

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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 270 of 2022

IN THE MATTER OF:

An application under Section 115(1) of the Code of
Civil Procedure.

And

IN THE MATTER OF:

Samar Chandra Saha

... Plaintiff-Respondent-Petitioner

-Versus-

Sree Sudan Chandra Saha and others

... Defendants-Appellants-Opposite parties

Mr. Choudhury Murshed Kamal Tipu, Advocate with
Mr. A. K. Khan Uzzal, Advocate and
Mr. Mahdi Zaman, Advocate

... For the Petitioner

Mr. Abdul Baten, Advocate with
Mr. Muhammad Mahadi Hasan, Advocate
Ms. Jarin Tasnim, Advocate and

... For the Opposite Parties

**Heard on 29.10.2025, 04.11.2025, 09.11.2025,
27.11.2025, 30.11.2025, 02.12.2025, 07.12.2025
09.12.2025 and 11.12.2025;**
Judgment on 15.12.2025

At the instance of the plaintiffs in Title Suit No. 27 of 2006,
this Rule was issued calling upon the opposite party Nos. 1-3 to
show cause as to why the judgment and decree dated 01.11.2021,

passed by the learned Joint District Judge, First Court, Habiganj in Title Appeal No. 173 of 2017 allowing the appeal setting aside the judgment and decree dated 28.09.2017 passed by the Court of the Assistant Judge, Madhabpur, Habiganj decreeing the above-mentioned suit in preliminary form giving *saham* to the parties should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the parties are directed to maintain *status quo* in respect of possession and position of the suit land for a period of 06(six) months which was subsequently extended from time to time and lastly extended on 06.06.2023 for a further period of 01(one) year and no steps were taken to extend the period of *status quo*.

The salient facts for the disposal of the Rule are that the plaintiffs Samor Chandra Saha and others instituted Title Suit No. 27 of 2006 before the Court of the Assistant Judge Court, Madhabpur, Habiganj, seeking a declaration of title and partition of disputed land, allotting their respective portions therein and subsequently, through amending the plaint, prayed that registered deed Nos. 1709/52, 1673/32, 856/09, 1709/52, 2768/54, 443/56 and 444/56, are void, illegal and not related to the disputed land and registered deed Nos. 307/2011, 4653/2008, 2043/2012 and

6291/2013 are void, illegal and fraudulent and not binding upon the plaintiffs along with other consequential reliefs, stating *inter alia* that, Nabadip Saha and others were the Mirasdar of the suit land. Laxmi Narayan Saha was the tenant of Nabadip Saha. He died, leaving behind one son namely, Harimohon Saha. Harimohon Saha died leaving behind two sons, Sukhlal Saha and Raimohon Saha. Accordingly, they were in possession of the suit land. Each of the above is entitled to half of the suit land. Sukhlal Saha was the elder brother and '*Karta*' of that undivided Hindu family. Later on, Raimohon Saha died, leaving behind four sons namely, Amar Chandra Saha, Samar Chandra Saha, Swapan Chandra Saha and Shankar Chandra Saha. Amar Chandru Saha died, leaving behind one son Jagabandu Saha. Sukhlal Saha died leaving behind one son namely, Sushil Chandra Saha. Accordingly, the plaintiffs and defendants are the owners of the suit land on an equal basis. The plaintiffs requested the defendants to make partition of the suit land however, the defendants refused to do so. Recently, S.A. *Khatian* was wrongly recorded in the names of Sukhlal Saha and his wife. The plaintiffs did not know about the above record of rights. The wrong record of rights clouds the title of the plaintiff. During the pendency of the suit, the defendants sold out some lands of this suit vide registered deed Nos. 307/10, 4653/08, 6291/13, 307/10,

2043/12 and 3721/12 to the defendant Nos. 5-8. The deed Nos. 1709/52, 1672/32, 1673/32, 224/40, 856/39, 2768/54, 443/56, 444/56, 307/10, 4653/08, 6291/13, 307/10, 2043/12 and 3721/12 are void, illegal and not binding upon the plaintiffs.

