

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

**First Appeal No. 222 of 2020**

**In the matter of:**

Abdul Barek and others.

... Plaintiffs-Appellants

-Versus-

Md. Abdul Kadir and others.

...Defendants-Respondents

Mr. Md. Mainul Islam with  
Mr. Md. Mostafa Kamal, Advocates

...For the appellant

Mr. Sheikh Zulfiqur Babul Chowdhury, Advocate  
with

Mr. Mohammad Abdul Haque, Advocates

... For the respondent nos. 8, 23 and 24

**Heard on 30.01.2025, 12.02.2025, 13.02.2025,  
and 19.02.2025**

**Judgment on 26.02.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

At the instance of the plaintiffs in Title Suit No. 187 of 2013, this appeal is directed against the judgment and decree dated 03.02.2020 passed by the learned Joint District Judge, Second Court, Gazipur in that title suit dismissing the same against the defendant nos. 1-16 on contest and *ex parte* against the rest.

The precise facts leading to preferring this appeal are:

The present appellant as plaintiff filed the aforesaid suit for declaration of title, recovery of *khas* possession and cancellation of deed stating, *inter alia*, that the suit property measuring 45 decimals of land including other lands originally belonged to one, Binod Bihari Roy, who died leaving behind 5 sons, named, Fani Bhuson Roy, Bivu Bhuson Roy alias Bidhu Bhuson Roy, Sudhir Chandra Roy, Khitis Chandra Roy and Herombo Chandra Roy and said Herombo Chandra Roy became the owner of  $\frac{1}{5}$ th *saham* of the total land as of heirs of his father. Subsequently, he died leaving behind 2 sons named Mihir Chandra Roy and Shamir Chandra Roy. Thereafter S.A. record was prepared being S.A. *Khatian* No. 208 in the name of Fani Buson Roy, Bivu Bhuson Roy alias Bidhu Bhuson Roy, Sudhir Chandra Roy, Khitis Chandra Roy, Mihir Chandra Roy and Shamir Chandra Roy. Thereafter S.A. Tenant, Bivu Bhuson Roy alias Bidhu Bhuson Roy became the owner of the suit land, being Plot No. 808 on amicable settlement. Later, he transferred 218 decimals of land including 45 decimals of suit land of S.A. Plot No. 808 to one, Habizuddin Matbor on 22.07.1963, by deed No. 4340 based on oral partition and Shamir Chandra Roy transferred 192 decimals of land to Abdul Hamid, son of Habiz Uddin Matbar including suit land on 01.08.1972 by deed No. 8060. Thereafter R.S. *khatian* was recorded in the name of Habiz Uddin Matbor in R.S. *Khatian* No. 257 with other co-sharers. Habiz Uddin Matbor died leaving behind one son, named Abdul Hamid and two wives named, Sagar Jan Bibi and Most. Jobeda Begum. Thereafter, Sagor Jan Bibi transferred 295.50 decimals of land including suit land to one, Abdul Barek on 2.10.1980 by a

Heba-bil-Ewaz deed being No. 1122. Abdul Hamid died leaving behind 4 wives named, Most. Archan Nessa, Golesa Bibi, Most. Meher Banu, Most. Shamsun Nahar and 8 sons named Md. Abdul Barek, Abdur Rahman, Abdul Halim, Abdul Khaleque, Abdul Malek, Abdur Razzak, Abdur Nasir, Abdul Basir Uddin and 10 daughters named Most. Anowara Begum, Most. Ayesha Akter, Most. Razia Begum, Most. Rafiza Begum, Most. Shahida Begum, Most. Sufia Begum, Most. Rokhsana Begum, Most. Asma Begum, Most. Mabiya Begum and Most. Rozina Begum. Thereafter Abdur Rahman, son of Abdul Hamid transferred 118 decimals of land including 45 decimals of land of plot No. 808 on 20.10.1985, by a Heba-bil-Awaz deed being No. 5529 to the plaintiff no. 1. Thereafter Razia Begum, daughter of Abdul Hamid transferred 89 decimals of land including 45 decimals of land to Abdul Barek on 26.12.1985 by a registered deed No. 6467. Abdul Nasir son of Abdul Hamid handed over 4 decimals of land out of 45 decimals to Abdul Barek (plaintiff no. 1) on 5.6.2008 by registered deed No. 9950. Abdul Halim son of Abdul Hamid again transferred 9 decimals of land out of 45 decimals of land including the suit land to plaintiff no. 1 on 29.4.2009 by registered deed No. 6564. Thereafter plaintiff no.1, Abdul Barek mutated his name in the holding on 16.9.1995 through Mutation Case No. 1176 of 95-96. Thereafter, Most. Anowara Begum and Ayesha Akter daughter of Abdul Hamid transferred 6 decimals of land of plot No. 808 on 4.7.2012 by Heba-bil-Awaz deed. Thus, Abdul Barek became the owner of 45 decimals of the suit land. Thereafter plaintiff no. 1 transferred a portion of the suit land to his 3 sons named, Atique Shahriar Ahmed (Ishfaq), Hamim Hasin (Ishrak), Akib Shahriar (Niloy) and to his daughter,

