Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 1596 of 2023
Md. Abdur Rashid and others
.....petitioners
-Versus-
Md. Mokaram Hossain and others
.....opposite parties

Mr. Md. Nurul Amin, Senior Advocate with
Mr. Sheikh Md. Tariqul Islam Advocate
.....for the petitioners

Mr. Shasti Sarker, Senior Advocate with
Mr. Forhad Ahmed Advocate
.....for opposite parties

Heard on: 14.05.2026, 19.05.2026, 24.06.2026, 30.06.2026 and 01.07.2026

Judgment on: 23.07.2026

In the instant revision Rule was issued calling upon the opposite parties 1-9 to show cause as to why the impugned judgment and decree dated 06.03.2023 passed by the learned Additional District Judge, 1st Court, Rajbari in Title Appeal Number 3 of 2013 allowing the appeal thereby reversing the judgment and decree dated 26.11.2012 passed by the Assistant Judge, Pangsha, Rajbari in Title Suit Number 110 of 2011 dismissing the suit 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.

The opposite parties as plaintiffs filed Title Suit Number 110 of 2011 on 20.04.2011 seeking partition of 191.50 decimals of land out of a total area of 208 decimals appertaining to R.S. record Number 135 corresponding to S.A. record Number 137 and R.S. record Number 168/3 corresponding to S.A. record Number 175. Subsequently plaintiffs claimed $1.87\frac{1}{2}$ acres of land by amendment as 4 decimals of land was included in the Government Road.

The plaintiffs' case as set out in the plaint and the amended plaint in brief is that the recorded tenants of R.S. Record Numbers 135 and 168/3 named Annada Charan, Ramesh Chandra, Bhabesh Chandra, Aditya Kumar and others jointly settled 1.56 acres of land comprised in the said two khatians in favour of Prasanna Kumar Mondal by executing an Amalnama and granting a landlord's Dakhila on the 5th day of Jaishtha, 1351 B.S. at an annual rent of taka 5 and 2 annas. Upon obtaining the said settlement Prasanna Kumar Mondal entered into possession of the settled land and continued to possess and enjoy the same by regularly paying rent. Consequently a modified S.A. Khatian Number 174 was prepared in his name under Section 46 of the State Acquisition and Tenancy Act.

The plaintiffs further state that one Kamala Guha Roy claiming title to the suit property filed Title Suit Number 607 of 1970 in the Court of the First Munsif, Goalanda against Prasanna Kumar Mondal as defendant 1 seeking a declaration of title and confirmation of possession or in the alternative recovery of possession. The suit was dismissed by judgment and decree dated 25.10.1976. Thereafter Kamala Guha Roy preferred Title Appeal Number 171 of 1976 which was also dismissed on 28.09.1978. In the said litigation the plaintiffs' predecessor-in-interest successfully proved the aforesaid Amalnama and landlord's Dakhila both of which were admitted in evidence. The scribe and the attesting witnesses to the said documents have in the meantime passed away.

The plaintiffs further aver that although the present suit was initially dismissed because the aforesaid documents of title had not been produced before the trial Court or referred to in the original plaint but they subsequently amended the plaint in appeal and by recalling P.W.1 duly proved the said documents in accordance with law.

It is further stated that thereafter Prasanna Kumar Mondal transferred the aforesaid 1.56 acres of land in favour of Tofazzal Hossain by a registered deed of sale being Kabala Number 6484

dated 01.08.1970. The present plaintiffs are the lawful heirs of the said Tofazzal Hossain.

The plaintiffs further assert that the recorded tenants of the aforesaid two suit khatians namely Debendra and Gyanendra jointly settled another 35.50 decimals of land in favour of Tofazzal Hossain by granting a landlord's Dakhila on the 20th day of Kartik, 1352 B.S. However owing to a mistake the said land was incorrectly recorded in the names of the former owners in S.A. Khatian Numbers 137 and 175. Accordingly the plaintiffs filed Title Suit Number 20 of 1993 in the Court of the Assistant Judge, Pangsha seeking a declaration of title and confirmation of possession. The suit was dismissed by the trial Court by judgment and decree dated 31.05.1993 and the decree was subsequently reversed and the plaintiffs succeeded in Title Appeal Number 70 of 1993.

The plaintiffs further contend that they have recently come to learn that the B.S. Record has erroneously been prepared in the names of the defendants without any lawful basis. According to the plaintiffs the said record is erroneous, illegal and misleading. They further allege that the documents relied upon by the defendants are forged, fabricated and collusive and the defendants' claim is wholly false. Since the defendants refused to effect partition of the plaintiffs' claimed share in the suit

property the plaintiffs were constrained to institute the present suit.