Defendant Nos. 1-2 and 9 contested the suit by filing joint written statements, denying the material allegations stated in the plaint, contending *inter alia* that the suit is not maintainable in this form, which is barred by waiver, *estoppel*, and defect of parties, *hotchpots* and limitation. The suit has been instituted without having any cause of action by the plaintiff, and being out of possession; without properly valuing the suit land and except for paying the proper Court fees. Mirasdar of the suit land was Ruhini Kumar Bhushan. Sukhlal Saha was the tenant as well as owner of the suit land under Ruhini Kumar Bhushan. Sukhlal Saha was the owner of 20 decimals of land appertaining to plot No. 939 of the *Khatian* No. 340. Sukhlal Saha purchased 28 decimals of land appertaining to plot No. 823 of the *Khatian* No. 199 from Sukhodamoyi Roy by registered deed No. 443/56. The SA record was duly prepared in the name of Sukhlal Saha. Later, he purchased 16 decimals of land appertaining to plot No. 820 of *Khatian* No. 467 from Sukhodamoyi Roy by registered deed No. 442/56. He became the owner of 49 decimals of lands of the *Khatian* No. 358

from Mirasdar Sashimohon Bhattacharjee and S.A. record duly recorded in his name. He became the owner of 20 decimals of land appertaining to plot No. 410 of *Khatian* No. 339 from the then Mirasdar Ruhini Kumar Bhushan. Later, he became the owner of 28 decimals of land appertaining to plot No. 907 of *Khatian* No. 246 from the then Mirasdar Jagabandhu Roy. He purchased 39 decimals of land appertaining to plot No. 588 of the *Khatian* No. 28 by registered deed No. 444/56. Kamini Kumar Datta and Ashwini Kumar Datta were the owners of 16 decimals of land appertaining to plot No. 229 of *Khatian* No. 628. Subsequently, Sukhlal became the owner of the above land by Patta. S.A. record was duly prepared in the name of Sukhlal Saha for 53 decimals of land appertaining to plot No. 46 of the *Khatian* No. 527. He purchased above 53 decimals of land from Sukhlal Roy and Manik Lal Roy, sons of Mahendra Roy, by registered deed No. 1709 dated 03.12.1952. Sukhlal Saha paid the rents of the above land accordingly. Raimohon Saha had no ownership in the above land. He married Sorozini Saha and got possession of plot No. 178 amicably. Ruhini Kumar Bhushan was the Mirasdar of the 08 decimal of land of the plot No. 179 of *Khatian* No. 310. Later, Sorozini Saha became the owner of the above land. Ruhini and another were the Mirasdars of the 15 decimals of land of the plot No. 178 of *Khatian* No. 127.

Sorozini became the owner of the above land from them. Sorozini Saha became the owner of 1.45 acres and 13 decimals of land of plot Nos. 17 and 28 of *Khatian* No. 517 from Ruhini Kumar Bhushan and S.A. record was duly prepared in her name. Sukhlal Saha was the owner of 51 decimals of land appertaining to plot No. 29 of *Khatian* No. 616. He sold out the above land to Sorozini Saha by registered deed No. 2768/54. Later, Sorozini Saha died leaving behind Sukhlal Saha and her son Sushil Chandra Saha, predecessor of the defendants. Sushil Chandra Saha sold out 20 decimals of land appertaining to plot No. 939 of *Khatian* No. 340 to Tazul Islam. Harimohon Saha lived in his father in law's house situated in a different village of Brahmanbaria district and died in December, 1958. The plaintiffs were tenants under Sushil Chandra Saha. Later, Sushil died, leaving behind two wives, three sons and three daughters. Defendant No. 1, Sudan Saha and defendant No. 2, Sudin Saha sold out some portions of land to defendant No. 7, Ranjan Paul, defendant No. 6, Rubel Miah and defendant No. 5 by different registered deeds on various occasions. The plaintiffs have no right, title, interest or possession in the suit land. So the suit is liable to be dismissed.

Subsequently, defendant Nos. 4, 6 and 7 submitted separate written statements, denying the material allegation stated in the

plaint, contending *inter alia* that the suit is not maintainable in this form, which is barred by waiver, *estoppel*, defect of parties and limitation; maintaining their registered purchased deeds regarding proportionate suit land, being genuine, but ultimately they did not contest the suit.

In order to dispose of the suit, the trial Court framed as many as 06(six) different issues. To support the case, the plaintiffs examined 03(three) witnesses, while the defendants examined 05 (five) witnesses. The plaintiffs produced several documents which were marked as exhibits 1 to 9. On the other hand, the defendants produced different documents which were marked as exhibits- 'Ka' to 'Da'('क'-'ड') in order to prove their respective cases. Advocate Commissioner, was also examined as CW1 and produced exhibit-I series.

