azizur Rahman who all are now in possession of their purchased lands. The plaintiff has no title whatsoever in the suit land and hence the suit is liable to be dismissed.

The defendant nos. 4 and 5 through jointly contested the suit but they mainly adopted the case of the defendant no. 1 adding that Monoranjan Sarker, son of Kumudini Sorkar left Bangladesh for India around 42-43 years ago and thus he is not a citizen of Bangladesh and never came back to Bangladesh and as a result, at the death of Kumudini Sorkar, her three daughters Horimoti Sorkar, Golapi Sorkar and Chondraboli Sorkar @ Amudini Sorkar inherited Kumudini's total lands. Then Horimoti Sorkar being the owner of 147.16 decimals of lands, later died leaving behind her only daughter, Jostna Sorkar. Then Golapi Sorkar being the owner of 147.16 decimals of lands died leaving behind her only daughter Jostna Sorkar who died without leaving any successor and hence her other sister/cousin, Jostna Sorkar and aunt, Chondraboli Sorkar @ Amudini Sorkar became the owners of half of 147.16 decimals of lands i.e. 73.58 decimals of land each and in this way, Chondraboli Sorkar @ Amudini Sorkar became the owner of 220.74 decimals of land in the suit land and she then on 06.04.2010 executed and registered a power of attorney being no. 4233 in favour of the defendant no. 1, Toruni Sorkar for transferring 147.50 decimals of land. The defendant no. 1 on 23.09.2010 sold out 73.50 decimals of land to one, Md. Azmot Ali and by sale deed no. 11707, he

also sold out 25 decimals of land to one, Hashem Sikder and by sale deed no. 14158 dated 24.11.2010 defendant no. 1 also sold out 25 decimals of land to one, Azizur Rahman who all are now in possession of their purchased lands. Thus Azmot Ali, the defendant no. 4 has been paying taxes of the suit land of 73.50 decimals of land upon mutating his name vide Mutation Case No. 265/11-12. It has also been stated that, Chondraboli Sorkar @ Amudini Sorkar executed another power of attorney being no. 460 dated 11.01.2011 in relation to transferring the suit land in favour of the defendant no. 1, Toruni Sorkar and being empowered by the aforesaid power of attorney, the defendant no. 1, Toruni Sorkar executed a sale deed no. 16626 dated 31.12.2012 selling 100 decimals of land to one, Abdul Hamid Dewan, the father of the defendant nos. 7-10. Then one, Abdul Hamid Dewan also purchased 25 decimals of land on 08.01.2013 sale deed no. 326 from Hasem Sikdar, while defendant no. 5 purchased through sale deed dated 28.09.2010 from defendant no. 1, Toruni Sorkar. Thus Abdul Hamid Dewan, the father of the defendant nos. 7-10 became the owner of 125 decimals of suit land by way of purchase and after his death, his one son and three daughters were substituted as defendant nos. 7, 8, 9 and 10. It has finally been stated that on 17.04.2019 defendant nos. 7, 8, 9 and 10 adopted the written statements submitted by the defendant nos. 4 and 5 as of their own and finally prayed for dismissing the suit.

The learned Joint District Judge, 2nd Court, Gazipur in order to dispose of the suit framed as many as 6(six) different issues. During the course of trial, the plaintiff examined 3(three) witnesses and produced documents which were marked as exhibit nos. 1-10 series. While the

contesting defendants examined 2 (two) witnesses and produced several documents which were also marked as exhibit nos. 'ka'- 'tha' (ক-ঠ). However, after conclusion of trial, the learned Joint District Judge, 2nd Court, Gazipur decreed the suit on contest against the defendant nos. 1, 3-5 and 7-10 and *ex parte* against the rest by his judgment and decree dated 30.06.2019.

It is at that stage, the defendant no. 4 and 7-10 as appellants prepared the instant appeal.

Mr. Abdus Salam Mamun, the learned senior counsel along with Mr. Md. Mosabbir Hasan Bhuiyan, the learned counsel appearing for the defendant nos. 4, 7-10-appellants upon taking us through the impugned judgment and decree and that of the memorandum of appeal at the very outset submits that the plaintiff did not acquire the property with regard to 255.50 decimals of land by virtue of two sale deeds dated 04.11.1991 and 24.03.1991 respectively, because it has been asserted by the defendants that the vendor of those deeds, Monoranjan Sarker left the country 40-42 years back having no scope to transfer the property by him.