Defendants 1-4/8-10/14 and 21 contested the suit by filing a joint written statement denying the material allegations made in the plaint.

The defendants' case in brief is that 25 decimals of land comprised in R.S. Khatian Number 135 and 27 decimals of land comprised in R.S. Khatian Number 168/3 were correctly recorded in the names of Gyanendra, Nagendra and Debendra in S.A. Khatian Numbers 137 and 175. Upon the death of Debendra he was succeeded by his two daughters named Chitra Rani and Shanti Rani. Subsequently Gyanendra, Chitra Rani and Shanti Rani also died whereupon their respective interests in the suit property devolved upon Nagendra. After the death of Nagendra his only son Mihir Kumar succeeded to the property as his sole heir.

It is further contended that Mihir Kumar transferred the aforesaid 52 decimals of land comprised in S.A. Khatian Numbers 137 and 175 to defendant 1 by registered deed of sale being Kabala Number 7033 dated 19.08.1995. Thereafter defendant 1 transferred 8 decimals of the said land to defendant 2 by a registered deed of sale dated 05.12.2004. Defendant Numbers 8-10 and 14 are the heirs of defendant 2. According to

the defendants they have constructed residential houses upon the suit land and have all along been possessing and cultivating the same.

The defendants further state that defendant numbers 6 and 7 derived title by purchase from defendant 1 under a registered deed dated 03.07.2001 and also by purchase from Dipti Rani and Binapani under a registered deed dated 19.05.1997. Defendants 11-13 and 21 principally claim title through Mihir Kumar by virtue of a registered deed of exchange being Number 8948 dated 28.11.1992.

On the aforesaid assertions the defendants prayed for dismissal of the suit.

Upon consideration of the respective pleadings of the parties the trial Court framed five issues for determination.

At the trial the plaintiffs examined as many as three witnesses while the defendants examined four witnesses. Both parties also adduced oral and documentary evidence in support of their respective cases.

During the pendency of the appeal the plaintiffs obtained leave to amend the plaint and pursuant thereto P.W.1 was recalled and further examined on 05.09.2018.

Upon conclusion of the trial the Senior Assistant Judge by judgment and decree dated 26.11.2012 dismissed the suit.

Being aggrieved thereby the plaintiffs preferred Title Appeal Number 3 of 2013 before the District Judge, Rajbari. Upon transfer the appeal was heard by the Additional District Judge, First Court, Rajbari who by judgment and decree dated 06.03.2023 allowed the appeal and reversed the judgment and decree of the trial Court.

Being dissatisfied with the judgment and decree passed in appeal defendants 1, 2, 8, 9 and 14 have preferred the instant Civil Revision in which Rule was issued on 03.05.2023.

Learned Senior Advocate Mr. Md. Nurul Amin along with Mr. Sheikh Md. Tariqul Islam appearing on behalf of the petitioners submits that the appellate Court committed error of law resulting in failure of justice in decreeing the suit without properly appreciating that the plaintiffs had utterly failed to prove the alleged settlement in favour of Prasanna Kumar Mondal. According to the learned Advocate the impugned judgment has been delivered upon a complete misreading of the evidence and non-consideration of material facts and documents on record. He further submits that the appellate Court misconstrued the documentary evidence and failed to appreciate that unless the plaintiffs established their title to the suit property in accordance with law no decree for partition could legally be granted.

He next submits that the plaintiffs failed to adduce any cogent or convincing evidence to establish that Debendra and Gyanendra granted settlement of the disputed land in favour of Tofazzal Hossain. He further contends that the appellate Court overlooked a material discrepancy inasmuch as the annual rent of the alleged tenancy as recited in the decree passed in Title Appeal Number 70 of 1993 is materially different from the rent pleaded by the plaintiffs in the present plaint. According to the learned Advocate this vital inconsistency goes to the root of the plaintiffs' case but the appellate Court failed to notice or consider the same thereby making the impugned judgment legally unsustainable.

Referring to Order Number 53 dated 08.08.2018 passed by the appellate Court Mr. Amin further submits that after P.W.1 had been recalled for further examination on 05.09.2018 the defendant-respondents were under the Civil Rules and Orders entitled to prior notice so as to enable them to cross-examine the recalled witness. However no such notice was ever served upon them. Consequently the plaintiffs succeeded in exhibiting the documents relied upon by them without affording the defendants any opportunity of cross-examination. As such the said documents cannot legally be used as evidence against the defendants or as proof of the plaintiffs' title.