Upon hearing, the parties and on perusal of the pleadings and evidence, the learned Assistant Judge, Madhabpur, Habiganj decreed the suit on contest in preliminary form on 28.09.2017 and declared that deed Nos. 1709/52, 1672/32, 224/40, 1673/32, 856/39, 2768/54, 443/56 and 444/56 are void and not binding upon the plaintiffs. The plaintiffs were allotted a *saham* of 2.48 acres of land and defendant Nos. 1 to 3 and 9 were allotted a separate *saham* of 2.26 acres of land. Defendant No. 5 was allotted a separate *saham*

of 5.33 decimals of land in plot No. 229 of *Khatian* No. 628. Defendant No. 7 was allotted a separate *saham* of 7 decimals of land of plot No. 410 of S.A. *Khatian* No. 339 and defendant No. 8 was allotted a separate *saham* of $(8.66+.5) = 9.16$ decimals of land of plot Nos. 39 and 178 of S.A. *Khatian* Nos. 526 and 127, respectively.

Challenging the aforesaid judgment and decree, the defendants filed Title Appeal No. 173 of 2017 before the learned District Judge, Habiganj who transferred the appeal to the learned Joint District Judge, First Court, Habiganj. On transfer, upon hearing the parties the learned Joint District Judge, First Court, Habiganj allowed the appeal on 01.11.2021 by setting aside the judgment and decree passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree dated 01.11.2021, passed in Title Appeal No. 173 of 2017, the petitioner preferred the instant Civil Revision before this Court and obtained a Rule and order of stay.

Mr. Chowdhury Morshed Kamal Tipu appearing on behalf of the petitioner submits that a local investigation was held and the Advocate Commissioner was examined and cross-examined and the report of the Advocate Commissioner was accepted where the suit schedule land appertaining to Taluk No. 52855. The defendants did

not raise any objection against the Report of the Advocate Commissioner; even they did not apply for further investigation. So, the trial Court rightly held that there is no material wrong in the report. But the appellate Court failed to appreciate these findings. He contends that in the absence of 'Suzi', if any local investigation is carried out that the same is not erroneous.

Learned counsel submits that since the defendants could not carry out any local investigation to ascertain whether the boundaries and schedule of the eight deeds appertain to the suit land or not. But the plaintiffs successfully carried out a local investigation and reports (exhibit- C'I') support the claim of the plaintiff that the suit land appertains to 'Taluk' 52855 Kararup and as such the appellate Court committed an error of law.

He next contends that since they are claiming that the suit land is not under Touzi No. 52855 Karaup, rather the same is under 52855/97. So, the burden of proof shifts to the defendants to prove the fact under section 103 of the Evidence Act. Because the plaintiff has discharged the burden of proof under section 102 of the Evidence Act. He also argues that the 'Taluk' of the schedule of the deeds are different from the 'Taluk' of the suit land.

Mr. Chowdhury by referring to the paragraph No. 21(kha) of the written statement contends that the defendants admitted Laxmi

Narayan Saha as predecessor of the plaintiffs and defendants. It is clearly stated in the written statement that “সাতবর্গ গ্রামেই হরিমোহন সাহার দুই পুত্র সুখ লাল সাহা ও রায়মোহন সাহার জন্ম হয়।” He further contends that even DW2, Sudin Saha in his cross-examination stated that ‘সুখ লাল ও রায় মোহন আপন ভাই।’ He submits that in view of the above-mentioned statement, it is proved that the appellate Court below failed to consider such vital statements that Laximohon Saha was the father of Harimohon Saha and Horimohon Saha is the father of Shuklal Saha and Roymohon Saha and as such the impugned judgment and decree passed by the appellate Court below is liable to be set aside.

Mr. Chowdhury contends that the suit land under Pargana Bejura, Mouza- Ektiarpur, Taluk 52855, belonged to one Laxmi Narayan Saha the predecessor of plaintiffs and defendants. Thus, the plaintiffs became 50% sharers of the suit land. The plea regarding the name of Laxmi Narayan Saha is not acceptable. Because, Laxmi Narayan and Laxmi Narayan ‘Saha’ is same person. The omission of ‘Saha’ in his name is nothing but a clerical mistake. Rather, the defendants did not raise any objection regarding the omission of ‘Saha’, neither in the written statement nor in the memorandum of appeal. Even in this regard, they did not make any cross-examination.

Learned Advocate next contends that the name of Laxmi Narayan was mentioned in exhibit-1, a certified copy of Touzi No. 52855 which was proved by PW1 and no objection was raised by the defendant at the time of producing the exhibits.

He next contends, that the name of Laxmi Narayan was also written in exhibit-2, 'Thak' bearing No. 105 as owner and possession holder which was proved by PW1 and no objection was raised by the defendants.