named, Rokaiya Rabia (Tuhfa) on 21.03.2007. After that, they mutated their name on 01.07.2007 through Mutation Case No. 31431 of 2006-2007. The plaintiffs have been enjoying title and possession in the suit land by erecting houses, but the defendants dispossessed the plaintiff from the suit land on 10.10.2012 illegally when plaintiff no. 1, Abdul Barek was in Makkah to perform *Hajj*. The second wife of Habiz Uddin named, Jobeda Begum belonged to 2.81 decimals of land out of 45 decimals of the suit land. Thereafter, plaintiff no. 1 tried to recover possession of the suit land, but failed and hence plaintiffs were constrained to file the suit.

On the contrary, the defendant nos. 1-16, 23 and 24 contested the suit by filing written statements. The defendant nos. 1 to 16 filed a joint written statement and these of the defendant nos. 23 and 24 filed another written statement denying all the material statements so made in the plaint contending *inter alia* that the suit is barred by limitation and bad for defect of parties. The defendants further stated that S.A. Tenant, Bidu Bhuson Roy transferred 315 decimals of land including 45 decimals of land of S.A. *khatian* no. 208 to the predecessor of the defendants, Habiz Uddin Matbor, who was the husband of their grandmother, Jobeda Khatun on 03.09.63 by registered deed No. 15259 and another S.A. tenant Amor Chandra Mollik transferred 179 decimals of land including 76 decimals of land of plot no. 640 to Habiz Uddin Matbar on 14.5.1963 by registered deed no. 3435. R.S. *khatian* was recorded in the name of Habiz Uddin and other co-sharers, being *khatian* nos. 257 and 240. Besides these, Habiz Uddin acquired 17.50 decimals of land of Mouza Mashumpur on 7.11.58, by registered deed nos. 16474 and 257 decimals of land on 12.7.63 and 66 decimals of land of C.S.

Plot No. 490 under Mouja Dakrail on 23.4.1964 by a registered deed nos. 4802 and 307 decimals of land of C.S. plot no. 286, *Khatian* no. 45 under Mouja Pargaon on 10.08.1962 by deed No. 4767 and 46 decimals land of C.S. *Khatian* no. 128, 27, 57 under Mouja Sataish by registered deed No. 4341 dated 12.07.1963. Thus Habiz Uddin Matbar acquired 3058.67 decimals of land. Thereafter he died leaving behind one son Abdul Hamid and two wives named Sagor Jan and Jobeda Khatun. Jobeda Khatun got 191.16 decimals of land as heir of Habiz Uddin. Subsequently, Jobeda Khatun died leaving behind two sons Abul Hossain and Babul Hossain, who were the sons of her ex-husband; the defendants are the heirs of said Abul Hossain and Babul Hossain. The mutation in the name of plaintiff No. 01, Abdul Barek was cancelled on the basis of Miscellaneous Case No. 236 of 2009. The defendants sold out 37.76 decimals of land to defendant no. 24 by deed no. 10924 dated 02.08.2018. The defendants have been enjoying title and possession in the suit land. The plaintiff filed the suit on the basis of false statements, hence the same is liable to be dismissed.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 8(eight) different issues and both the plaintiff and the defendants examined 3(three) witnesses each in support of their respective cases. Apart from that, the plaintiff also produced several documents which were marked as exhibit nos. '1'-'17' series while the defendants also produced several documents which were marked as exhibit nos. 'ka'-'sha' series.

The learned Judge of the trial court after conclusion of the trial by impugned judgment and decree dismissed the suit against defendant nos. 1-16 on contest and *ex parte* against the rest on 03.02.2020.

Being aggrieved by and dissatisfied with the said judgment and decree dated 03.02.2020 the plaintiffs as appellants then preferred this appeal.