The learned Advocate further submits that it is well-settled principle of law that a private Dakhila requires strict proof before it can be relied upon. In the present case according to him the plaintiffs utterly failed to prove the alleged Dakhila granted in favour of Prasanna Kumar Mondal in the manner required by law. Nevertheless the appellate Court accepted the alleged Amalnama and Dakhila without assigning any lawful or convincing reason thereby committing error of law occasioning failure of justice.

He further submits that the instant suit involves complicated and seriously disputed questions of title which cannot appropriately be adjudicated in a suit for partition and therefore the suit itself is not maintainable.

Referring to Exhibit-3 series, Exhibit-4 series, Exhibit-9 series and Exhibit-10 series the learned Advocate submits that the plaintiffs have principally founded their claim upon the judgments and decrees passed in Title Suit Number 607 of 1970 and Title Suit Number 20 of 1993 although the present defendants were not parties to either of those proceedings. According to him the appellate Court failed altogether to examine the legal effect of those judgments and decrees or to consider whether they could lawfully bind the present defendants or establish the plaintiffs' title.

He also contends that Exhibit-Ga(1) constitutes a complete bar to the plaintiffs' claim of title. Since the plaintiffs neither sought cancellation of nor any declaratory relief against the said document it continues to remain operative and binding. Therefore so long as Exhibit-Ga(1) remains effective no decree could legally be passed in favour of the plaintiffs.

In conclusion Mr. Amin submits that the plaintiffs have miserably failed to establish their case by reliable evidence and the impugned judgment and decree are legally unsustainable. He accordingly prays that the Rule be made absolute.

On the other hand learned Senior Advocate Mr. Shasti Sarker along with Mr. Forhad Ahmed appearing on behalf of the plaintiff-opposite parties submits that the appellate Court upon proper appreciation of oral and documentary evidence as well as the applicable principles of law rightly reversed the judgment of the trial Court and decreed the suit. According to the learned Advocate the impugned judgment is based upon correct findings of fact and law and therefore calls for no interference in the exercise of the revisional jurisdiction of this Court.

The learned Advocate further submits that after the plaint was amended in appeal P.W.1 was recalled and produced the rent receipts, the Amalnama, the landlord's Dakhila and other relevant documents establishing the plaintiffs' title. Although the

defendants had the opportunity to challenge the said evidence P.W.1 was not cross-examined with regard to those documents. Consequently the documents having been admitted in evidence without objection carry due evidentiary and presumptive value which cannot subsequently be displaced except in accordance with law. He therefore contends that the appellate Court rightly relied upon those documents in decreeing the suit.

Referring to the deposition of D.W.2 the learned Advocate submits that D.W.2 unequivocally admitted that the land measuring 1.56 acres described in Exhibit-1(Gha) originally belonged to the predecessors-in-interest of the plaintiffs. According to him such admission strikes at the very root of the defence case and substantially supports the plaintiffs' claim of title.

He next refers to Section 90 of the Evidence Act and submits that Exhibit-6 namely the Amalnama and Exhibit-7 namely the landlord's Dakhila are both more than thirty years old. Accordingly they enjoy the statutory presumption of due execution and authenticity contemplated under Section 90 of the Evidence Act. In support of this proposition he has relied upon the decision in the case of Additional Deputy Commissioner (Revenue) Vs. Md. Reazuddin and others reported in 5

BLC(AD) 76 and Razzak Bepari and others Vs. Entajuddin and others reported in 29 BLC(AD) 407.

The learned Advocate further submits that the plaintiffs claim title through settlements allegedly granted by Gyanendra and Debendra whereas the defendants themselves claim title through purchase from Mihir Kumar. Thus according to him there exists no real dispute regarding the source of title and the appellate Court rightly decreed the suit upon proper appreciation of the evidence on record.

He also argues that the predecessors-in-interest of the plaintiffs had already acquired valid right, title and interest in respect of the suit land measuring 1.56 acres by virtue of the judgment and decree passed in Title Appeal Number 70 of 1993 arising out of Title Suit Number 20 of 1993 as evidenced by Exhibit-3 series. Since the said judgment and decree continue to remain valid and have not been set aside by any competent Court the plaintiffs are legally entitled to rely upon the same in support of their claim.