Mr. Chowdhury further submits that it is evident from exhibits 'Kha'(খ) to 'Ja' (জ) produced by the defendants that the schedule and boundary as described in the so called deed are different from the suit schedule land and defendant No. 2, Sudin Saha as DW1 admitted in his cross-examination by stating that “আমার দাখিলকৃত কবলায় দাগ খতিয়ান নেই, তৌজি নাম্বার নেই।”

Mr. Chowdhury next contends that DW1 admitted during cross-examination that “সমর সাহার নামে (plaintiff No. 2) পৃথক হোল্ডিং আছে।” DW4, Khorshed in cross-examination stated that “সাতবর্গ এবং নয়গাওয়ার মধ্যে একটা ক্ষেতের আইলা।” which proves that the plaintiffs predecessors used to live in same locality.

Mr. Chowdhury submits that the appellate Court below emphasized on the record of rights only and thus it erred in law by not considering that mere record of rights is not a document of title

as it does not create or extinguish title over land, at best along with other evidence of title it may support possession only. In support of his contention, he referred to the decision passed in the case of *Lal Meah, being dead his heirs Momena Khatun and others Vs. Haji Md. Ibrahim Meah and others*, reported in 28 DLR(AD)(1976) 61.

Mr. Chowdhury submits that the suit was filed within the limitation period. The cause of action as stated in the plaint বিবাদীগণের প্ররোচনায় বিগত ১১.০৫.২০০৬ ইং তারিখে ভলিউম পর্যালোচনা করিয়া সুখলাল সাহার নামে অশুদ্ধ রেকর্ডের বিষয়ে অবগত হন। তৎপূর্বে বাদীগণ ঘূর্নাক্ষরে ঐ রেকর্ড সম্পর্কে অবগত ছিলেন না।” So, the plea that the suit is barred by limitation is not acceptable. In support of his contention, he referred to the decision passed in 40 CWN 566, 1998 BLD 497.

Mr. Chowdhury further contends that the defendants failed to prove that the plaintiffs are their tenants and DW1, DW4 and DW5 could not produce any rent receipt or agreement in this regard. So, the plea of the defendants that the plaintiffs are their tenant is not tenable.

In support of his contention, learned counsel refers to the cases of *Nemai Kumar Vs. Romesh Chondro Datta*, reported in 46 DLR (AD)(1994) 111; *Abdun Noor and others Vs. Aziruddin and others*, reported in 64 DLR (AD)(2012) 127; *Lal Meah, being dead his heirs Momena Khatun and others Vs. Haji Md. Ibrahim Meah*

and others, reported in 28 DLR(AD)(1976) 61; *Pakistan Vs. Muhammad Abdul Kuddus*, reported in 1988 BLD 497; *Abdul Kader Khalifa Vs. Saju Bibi and others*, reported in 52 DLR (AD)(2000) 34 and *Rabija Khatun and others Vs. Badshah Meah and others*, reported in 47 DLR (1995) 511.

With those submissions, the learned counsel finally prays for making the Rule absolute.

Per contra, Mr. Abdul Baten, with Ms. Jarin Tasnim, learned Advocates appearing on behalf of the opposite party Nos.1-3 contends that the trial Court passed the judgment and decree relying upon the report of the Advocate Commissioner. The plaintiffs showed 'Wajib-ul-Arz' and 'Thak' of the suit land but failed to show 'Suzi' (supplementary sketch map used to detail boundaries when maps are insufficient). But the commissioner made the report on the basis of 'Wajib-ul-Arz' and 'Thak' but he did not find any 'Suzi'. 'Suzi' is very crucial.

Learned counsel submits that Laxmi Narayan could not produce any deed, documents showing his right, title, in the suit land.

He next contends that 'Wajib-ul-Arz' and 'Thak' were made in the period of the Mughal Regime. But in the latest records namely, S.A., R.S. and B.S., the name of the predecessors of the

plaintiffs are absent rather the names of the predecessors of the defendants were recorded correctly in these records. S.A., R.S. and B.S. record were correctly recorded in the names of the defendants and the latest record will prevail over the earlier records.

He further submits that in exhibit-2, ('Thak') the name of Laxmi Narayan was written but there is no name of 'Laxmi Narayan Saha' and as such there is no nexus between genealogy and exhibit-2.

He further submits that Harimohon Saha was the father of Sukhlal Saha and Roymohon Saha. Since there is no record in the name of Harimohon Saha, Sukhlal Saha and Raimohon Saha are entitled to nothing. When the S.A. record was prepared the said Horimohon Saha was alive but he did not claim the suit land. Sukhlal Saha and his wife Sorozini Saha purchased the suit land by 8 deeds. This description was mentioned in paragraph No. 21 of the written statement.