To supplement the said submission, the learned counsel contends that since the plaintiff has failed to produce the original copy of two sale deeds and mark those as exhibits, so in absence of any document, no title has accrued to the plaintiff in respect of 255.50 decimals of land and therefore, he has no *locus standi* to file the suit and proceed with the same.

Insofar as regards to 147.50 decimals of land, the claim of the plaintiff as of the heir of Gadu Nomodas, the defendants have got no objection or dispute, the learned counsel further adds.

The learned counsel also contends that since R.S record was prepared in the name of Krishnomoni Sarker as well as Kumudini Sarker in 441 decimals of land each, so until and unless, that very R.S record is challenged and cancelled, the plaintiff cannot claim to have acquired any right, title and interest in the suit property.

The learned counsel next submits that the present defendants have acquired the suit property by virtue of several sale deeds dated 31.08.2010, 27.09.2010, 28.09.2010, 24.11.2010, 31.12.2012 and 08.01.2013 totaling 273.50 decimals of land and soon after purchasing the said property, the defendants got their respective name mutated in the *khatian* and accordingly paid rent (*khazna*) and therefore, they acquired indefeasible title and possession over the suit property while the plaintiff has no right, title and interest in the suit property and therefore, mere filing a suit for declaration of title and challenging those deeds claiming to be inoperative cannot be sustained.

The learned counsel by referring to the written statement in particular, paragraph no. gha, also contends that in that paragraph, the defendants have clearly asserted that Monoranjan Sarker, son of Kumudini Sarker left this country 42-43 years back and the said facts have clearly been asserted by the D.W-1 in his testimony having no scope to get any property by the plaintiff, Nil Roton Sarkar from Monoranjan Sarker and therefore, the claim of the plaintiff to get 255.50 decimals of land clearly falls through.

The learned counsel further contends that though the plaintiff has produced a certified copy of the sale deed dated 24.03.1991 but since that

sale deed has not been marked any exhibit, so through that sale deed, the plaintiff has not acquired any title over that purchased land. In that regard, the learned counsel placed his reliance in the decision reported in 41 DLR (AD) 97 as well as 47 DLR (AD) 45 and submits that in those decisions, it has been settled that if any secondary evidence has to be taken into evidence, the scribe or the attesting witness to the said deed has to be produced before the court to prove the genuineness of such document but in the instant case, though the certified copy of the sale deed has been produced which is a secondary evidence but fact remains, the said deed has not been proved by any scribe or attesting witness.

The learned counsel then submits that while producing any secondary evidence, the plaintiff must explain why the original document could not be produced, but there has been nothing to that effect in the entire plaint leaving the claim of acquiring title over 255.50 decimals of land by the plaintiff disproved.

In regard to the validity of acquiring ownership over the suit property, the learned counsel then placed his reliance to the decision reported in 15 MLR (AD) 17 and submits that it is the plaintiff who is to prove his own case since the plaintiff relied upon two sale deeds claimed to have purchased from one, Monoranjan Sarker but he has failed to prove acquiring ownership by alleged purchase so he cannot get any title in the suit property and therefore, that very decision is squarely applicable in the case of the plaintiff.

When we pose a question to the learned counsel for the appellant that in spite of R.S record is prepared in the name of Krishnomoni Sarker and

Kumudini Sarker and the vendor of the defendants claimed to have acquired the property from the daughter of Kumudini Sarker named, Chandraboli Sarker alias Amodini Sarker, when it is the provision so have been provided in the Dayabhaga School of inheritance, authored by Mulla's Hindu Law that no daughter will inherit the property left by her father or grandfather, the learned counsel then contends that since R.S record has still been subsisting in the name of the mother of Chandraboli Sarker so there has been no scope for Nil Roton Sarkar to acquire the property from Monoranjan Sarker.

The learned counsel lastly contends that since the property has been acquired by the predecessor of the defendants that is, Chandraboli Sarker as the descendent of Gadu Nomodas so said Chandraboli Sarker has rightly inherited the property and in that regard, the learned counsel cited a decision of the Appellate Division passed in Civil Appeal No. 55 of 2003 and submits that the *ratio* settled therein is applicable in the facts and circumstances of the instant case and finally prays for allowing the appeal on setting aside the impugned judgment and decree.