Replying to the contention advanced on behalf of the petitioners regarding the maintainability of the suit Mr. Sarker submits that in a suit for partition the Court is competent to determine and finally decide all incidental questions relating to title between the co-sharers. In support of this proposition he has

placed reliance upon the decision in the case of Cinmoy Chowdhury ad another Vs. Mridul Chowdhury and others reported in 55 DLR(AD) 115.

Finally the learned Advocate submits that the plaintiffs have successfully established their case by cogent oral and documentary evidence and the appellate Court has committed no illegality in reversing the judgment of the trial Court and therefore the Rule being devoid of merit is liable to be discharged.

I have heard the learned Senior Advocates appearing for the respective parties and perused the materials on record and gone through the judgments and decrees passed by the Courts below.

The plaintiffs claim the suit land on the basis of two independent settlements. The first relates to 1.56 acres of land allegedly settled in favour of their predecessor Prasanna Kumar Mondal by the recorded tenants of R.S. Khatian Numbers 135 and 168/3. The trial Court disbelieved the said claim on the ground that the plaint contained no specific pleading regarding the alleged settlement and the plaintiffs failed to prove the same by satisfactory evidence.

During the pendency of the appeal plaintiffs amended the plaint and in support of the amended pleadings P.W.1 was

recalled and further examined on 05.09.2018. He deposed that Annada Charan Guha Roy and the other recorded tenants of R.S. Khatian Numbers 135 and 168/3 granted settlement of 1.56 acres of land in favour of Prasanna Kumar Mondal by an Amalnama dated 5th Jaishtha, 1351 B.S. which was marked as Exhibit-6. He further stated that on the strength of the said settlement S.A. Khatian Number 174 was prepared in the name of Prasanna Kumar Mondal which was marked as Exhibit-1 (Gha). According to him Kamala Guha Roy subsequently filed Title Suit Number 607 of 1970 against Prasanna Kumar Mondal challenging his title. The suit was dismissed by judgment dated 31.08.1976 and decree dated 25.10.1976 marked as Exhibits-8 and 9 respectively. The appeal therefrom being Title Appeal Number 171 of 1976 was also dismissed by judgment dated 21.09.1978 and decree dated 28.09.1978 marked as Exhibits-10 and 11 respectively. He further stated that in the said suit the present landlord's Dakhila Exhibit-5(kha) had been exhibited as Exhibit-B and the present Amalnama Exhibit-6 had been exhibited as Exhibit-A.

It appears from the record that P.W.1 was not cross-examined after his recall. The submission of the learned Senior Advocate for the petitioners is that no notice was served upon the defendants in accordance with the Civil Rules and Orders

and as such they were deprived of the opportunity to cross-examine the witness. Since this issue relates to the legality of the appellate proceeding I shall deal with the same at the appropriate stage.

The appellate Court accepted the Amalnama by observing only that upon perusal of Exhibit-6 it appeared to be genuine and nothing contrary was found therein. In my view such a general observation without examining the legal nature of the document and the surrounding circumstances under which the alleged settlement was claimed to have been created cannot by itself be sufficient to establish the plaintiffs' title.

It is a settled principle of law that an Amalnama may either amount to an agreement to grant a lease or may itself operate as an instrument creating a lease. Before acting upon such a document the Court is required to determine its true legal character. If the document merely evidences an agreement to lease registration may not be necessary. On the other hand if it itself creates or grants the lease the question of compulsory registration arises. Even where registration is not required the transaction must be proved by satisfactory and reliable evidence. Ordinarily an unregistered Amalnama is expected to be supported by contemporaneous rent receipts showing that the settlement was actually acted upon.

In the present case neither the plaint nor Exhibit-6 contains any recital regarding payment of nazar or salami or any other premium at the time of the alleged settlement. Although payment of nazar or salami is not an indispensable requirement in every case but its absence is undoubtedly a relevant circumstance while appreciating the genuineness of the alleged settlement. Under the Bengal Tenancy Act a landlord ordinarily settled land upon such terms as were agreed between the parties. The complete absence of any recital regarding consideration therefore called for careful examination but the appellate Court did not address this aspect at all.

There is another important circumstance. The alleged settlement is said to have been made on 5th Jaishtha, 1351 B.S. If that be so the earliest rent receipts issued immediately after the settlement would have been the best evidence in support of the plaintiffs' case. However neither the plaint nor the evidence discloses any original Dakhila for the years 1351, 1352, 1353 or 1354 B.S. No such document has been produced and no explanation has been offered for its non-production. Thus the alleged settlement of 1351 B.S. remains unsupported by any contemporaneous rent receipt relating to the period immediately following the alleged settlement which is generally granted in a sitting.