Mr. Md. Mainul Islam along with Mr. Md. Mostafa Kamal, the learned counsels appearing for the appellants upon taking us to the impugned judgment and decree at the very outset submits that the learned Judge of the trial court erred in law in not taking into consideration of the fact that, the suit is well maintainable since the plaintiff's title has been denied by the defendants by filing a Miscellaneous Case for cancelling the mutation stands in the name of the plaintiffs having no scope to find the suit is not maintainable.

The learned counsel further contends that though the learned Judge of the trial court found the suit is bad for the defect of parties but there has been no clear assertion in the entire written statement to that effect but the learned Judge of the trial court on his own volition allegedly found such defect which cannot be sustained in law and as such the assertion of the trial Court is not based on any materials on record.

The learned counsel next contends that the defendant nos. 1-16 are the owners of 2.81 decimals of land in the suit plot but the defendant nos. 6 and 23 sold out 37.76 decimals of land out of the suit plot to defendant no. 24 by registered deed no. 10924 dated 02.08.2018 during the pendency of

the suit though they have no saleable right and the same is collusive and fraudulent but the trial Court failed to appreciate such a vital aspect.

The learned counsel also submits that PW 1, PW 2, PW 3 and DW 1 in their respective testimony proved that the plaintiffs were in possession of the suit land before dispossession and they were dispossessed by the defendants on 10.10.2012 illegally.

Mr. Islam goes on to submit that the decisions passed in the case of *Tayeb Ali Vs Abdul Khaleque and others*, reported in 43 DLR (AD) (1991) 87 as relied upon by the respondents is not applicable in the instant case because in that case, the plaintiff sought declaration of title to an unspecified 6 pies share of an undivided plot of land and there being no evidence that the donor thereof was in exclusive possession at any time. With these legal submissions, the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and decree.

However, in support of his such contention learned counsel has referred to a decision passed in the case of *Amir Hamja Vs. Mohammad Abdul Ali and others*, reported in 4MLR(AD)(1999)424.

*Per contra*, Mr. Sheikh Zulfiquar Babul Chowdhury, learned Advocate with Mr. Mohammad Abdul Haque the learned counsels appearing for respondent nos. 8, 23 and 24 vehemently oppose the contention taken by the learned counsel for the appellant and submit that, there has been no assertion in the plaint that the plaintiff had been in possession in the suit land before dispossession and such enjoyment of possession and dispossession has not been proved by any independent witnesses.

The learned counsel further contends that since the suit has also been filed for recovery of *khas* possession, so the plaintiff has to prove dispossession from the suit property even though there has been no witness ever produced by the plaintiff to prove when the defendants dispossessed the plaintiff from the suit land and the trial court has rightly dismissed the suit.

The learned counsel next contends that since the mutation earlier stood in the name of the plaintiffs has been cancelled and it was upheld up to the Land Appeal Board and is now pending before this court in a writ jurisdiction so until and unless, mutation is restored in favour of the plaintiffs, they cannot claim title over the suit property.

Mr. Mohammad Abdul Haque, another learned counsel appearing for the respondents by adopting submission made by Mr. Chowdhury also submits that admittedly, Jobeda Khatun was the second wife of Habiz Uddin Matbor and accordingly, she was entitled to one *anna* share of property left by her husband Habiz Uddin Matbor as heir and thus she was entitled to 191.16 decimals of land out of 3058.67 decimals of land belonged to her husband, Habiz Uddin Matbor and accordingly the defendant nos. 1 to 16 as the heirs of Jobeda Khatun, are entitled to 191.16 decimals of land but unfortunately, the plaintiffs did not hand over the said portion of land adding further that the defendants acquired the suit land by amicable settlement and thus being heirs of Jobeda Khatun they have been enjoying title and possession of the suit land.

The learned counsel next contends that the Advocate Commissioner submitted an inspection report before the trial Court wherein, it has been



described that there are 26 small rooms and one grocery shop but no tenant and shopkeeper were examined as witnesses by the plaintiffs where the plaintiffs also failed to prove dispossession by producing any document and marked that as exhibit. Where the suit property is *ejmali* property and thus the plaintiff should have instituted a partition suit and a suit for declaration of title cannot lie and the trial Court has very rightly passed the impugned judgment.