On the contrary, Mr. Mukunda Chandra Debnath along with Mr. Palash Kanti Das, the learned counsels appearing for the respondent no. 1(a) to 1(b) very robustly opposes the contention taken by the learned counsel for the appellants and submits that since the appellants as defendants in their entire written statement did not challenge the propriety of the purchase deed dated 04.11.1991 and 24.03.1991 through which the plaintiff-respondents got 255.50 decimals of land in total from Monoranjan Sarker, so there has been no occasion on the part of the defendants to assail

the validity of the deeds for the first time before this court. In that regard, the learned counsel has placed his reliance in the decision reported in 53 DLR (AD) 45 and takes us through paragraphs 6 and 8 thereof and submits that in those paragraphs it has been clearly held that *"Since specific assertion has not denied specifically either in written statements or in evidence, the court is not inclined to permit the defendants to raise such a question at this stage."* and therefore, the decision reported in 47 DLR (AD) 45 relied upon by the learned counsel for the appellants cannot be sustained in the facts and circumstances of the instant case.

The learned counsel further contends that the cardinal point to be adjudicated in the instant appeal is, whether Chandraboli Sarker can inherit the property left by her maternal-grandfather, Gadu Nomodas and if Chandraboli Sarker does not acquire any property left by Gadu Nomodas then she had no saleable right to transfer any property by any means in favour of the predecessor of the defendants-appellants. In that regard, the learned counsel by referring to paragraph no. 88 titled "**order of succession among *sapindas***" according to Dayabhaga or Bengal School provided in Chapter VII of Mulla's "Hindu Law" submits that the first '*sapinda'* will be "son" then "grandson" and thereafter, "great-grandson" so under that very provision of order of succession in "Dayabhaga School" followed by the Hindu in Bangladesh, there has been no scope for Chandraboli Sarker to inherit any property left by Gadu Nomodas let alone she reserved any right to transfer property to the defendants.

When we pose a question to the learned counsel with regard to the judgment so relied upon by the defendants-appellants passed in Civil

Appeal No. 55 of 2003 dated 11.12.2022, the learned counsel then takes us through page no. 15 of the said judgment and submits that in that decision, the predecessor of the plaintiff "Rukkhini Dashi" got the property by virtue of registered *patta* dated 24 *Boishakh* 1311 B.S and that property was regarded as ***stridhana*** property and the plaintiff namely, Elokeshi Mondal claimed the said ***stridhana*** property as of grand-daughter of that "Rukkhini Dashi" and therefore, the facts so have been described in the cited decision is explicitly distinguishable with the facts and circumstances of the instant case as in the instant case, no ***stridhana*** property has been claimed by the predecessor of the defendants, Chandraboli Sarker rather Chandraboli Sarker claimed to have acquired the property as one of the descendents of Gadu Nomodas which is totally contrary to the provision as has been provided in paragraph no. 88 of Chapter VII of Mulla's Hindu Law (*supra*) and therefore, there had been no scope on the part of the Chandraboli Sarker either to give any power of attorney to anybody else let alone to transfer the suit property to the defendants by virtue of sale deeds which have been called in question in the suit.

The learned counsel further submits that though the plaintiff has produced the certified copy of the sale deed dated 24.03.1991 through which 100 decimals of land has been transferred by Monoranjan Sarker in favour of plaintiff, Nil Roton Sarkar but the court witness no. 1 (C.W-1) found the khatian number stated therein as 135 in place of 136, however he clearly found nexus among the khatian so described in the plaint with that of the khatian mentioned in the volume called *balamboi* (বালামবই) and as the defendants declined to cross-examine the said C.W-1 so it alternatively

proves that the plaintiff has rightly acquired title and possession over the suit land by two sale deeds dated 04.11.1991 and 24.03.1991. With those submissions, the learned counsel finally prays for dismissing the appeal by affirming the judgment and decree passed by the learned Judge of the trial court.

Be that as it may, we have considered the submission so advanced by the learned senior counsel for the appellants and that of the learned counsel for the respondent no. 1(a) to 1(b).

The crux of the dispute among the parties is, whether the predecessor of the defendants, Chandraboli Sarker has got any saleable right to transfer the property measuring an area of 273.50 decimals of land in favour of the defendants or not.

To dwell on that cardinal point, we have very meticulously gone through the provision so have been provided in Hindu Law authored by D.F Mulla and chapter VII thereof where paragraph no. 88 is very much pertinent in adjudicating the instant appeal.