The plaintiffs have instead relied upon Exhibit-5(kha). A plain reading of the document shows that rent for the years 1355-1357 B.S. was realised together and the annual rent inclusive of cess and education cess was fixed at 5 taka 10 annas and 8 pies. It further appears that education cess was realised even for the year 1355 B.S. The Appellate Division in the case of Jaynal Abedin vs. Aliar Rahman reported in 3 BLD (AD) 105 observed that education cess was imposed with effect from 1356 B.S. The apparent inconsistency appearing in Exhibit-5(kha) therefore required careful judicial scrutiny but the impugned judgment is completely silent on this material aspect.

Another important aspect also appears to have escaped the notice of the appellate Court. A careful reading of the judgment passed in Title Appeal Number 171 of 1976 marked as Exhibit-10 shows that the appellate Court observed that the landlord's Dakhila then marked as Exhibit-B and now marked as Exhibit-5(kha) proved payment of rent by Prasanna Kumar Mondal from the very inception of the alleged settlement in 1351 B.S. up to 1357 B.S. However the Dakhila itself does not support such observation. On the contrary Exhibit-5(kha) shows payment of rent only for the years 1355-1357 8.5. There is no recital in the document showing payment of rent for the years 1351-1354 B.S.

The finding recorded in Exhibit-10 is therefore not borne out by the document itself.

In such circumstances the observation made in Exhibit-10 amounts to a misreading of the documentary evidence affecting the merit of the case and touching the root of the plaintiffs' claim. The appellate Court before placing reliance upon the said judgment ought to have examined whether the finding was consistent with the document itself. Unfortunately no such exercise was undertaken.

It is also an admitted position that the present defendants were not parties either to Title Suit Number 607 of 1970 or to Title Appeal Number 171 of 1976. Therefore those documents are not binding upon the present defendants. Having regard to the facts and circumstances of the present case the defendants are not precluded from challenging the correctness of those judgments by way of defence under Section 44 of the Evidence Act. In this regard I find considerable force in the submission advanced by Mr. Md. Nurul Amin. The principle laid down as referred to by Mr. Amin in the case of Nurul Islam Vs. Morshedul Alam reported in 64 DLR(AD) 3 is applicable to the present facts.

The plaintiffs have further relied upon the registered kabala deed dated 01.08.1970 marked as Exhibit-2 whereby

Prasanna Kumar Mondal transferred the land in favour of Tofazzal Hossain. If Prasanna Kumar Mondal had in fact acquired title by virtue of the settlement allegedly made on 5th Jaishtha, 1351 B.S. one would naturally expect the said deed to contain at least a recital regarding the source of such title. Surprisingly Exhibit-2 is completely silent about the alleged Amalnama or the settlement. Although such omission may not by itself be decisive but it certainly does not lend any support to the plaintiffs' case regarding the alleged settlement.

The plaintiffs have also relied upon S.A. Khatian Number 174 marked as Exhibit-1 (Gha). A careful examination of the document shows that it is not a finally published S.A. Khatian. Rather it is a modified khatian prepared under Section 46 of the State Acquisition and Tenancy Act. The certified copy thereof was obtained on 20.10.1970 whereas the S.A. Record of the locality had already been finally published on 05.08.1965. The appellate Court did not examine the legal effect or evidentiary value of this document. A modified khatian prepared after the final publication of the S.A. Record cannot without examining the basis and legality of such modification be treated as collateral evidence of the plaintiffs' title.

The law is equally settled that a private landlord's Dakhila requires strict proof. In the present case the plaintiffs were

required to prove not only the execution of the Amalnama but also the genuineness of the Dakhila relied upon in support thereof. Having considered the evidence on record I find that the plaintiffs have failed to prove the alleged settlement and the consequential Dakhila in accordance with law. The appellate Court accepted the plaintiffs' claim by merely observing that Exhibit-6 appeared to be genuine without examining the material inconsistencies and legal issues discussed above. The finding recorded in favour of the plaintiffs regarding the first settlement therefore cannot be sustained in law.