In support of his contention, the learned counsel has referred to decisions passed in the cases of *Tayed Ali Vs. Abdul Khaleque and others*, reported in 43DLR(AD)(1991)87 and *Adbul Quddus Matabbar Vs. Yousuf Ali Bayati and others*, reported in 17BLT(AD)(2009) 45.

With those submissions, the learned counsel finally prays for dismissing the appeal by affirming the judgment and decree passed by the trial Court.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellant and that of the respondent no. 8, 23 and 24, perused the memorandum of appeal, including the impugned judgment and decree and all the documents appeared in the paper book.

It appears from the record that Shagorjan Bibi gifted 295.50 decimals of land including 45 decimals of land of C.S. plot no. 808 to her grandson named, Abdul Barek who is plaintiff no. 1. Thereafter, Abdur Rahman transferred 118 decimals of land including the suit land by *heba* deed no.5529 dated 20.10.1985 to plaintiff no. 1. Then Razia Begum also transferred 89 decimals of land including the suit land to the plaintiff no. 1 by deed no. 6467 dated 26.12.1985 and then plaintiff no.1 mutated his

name in the holding by mutation case no.1176/1995-1996 on 16.09.1995 and started paying land development tax to the respective office. Subsequently, Abdul Nasir transferred 4 decimals of land of the suit plot no. 808 to the plaintiff no. 1 by deed no. 5608 on 05.06.2008. After that, Abdul Halim also transferred 9 decimals of the suit land to plaintiff no. 1 on 29.04.2009 by deed no. 6564. Mossammat Anowara Begum and Mossammat Aysha Akhter gifted 6 decimals of land of the suit land to plaintiff no. 1 on 04.07.2012 by deed 14910.

Subsequently, plaintiff no. 1 gifted 16.50 decimals of land of the suit plot to his minor offspring, defendant nos. 2 to 5. Thereafter, their names were also mutated in the holding by Mutation Case No. 31434 of 2006-2007 and started paying land development tax to the respective office and then started enjoying title and possession over the suit property.

DW1, Abdur Rashid (Defendant no. 6) in his cross-examination stated that, নাঃ জমিতে জোবেদা ০২.৮১ শতক পায় হিস্যা মতে-সত্য। তার অংশ ২.৮১ শতক বাদ দিয়ে এই মামলা করা হয়েছে-আমার জানা নাই।

The defendants did not challenge the above-mentioned purchase deed and they did not file any partition suit.

Since the defendants have not yet challenged the propriety of the above-mentioned deeds and since the said deeds remained unchallenged, so there has been no scope for the defendants to deny the title of the plaintiffs in the suit property. It is also an established principle as also put forward by the learned counsel for the appellants that since the mutation does neither establish nor extinguish any title of one's property, so mere rejection of mutation earlier stood in the name of the plaintiff (though the said dispute

is still under challenge before this court) does not nullify title of the plaintiffs in the suit land who acquired the same by way of gift and subsequently by purchase.

Thus, the plaintiffs successfully proved their title over the suit land through documentary evidence and the defendants failed to establish any lawful claim over the suit property.

Further, the plaintiffs asserted in paragraph no. 20 of the plaint that the plaintiff no. 1 went to Holy Makkah to perform *Hajj* on 03.09.2012 and the defendant dispossessed the plaintiffs by demolishing houses and then erected 3 to 4 small rooms on 10.10.2012. PW1, Abul Barek corroborated the said assertion made in the plaint as he stated in his examination-in-chief that, “নাঃ সম্পত্তিতে আমার ঘর দুয়ার, টং ঘর ও খালি জমি ছিল। ৩০.০৯.২০১২ তারিখ আমি হজ্ব করতে যাই। আমার অনুপস্থিতিতে ১০.১০.২০১২ তারিখ বিবাদীরা নাঃ সম্পত্তি থেকে আমাদের বেদখল করে। বিবাদীদের বহুবার ছাড়িয়া দিতে বলছি। সর্বশেষ ২৫.০৮.১৩ তারিখ বলছি কিন্তু তারা না দেয়ায় এই মামলা দায়ের করি।”

In cross-examination, PW1 further stated that, নাঃ দাগে আমার দখল ছিল তাই আমার নামে খাজনা খারিজ ছিল। আমাকে ১০.১০.১২ তারিখ বেদখল করে। আমি তখন হজ্জে ছিলাম।