There has been no gainsaying the fact that the order of succession among '*sapindas'* provided in paragraph no. 88 of that Chapter, it has clearly been stipulated that "son" then "grandson" and finally "great-grandson" will take precedence in inheriting the property left by their predecessor. So under no circumstances, can the daughter's daughter of Gadu Nomodas, namely, Chandrabati Sarker that is, the predecessor of the defendants can get the property left by their maternal grandfather, Gadu Nomodas. For argument's sake, since R.S record was prepared in the name of the mother of Chandraboli Sarker, Kumudini Sarker in 441 decimals of

land each yet as per order of succession among '*sapindas'* provided in paragraph no. 88, we don't find that, Chandraboli Sarker ever acquired any property as heir of Kumudini Sarker rather her son, Monoranjan Sarker acquired total quantum of land that is, 441 decimals of land. In such a view of the matter, in spite of preparation of R.S record in the name of the predecessor of both Monoranjan Sarker and Chandraboli Sarker that is, Kumudini Sarker still as per the Dayabhaga School of inheritance, Chandraboli Sarker can never acquire any property from her mother as her descendent.

Another pertinent point that has been cropped up during the course of hearing as to whether the plaintiff acquired title and possession over 255.50 decimals of land by virtue of two sale deeds. Since the onus squarely lies upon the defendants to prove that at the time of transfer by those two sale deeds, Monoranjan Sarker was not present in this country or in other words, he was not the citizen of this country, as has been asserted by them in their written statement saying that, Monoranjan Sarker left the country 42-43 years back, but it remained disproved as not a scrap of document has been produced by the defendant to prove that fact. Rather, it alternatively proves, the plaintiff acquired 255.50 decimals of land through two sale deeds and since the defendants did not dispute with regard to acquiring rest 147.50 decimals of land as of descendent of Gadu Nomodas, so the plaintiff has perfectly acquired 403.00 decimals of land in total and hence, the plaintiff has rightly challenged the sale deeds so have been made in favour of the defendants by the attorney of Chandraboli Sarker. Because, if those sale deeds remain in operation, it will certainly cast cloud over the

title and possession of the plaintiff in the suit land he purchased from Monoranjan Sarker when it has also been proved, Chandraboli Sarker did not acquire any property left by Gadu Nomodas. Given the above perspective, the plaintiff has rightly filed the suit challenging the propriety of the sale deeds apart from praying for declaration of title in the entire suit properties.

Further, on going through the decision passed in Civil Appeal No. 55 of 2003 by the Appellate Division on which the learned counsel for the defendants has hugely placed their reliance, we have thus very meticulously gone through it, and find that in the said decision, whether the *stridhana* property will be inherited by the successor of their predecessor or not has been decided. But under no circumstances, can the said decision bears any nexus with the facts and circumstances of the case in hand. Because, in the instant case, the plaintiff has challenged the propriety of 6(six) sale deeds made through power of attornies as well as title in the suit property and it is admitted position that, the plaintiff of the said cited decision claimed *stridhana* property as a heirs of her grandmother which was upheld by the Appellate Division and what is *stridhana* property has clearly been described at page no. 18 and that of the case of the plaintiff at page no. 15. So it is abundantly clear that the decision upon which the learned counsel put his reliance has got no relevance with the facts and circumstances of the instant case and thus totally inapplicable here as the plaintiff of the instant case has never claimed *stridhana* property as any heir of his predecessor.

Then again, though the learned counsel for the appellant cited a decision with regard to the admissibility of secondary evidence but we don't find the said decision is applicable here as well in view of not disputing the authenticity of the deeds dated 04.11.1991 and 24.03.1991 by the defendant as had the defendants raised such objection, the plaintiff would have surely taken defence with that regard by cross examining the witness of the defendants.

Also, we have examined the decision reported in 15 MLR (AD) 17 as well and we are of the view that it is the universal proposition that, the plaintiff has to prove his/her own case without depending on the weakness of the defendant's case. But the case in hand, the plaintiff has challenged the propriety of 6(six) sale deeds preceded by power of attornies couple with declaration of title in the suit land as made out in the prayer of the plaint. So, plaintiff was duty bound to prove his case on those scores which he has discharged but certainly the plaintiff is not obliged to controvert to what has not been asserted in the written statement by the defendants.

Overall, with the above discussion and observation, it has been abundantly proved that the plaintiff has been able to prove his case in line with the plaint so invariably we find the above decision goes in favour of the plaintiff.

Regard being had to the above facts and circumstances, we don't find any illegality or impropriety in the impugned judgment and decree which is liable to be sustained.

Resultantly, 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 learned Joint District Judge, 2nd Court, Gazipur forthwith.

Md. Bashir Ullah, J.

I agree.

Abdul Kuddus/**B.O**.