He next submits that Roymohon Saha, the grandfather of the plaintiff used to live in Satbarga, Brahmanbaria and his name was correctly recorded in exhibit-Da(७) for the land of Satbarga, which proves that he was an inhabitant of Habiganj. Rather, the name was included in the voter list of Satbarga, Brahmanbaria. There is no name of Raymohon Saha in the voter list of Habiganj.

He further argues that the defendants proved their case by 8 deeds, *parchas* and rent receipts. Rent receipts show the possession of the suit land and possessions follows the titles vide exhibit Nos. 'Kha'(ख) to 'Ja' (ज) series.

He next submits that the appellate Court averred all the lenient findings of the trial Court and the appellate Court followed Order 41, Rule 31 of the Code of Civil Procedure.

Mr. Baten argues that the plaintiff must prove his own case. The defect of the defendants is not a good ground for decreeing in favour of the plaintiff.

He referring to 'Touzi' No. 52855 (exhibit-I) submits that the 'Touzi' number was written 52855/97 in *parchas*. The trial Court erred in its judgment, mentioning that "Moreover, after perusal of the above deeds, it is seen that the deed Nos. 224/20, 2768/54 and 442/56 included different Taluks."

He further contends that in exhibit-1 that is in 'Tauzi' there is a name of Bajeshari, but no where it is seen in the genealogy of the plaintiff's case. In 'Touzi' the total land is 183 acres whereas in the first schedule of the plaint, the quantum of the land shows 5.22 acres. So, there is no specification under Order 7, Rule 3 of the Code of Civil Procedure. They failed to prove and specify 5.22 acres of land out of 183 acres.

He next contends that it appears from exhibit-Dha(ঢ) (*Khatian* No. 355) that Harimohon Saha, father of the Roymohon Saha lived in Brahmanbaria and the quantity of his land is 20 decimals. These 20 decimals of land were not included in the schedule of the plaint. In a partition suit, *hotchpot* is a very important and very vital ingredient of a partition suit. The trial Court did not make any discussion in its judgment.

Mr. Baten argues that S.A. *Khatian* No. 315 (exhibit-3) shows that the name of the owners of plot No. 939 is Shuklal Saha and there was no name of Roymohon Saha. S.A. *Khatian* No. 311 (exhibit No. 3'Ka') shows that plot No. 179 was recorded in the name of Sorozini Saha, wife of Shuklal Saha. All S.A. records were correctly recorded in the name of Shuklal Saha and his wife Sorozini Saha and subsequently, the R.S. record was also prepared in the name of Shuklal Saha and Sorozini Saha. Even B.S. *parchas* also recorded in the name of the present defendants-opposite parties. The name of Roymohon Saha is absent in the records.

He next contends that S.A. *Khatian* No. 329 (exhibit 3'Cha') shows that there are 2 plots, namely 410 and 423. But 410 was included 423 remained absent in the schedule. Thus, the plaintiffs failed to mention the total land. S.A. *Khatian* No. 1/27 (exhibit-৩'এস') shows that there are 2 plots namely 588 and 436. But in the

plaint plot No. 436 is absent. S.A. *Khatian* No. 495 shows that there is plot No. 46 but it was not included in the plaint. So, the suit is barred by the principle of common *hotchpot*.

In support of his contention, learned counsel refers to the cases of *Younus (Md) and others Vs. Bangladesh Government, represented by its Deputy Commissioner, Chittagong and others*, reported in 72 DLR (2020) 623; *Abdul Halim and another Vs. Sheikh Abdullah and others*, reported in VI ADC (2009) 581; *Md. Mintu Chowdhury Vs. Khurshid and others*, reported in 33 BLD (AD)(2013)72; *Md. Mozaffer Rahman and others Vs. Government of Bangladesh and another*, reported in 15 MLR (AD)(2010) 170; *Government of Bangladesh, represented by the Additional Deputy Commissioner (Revenue), Gazipur Vs. A.K.M. Abdul Hye and others*, reported in 9 MLR (AD)(2004)82; *Kazi Rafiqul Islam Vs. Kazi Zahirul Islam and others*, reported in 70 DLR (AD)(2018) 135; *Ratan Chandra Dey and others Vs. Jinnator Nahar and others*, reported in 61 DLR (AD)(2009)116; *Musa Ali Vs. Nur Ahmed and others*, reported in 44 DLR(AD)(1992)154; *Joynal Abedin and others Vs. Mafizur Rahman and others*, reported in 44 DLR (AD)(1992)162; *Rezaul Karim and others Vs. Md. Shamsuzzoha and others*, reported in 2 MLR (AD)(1997) 16; *Dr.*

S.M. Yunus Ali Vs. Joint District Judge and Artha Rin Adalat and another, reported in 16 BLT(AD)(2008) 167.