PW2, Syed Lashkar corroborated the evidence adduced by PW1 and stated in his examination-in-chief that, নাঃ জমি আগে বাদীরা ভোগ দখল করতো। ২০১২ সনে বিবাদীরা জোর করে নাঃ সম্পত্তি দখল করেছে। In cross examination PW2 stated that, ৬৪০ ও ৮০৮ দাগে বিবাদীরা এখন খায়, আগে বাদীরা খাইতো।

PW3, Ataur Rahman, who resides near the suit land also corroborated the evidence made by PW1 and PW2 and stated in his examination-in-chief that, নাঃ জমি আমি বুঝের পর হইতে দেখছি বাদীরা খাইতো। ২০১২

সালে বাদী হজে যাওয়ার পর বিবাদীরা নাঃ জমি দখল করে নিচ্ছে। এখন বিবাদীরা খায়। In cross-examination PW3 stated that নাঃ জমি থেকে আমার বাড়ী দেড়শ গজ দূরে হবে। ৪৫ শতক নিয়ে মামলা। বাদীপক্ষ পৈত্রিক ওয়ারিশ সূত্রে নাঃ জমি ভোগ করত। বাদীর আগে তার বাবা খাইতো। বাদীর বাবা হামিদ, তার ১০ মেয়ে ৮ ছেলে। তাদের মধ্যে বন্টন হয়েছে কিনা জানি না, তবে বাদীকে তার ভাই বোনরা তাদের অংশ দিয়েছে। ১-১৬নং বিবাদীরা নাঃ সম্পত্তি এখন ভোগ দখল করে-সত্য।

DW1, Abdur Rashid (Defendant no. 6) in his cross-examination stated that, ০২.১০.৮১ তাং এ ১১২২ নং হেবা দলিলে ৮০৮ দাগের ৪৫ শতক জমি সহ ২৯৫.৫০ শত জমি সাগরজান তার নাতি আঃ বারেক (বাদী) বরাবর দান করে দখল দেন-সত্য। ৫৫২৯/৮৫ নং হেবা দলিলে বাদীর ভাই মালেক বাদীকে জমি দান করে দখল দিয়েছে নাঃ দাগে-সত্য।

রেজিয়া (বাদীর বোন) ৬৪৬৭/৮৫ নং দলিলে বাদীকে তার অংশ দান করে দখল দিয়েছে-সত্য। হালিম (বাদীর ভাই) ৬৫৬৪/০৯ নং দলিলে বিক্রয় করে নাঃ দাগে বাদীকে দখল দেয়-সত্য।

আনোয়ারা বেগম ১৪৯১০/১২নং হেবা দলিলে তার অংশ বাদীকে দান করে দখল দেয়-সত্য।

বাদী নাঃ জমির মধ্যে কিছু অংশ ১২৭৭/০৭ নং দলিলে তার ০৩ পুত্র ০১ কন্যাকে (আতিক গং) দান করে দখল দেয়-সত্য।

In view of the evidence stated above, we find that earlier the plaintiffs were in possession in the suit land before they were dispossessed by the defendants. Moreover, it appears from exhibit-11 series that the suit land was mutated in the name of plaintiff no.1 by Mutation Case No. 1176 of 1995-96 and accordingly, Duplicate Carbon Receipt (DCR) was issued on 03.01.1996 in favour of plaintiff no.1 and the plaintiff also paid land development tax (*khazna*). It also appears from exhibit-13 that plaintiff no.1 gifted 16.50 decimals of land of the suit plot to plaintiff nos. 2-5 on 21.03.2007 by register deed no. 1277. Exhibit-14 series also shows that 16.50 decimals of land of the suit plot were mutated in the name of the plaintiff nos. 2-5 and Duplicate Carbon Receipt was issued in their favour

on 20.08.2007 and accordingly, they have paid *khazna*. It is evident from exhibit-11, 13 and 14 that the plaintiffs were in possession of the suit land.

Even the trial Court also observed in the impugned judgment that “কাজেই দেখা যায় যে, বিবাদী পক্ষ বাদী পক্ষকে নালিশী জমি হতে বেদখল করেছেন মর্মে প্রতীয়মান হয়।”(vide page no. 231 of Part I of the Paper Book). So, the plaintiffs are entitled to recover *khas* possession of the suit land.