The plaintiffs further claim that the recorded tenants namely Debendra and Gyanendra of R.S. Khatian Numbers 135 and 168/3 jointly granted settlement of another $35\frac{1}{2}$ decimals of land in favour of their predecessor named Tofazzal Hossain upon receipt of adequate nazar salami and at an annual rent of 2 taka 5 annas and 3 pies. According to the amended plaint filed on 23.07.2012 the said settlement was allegedly made on 20th Kartik, 1352 B.S. through a Landlord's Dakhila. However no such Dakhila was produced before the Court in support of the alleged settlement. The plaintiffs further assert that during the S.A. operation the said $35\frac{1}{2}$ decimals of land was erroneously recorded in the names of the former landlords in S.A. Khatian

Number 137 marked as Exhibit-1(Kha) and S.A. Khatian Number 175 marked as Exhibit-1(Ga) instead of being recorded in the name of Tofazzal Hossain. On that allegation Tofazzal Hossain filed Title Suit Number 20 of 1993 in the Court of the Assistant Judge, Pangsha praying for declaration of title and confirmation of possession. The suit was dismissed by judgment dated 27.05.1993 as evidenced by Exhibits-3 series. Thereafter Title Appeal Number 73 of 1993 was preferred and the appellate Court by judgment and decree dated 31.07.1997 allowed the appeal as evidenced by Exhibits-4 series. On the strength of the said appellate decree the plaintiffs claim that they acquired right, title and possession in the said land.

It appears from the decree passed in Title Suit Number 20 of 1993 marked as Exhibit-3(Ka) that the recorded tenants of S.A. Khatian Numbers 137 and 175 were not impleaded as defendants in that suit. It is therefore evident that the judgments and decrees contained in Exhibits-3 series and 4 series are not binding upon the recorded tenants of the said khatians or upon persons claiming through them.

There is yet another material inconsistency. Exhibits-3 series show that the annual rent of the alleged settlement was 13 annas only whereas the plaintiffs have specifically pleaded in the amended plaint that the rent was fixed at 2 taka 5 annas and

3 pies. No explanation has been offered for this substantial discrepancy. This inconsistency goes to the root of the plaintiffs' claim and seriously affects the credibility of the alleged settlement.

On the other hand the defendants' case appears to be consistent with the documentary evidence on record. Their case is that after the death of Debendra his two daughters Shanti Rani and Chitra Rani inherited his interest. S.A. Khatian Number 137 comprises 25 decimals of land and S.A. Khatian Number 175 comprises 27 decimals making a total of 52 decimals. Shanti Rani, Chitra Rani and Gyanendra died leaving behind Nagendra who inherited the property. After the death of Nagendra his son Mihir Kumar transferred the said 52 decimals of land to defendant 1 by registered kabala deed Number 7033 dated 19.08.1995 marked as Exhibit-Ga(1).

Significantly the plaintiffs themselves have admitted the existence of the said registered deed in the plaint and have not raised any specific objection either to the transfer or to the extent of 52 decimals conveyed thereunder. If the said 52 decimals are excluded from the total area comprised in R.S. Khatian Numbers 135 and 168/3 the remaining land comes to 1.56 acres which is precisely the land covered by the plaintiffs' first alleged settlement. The plaintiffs have already failed to

establish the validity of that settlement. Consequently no independent title survives in their favour over the remaining land.

The evidence further shows that the defendants are in possession of different portions of the suit property by inheritance, purchase and exchange. Although from the evidence of D.W.1 and D.W.2 it appears that the plaintiffs are in possession of a portion of the suit land such possession in the absence of proof of lawful title cannot confer any legal right. Since the plaintiffs have failed to establish their title to the suit property their possession if any is no more than that of trespassers.

In the facts and circumstances of the present case no complicated question of title requiring further investigation survives for determination. The plaintiffs have failed to prove either of the two settlements upon which their entire claim is founded. Consequently the decisions cited by the learned Advocate for the opposite parties reported in 5 BLC(AD) 76, 29 BLC(AD) 407 and 55 DLR(AD) 115 are clearly distinguishable on facts and have no application to the present case.

For the reasons stated above I find substance in the submissions advanced by the learned Advocate for the petitioners. The impugned judgment and decree passed by the

appellate Court suffer from misreading and non-consideration of material evidence and cannot be sustained in law.

Accordingly the Rule is made absolute.

The judgment and decree dated 06.03.2023 passed by the Additional District Judge, 1st Court, Rajbari in Title Appeal Number 3 of 2013 are hereby set aside and those dated 26.11.2012 passed by the Assistant Judge dismissing the suit are restored.

The order of status quo passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J:

Naher-B.O