With those submissions, the learned Advocate finally prays for the discharging of the Rule.

I have heard the learned Advocates for both sides, perused the civil revisional application, impugned judgments and decrees and other materials on record.

The learned Assistant Judge decreed the suit, placing reliance upon the report of the Advocate Commissioner, observing that no material illegality or infirmity was found therein. Although, the trial Court itself acknowledged that a commissioner's report is neither conclusive nor sacrosanct and must be corroborated by other admissible evidence on record, it nonetheless relied substantially upon the said report.

This Court finds considerable substance in the observations made by the appellate Court below, which held as follows:

“Although plaintiffs tried to base their case on the basis of the Commission report, but, from the deposition of CW1, Md. Tazammul Haque- Civil Court Commissioner, it appears that he tried to affirm his report and related documents exhibit- I series, wherein it has been stated that he relied upon disputed plots of the suit land, with the ‘Thak’ and ‘Wajib-ul-Arz’ supplied by the plaintiffs,

through superposing; but admittedly he did not get any 'Suzi', so he had to rely upon 'Thak', for his investigation; which is appeared to be contradictory with the earlier registered deeds owned by the defendants/ appellants party and Record of rights; resultantly, that report is not going to substantiate the title and possession of the plaintiffs over suit land, for reason stated herein before, in absence of any document of title, possession by them. While in cross-examination, he admits that he did not get the 'Suzi'. Admittedly, he has not found any tri-junction pillar; but determining the fixed point, capriciously, as it transpired, he submitted that biased and obliged report, concertedly, without having any basis."

In this context, reliance may profitably be placed upon the decision passed in the case of *Abdun Noor and others Vs. Aziruddin and others*, reported in 64 DLR (AD)(2012) 127, wherein it has been held:

"The report of the Advocate Commissioner shall go into evidence even if the Commissioner is not examined in Court, and the evidentiary value of the report of the Advocate Commissioner may vary depending upon the facts and circumstances of a particular case. The Advocate Commissioner's report is not sacrosanct, but it is only a piece of evidence which is to be considered along with other evidence. The court may or may not rely

on such evidence notwithstanding the fact that it has been admitted in evidence.”

Further in *Younus v Bangladesh*, reported in 72 DLR (2020) 623, this Court held:

“A report of the commissioner pursuant to the provisions of Order 26, Rule 9 of the Civil Procedure Code, 1908 is not binding and the court of law is at liberty to accept or refuse in the line of other evidence.”

It is admitted that the learned Advocate Commissioner prepared his report on the basis of the ‘Thak’ and ‘Wajib-ul-Arz’ relating to the suit land as supplied by the plaintiffs. It further appears that he did not obtain the ‘Suzi’ map, nor did he find any tri-junction pillar at the spot. ‘Suzi’ is a detailed survey map containing accurate measurements and was based on the C.S. Survey. In contrast, the ‘Thak’ is an early and rough map of mouza, possessing comparatively low accuracy and used primarily as a historical reference. The ‘Wajib-ul-Arz’ is a record of customs, usages and easements generally relied upon to establish local practices. Therefore, the ‘Suzi’ map constitutes a more reliable and accurate instrument for land measurement than the ‘Thak’ map and the ‘Wajib-ul-Arz’.

It appears that the learned Advocate Commissioner overlooked the registered deeds held by the defendants, the relevant

Record of Rights, namely S.A., R.S. and B.S., as well as the land development tax receipts. Although, the ‘Wajib-ul-Arz’, ‘Thak’, and ‘Suzi’ originated during Mughal period, subsequent surveys were conducted in different phases. The Cadastral Survey (C.S.) record was carried out between 1888 and 1940; the State Acquisition Survey (S.A.) between 1956 and 1962; the Revisional Survey (R.S.) between 1962 and 1980; and the Bangladesh Survey (B.S.) record commenced in 1971. It is a settled principle of law that in the absence of rebuttal evidence, the latest record of right shall prevail over earlier records. This view finds support in the decision in *Md. Mintu Chowdhury Vs. Khurshid Nayeem and others*, reported in 33BLD (AD)(2013) 72.