Admittedly, the suit land and other lands belonged to Habiz Uddin Matbor were not partitioned through metes and bound where DW 1, Abdur Rashid (defendant No. 6) deposed in his cross-examination that, “হাফিজ উদ্দিনের ওয়ারিশদের মধ্যে কোন লিখিত আপোষ বন্টন হয়নি।” Yet defendant nos. 6, 8, 9, 10, 12, 13, 14, 15 and 16 executed power of attorney no. 18318 dated 02.09.2012 in favour of defendant no. 23 and defendant no. 11 executed power of attorney dated 17.09.2012 empowering defendant no. 23 to look after and transfer the suit land. Thereafter, defendant no. 23 sold out 37.76 decimals of land of the suit plot to one, Moniruzzaman Khan (defendant no. 24) by deed no. 10924 on 02.08.2018 during the pendency of the suit. DW 3, Moniruzzaman Khan (defendant no. 24) in his cross-examination stated that, “হাফিজ উদ্দিন ভোগ দখল করতো তিনি তার স্ত্রী জবেদাকে কবে দিয়েছে জানি না জবেদার ওয়ারিশদের কাছ থেকে আমি কিনেছি কিন্তু তাদের কোন বায়া দলিল নাই। জবেদা স্বামীর ওয়ারিশ সূত্রে আনা সম্পত্তি পেয়েছে-সত্য। আমার দলিল ০২.০৮.১৮ তারিখের। এই মামলা চলাকালে আমি আমার জমি কিনেছি। এই মামলা চলার কথা আমি ক্রয় করার সময় জানতাম না।”

The heirs of Zobeda Khatun are entitled to 2.8125 decimals of land out of 45 decimals but defendant no. 23 sold out 37.76 decimals of land to defendant no. 24. So, the impugned power of attorney and deed appears to

have been executed through misrepresentation and thus liable to be cancelled.

Now, we would like to examine whether any illegality has ever been committed in the impugned judgment by the learned Judge of the trial court. On going through the impugned judgment, we find that the learned Judge in order to dispose of the suit framed as many as 8 different issues and in disposing of issue no. 1, the learned Judge of the trial court ultimately arrived at a finding that, since the suit is for confirmation of possession, so the suit itself is not maintainable in its present form. But that very issue has not been properly addressed as it is admitted by the learned counsel for the respondents that the suit has not been filed for confirmation of possession rather recovery of *khas* possession so for that obvious reason, the decision on that issue no. 1 cannot sustain on the face of the materials on record.

Furthermore, the learned Judge of the trial court also disposed of issue no. 3 which was framed to decide whether the suit is bad for defect of parties or not. The learned Judge of the trial court also disposed of the said issue against the plaintiff-appellant finding that all owners of the suit land have not been made party. But on that score, we have also very meticulously gone through the entire written statement and don't find any assertion of the defendants that the suit is bad for the defect of parties other than an evasive denial to that effect. So how the learned Judge of the trial Court came to a finding that, the suit is bad for the defect of parties is totally incomprehensible to us but rather a reflection of the non-application of his judicial mind.

Moreover, the suit has not been filed for partition rather for declaration of title and recovery of *khas* possession and the plaintiffs claimed the suit property to have obtained through gift and purchase. So, under no circumstances, can a suit filed for declaration of title and recovery of *khas* possession be dismissed on account of bad for defect of parties.

We are also totally at one with the submission so placed by the learned counsel for the appellants seeking title over the suit property instead of a suit for eviction against the defendants. Because, the defendants also claimed to be the heirs of their predecessor, Habiz Uddin and in the cancellation of mutation case, they also claimed the title over the suit property and when the defendants denied the title of the plaintiffs in the suit land, whatever manner it might be, then there has been no other option but to pray for declaration of title and recovery of *khas* possession in the event of dispossession from the suit land which is thus well maintainable. So, the submission placed by the learned counsel for the respondents to that effect does not stand at all.

Given the above facts, circumstances of the case and discussion and observation made hereinabove, we are of the view that the learned Judge of the trial court in a very slipshod and casual manner dismissed the suit without taking into consideration of the materials and evidence on record in its proper perspective.

Overall, we find no substance in the impugned judgment and decree which is liable to be set aside.

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

The judgment and decree dated 03.02.2020 passed by the learned Joint District Judge, Second Court, Gazipur in Title Suit No. 187 of 2013 is thus set aside and the suit is decreed.

The plaintiff's title over the suit property measuring an area 42.19 decimals of land is thus declared. The plaintiffs are also entitled to recover *khas* possession of the suit land and thus the defendants-respondents are directed to vacate the suit property within 60 days from date failing which the plaintiffs are at liberty to take possession of the suit land through lawful means.

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

**Md. Mozibur Rahman Miah, J.**

I agree.