In the instant case, the plaintiffs relied solely upon the ‘Wajib-ul-Arz’ and ‘Thak’ to substantiate their claim. The trial Court, however, most illegally decreed the suit upon reliance on these two documents, while disregarding the latest Record of Rights, namely S.A., R.S. and B.S. as well as the rent receipts.

Mr. Baten appearing on behalf of the opposite parties contends that the plaintiffs are the tenants of the defendants. In reply, Mr. Chowdhury for the petitioners contends that the defendants failed to prove that the plaintiffs are their tenants and DW1, DW4 and DW5 could not produce any rent receipt or

agreement in this regard. DW1 in his cross-examination replied that বাদীগণ ১৪ বছর যাবৎ ভাড়াটিয়া হিসাবে দখলে আছে। এর আগে কে ভাড়াটিয়া ছিল খেয়াল নাই। ... বাদীগণ ভাড়াটিয়া ছিল মর্মে কোন কাগজাত দাখিল করি নাই। Further DW4, Khorshed Miah replied that কোন ভাড়ানামা নাই। DW5, Shab Miah stated that কোন ভাড়া চুক্তি হয় নাই।

DW1, Sudin Saha (Defendant No. 2) stated in his examination in chief that ১৭৮ দাগের ভূমিতে আমাদের ৮টি ঘর ছিল, উত্তর দিকে ১টি ঘর বাদী সমর সাহা, শংকর সাহাকে ভাড়া দেয়া হয় মাসিক ৫০০/- টাকায় ১৪০০ বাংলা, ০১.০৫.২০০০ ইং। ভাড়া দেয়া বা আলোচনার সময় আব্দুল আলী, খোরশেদ মিঞা, সাবেক কমিশনার বেনুপদ রায় উপস্থিত ছিলেন।

He deposed in cross-examination that “বাদীগণ কিছু জায়গায় দখল আছে ভাড়াটিয়া হিসাবে। বাদীগণ আমার বাবার ভাড়াটিয়া ছিল। ০১.০৫.২০০০ ইংরেজী ১৪০০ বাংলায়। ভাড়া দিয়েছিলাম। বাদীগণ ১৪ বছর যাবৎ ভাড়াটিয়া হিসাবে দখলে আছে।”

DW2, Abdul Ali stated in his examination-in-chief that “আমি জন্মের পর থেকে দেখেছি সুশীল (Father of defendant Nos. 1 to 3), সুদনরা দখল করে ...বাদীদের দেখিনা এখন। নালিশী জমির মালিক দখলকার সুদন সাহা (defendant No. 1), সমর সাহা (plaintiff No. 1) ভাড়াটিয়া ৫০০/- টাকায় মাসিক ভাড়ায় থাকে।”

In cross-examination he deposed that “ভাড়া দেয়ার সময় আমি ছিলাম। মোর্শেদ, মন্টু, সোয়াব মিঞাও ছিল।”

DW3, Mantu Sarkar deposed that “বিবাদীরা এ জায়গা বাপ দাদা থেকে পায়। বাদী এখানে ১৫-১৬ বছর যাবৎ থাকে। এরা ভাড়া থাকে।”

DW4, Morshed Miah deposed that “নালিশী ভূমিতে বিবাদীরা ভোগ দখল করে। এগুলো তাদের বাপ দাদার জায়গা। রায়মোহন কি বাদীদের কখনো এই জায়গা দখল করতে দেখি নাই। আমরা একই গ্রামের। তাই নালিশী ভূমি চিনি। বাদীরা সাতবর্গে থাকত। বাদীরা কখনো নালিশী ভূমিতে বসবাস করে নাই। সমর সাহা (plaintiff No.1) ভাড়াটিয়া।”

DW5, Md. Soyab Miah who is neighbour of the parties corroborating the above-mentioned evidence deposed in his examination-in-chief that “বিবাদীগণ দাদার আমল থেকে দখলে আছে। পূর্বের পুকুর আমার। ৭৪ শতক পুকুর। চারটা ঘর আছে বাড়িতে। পশ্চিম, দক্ষিণ ও পূর্বের ঘরে বিবাদীরা ৩ ভাই থাকে। উত্তর দিকের ঘরে ভাড়া থাকে বাদী। আমি ছিলাম ভাড়া দেয়ার সময়। আমি, আব্দুল আলি, (DW2) সুচিন্দ্র সরকার, মন্টু (DW3) ছিল তখন, বাদীরা ভাড়াটিয়া।”

The above-mentioned evidence proves that the plaintiffs are tenants in the suit land and there is no substance in the contentions of the learned lawyer appearing on behalf of the petitioner.

Mr. Baten appearing on behalf of the opposite parties contends that the first schedule of the plaint is unspecified and there is no boundary which is barred by Order 7, Rule 3 of the Code of Civil Procedure.

In reply, Mr. Chowdhury appearing on behalf of the petitioners submits that giving the boundary of the land is not essential if the survey number or plot number makes the plot identifiable. In this regard, he referred to the decisions passed in

AIR 1989, Orissa, 248, (Mahmudul Islam, Page-611, and Volume-1). He also referred the case, *Kazem Vs. Danesh*, reported in 1 CWN 574, wherein it was held that “A suit should not be dismissed because of the failure to give sufficient particulars and the plaint should be allowed to be amended.”

However, I find substance in the contention advanced by Mr. Baten for the opposite parties. It is evident from the plaint that the first schedule of the plaint is unspecified and there is no boundary in the schedule. In this connection, reliance may be placed on the decision passed in *Amulla Kumar Bairagi and others Vs. Chitta Ranjan Biswas and others*, reported in (2011) 19 BLT (AD) 118, wherein our Apex Court held that the High Court Division made the rule absolute mainly on the ground that the suit land is totally undemarcated and unspecified in the schedule of the plaint and a court shall not be able to pass an executable decree. The Apex Court found no illegality in the judgment of the High Court Division since the lower appellate court had passed a decree over unspecified and undemarcated suit land which is not executable.

Exhibit-Tha(२) series (105 copies of original rent receipts) show that the predecessors of the defendants have been paying land development tax for long time. Rent receipts show the possession of the suit land and possession follows the title. Thus, the defendants

proved their title in the suit plot. In *Erfan Ali Vs. Joynal Abedin Miah*, reported in 35 DLR (AD)(1983)216, the Apex Court held:

“Rent receipts, though not documents of title, are important items of evidence of possession and may be used as collateral evidence of title since possession generally follows title.”

It appears from the record that Sukhlal Saha and Sorozini Saha acquired the suit land vide registered deeds which are duly produced before the trial Court as exhibits ‘Kha’(খ)-‘Ja’(জ) and subsequently the said Sukhlal Saha and Sorozini Saha’s name were correctly recorded in different S.A. *Khatian* and exhibited as Jha(ঝ) series. During B.S. operation, the name of the defendants correctly recorded in B.S. *Khatian*. It is a settled principle of law that a registered document carries a strong presumption as to genuineness under Sections 59, 79 and 114 of the Evidence Act and Section 60 of the Registration Act. Unless rebutted by strong evidence, such registered deeds must be accepted as valid. Mere oral statements cannot invalidate them. Therefore, the plaintiffs’ attempt to deny the recitals of the earlier registered deeds is legally untenable. This view finds support from the decision passed in the case of

Kazi Rafiqul Islam vs. Kazi Zahirul Islam, 70 DLR (AD) 135, and
Ratan Chandra Dey vs. Jinnator Nahar, 61 DLR (AD) 116.

It appears from exhibit Jha(ঝা) series that the names of Sukhlal Saha and Sorozini Saha were correctly recorded in different S.A. *Khatian*. However, at the time of preparation of D.P. *Khatian* Roymohon Saha, the father of PW1 was alive but no objection was raised. PW1, Samar Chandra Saha (plaintiff No. 1), in cross-examination stated that “আমার পিতা আজ হতে ৪৮ বছর পূর্বে ১৯৬৩ ইং তারিখে মারা যান।” Subsequently, R.S. record was prepared in the name of Shusil Chandra Saha, the father of defendant Nos. 1 to 3. During B.S. operation, the names of the defendants were recorded in B.S. *Khatian*. The plaintiffs-petitioners made objection under section 30 of the State Acquisition and Tenancy Act. However, it appears from exhibit ‘Yeo’(য়ে) and ‘Ta’(টা) that the objection was rejected and an appeal under section 31 of the same Act was also rejected.

Considering the above facts, circumstances, and *ratio*, this Court finds no merit and substance in this Rule.

As a result, the Rule is discharged, however without any order as to costs.

The judgment and decree dated 01.11.2021 passed by the learned Joint District Judge, First Court, Habiganj in Title Appeal

No. 173 of 2017 is hereby affirmed and those of the trial Court is set aside and the suit is dismissed.

The order of stay granted at the time of issuance of the Rule stands recalled and vacated.

Let a copy of this judgment with the Lower Court Records be communicated to the concerned court forthwith.

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer.