

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No.4214 of 2016*

*Md. Salim Miah and others*

*.....Petitioners.*

*-Versus-*

*Sathi Begum and others.*

*.....Opposite parties.*

*Mr. M. Mushfiqur Rahman, Advocete.*

*.....For the petitioners.*

*None appears.*

*.....For the Opposite party no. 1.*

*Heard and Judgment on 10.07.2024.*

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party no. 1 to show cause as to why judgment and decree dated 11.08.2016 passed by the District Judge, Narsingdi in Title Appeal No. 52 of 2015 affirming those dated 25.02.2015 passed by the Senior Assistant Judge, Narsingdi Sadar, Narsingdi in Title Suit No. 141 of 2011 dismissing the suit should not be set aside.

Petitioners as plaintiff filed Title Suit being No. 141 of 2011 before the Court of Assistant Judge, Narsingdi Sadar, Narsingdi for declaration of title and for further declaration that recording of S.A. and R.S. khatian were wrong.

Plaint Case in short inter-alia, is that, the original owners of the suit land in C. S. Plot No. 1 for 59 decimals of land were Sheikh Jabbor Ali, Sheikh Muksud Ali and Sheikh Mohobbot Ali and their names were finalized and correctly published in C. S. Record No. 9. Sheikh Muksud Ali being owner of 19.67 decimals of land in the disputed Plot died leaving behind 02 (two) sons namely, Suna Miah and Lal Miah as his legal heirs. Suna Miah being owner in the disputed plot died leaving behind his full brother Lal Miah and 01 (one) daughter namely, Hajera as his legal heirs. Lal Miah being owner of the suit land by inheritance died leaving behind 04 (four) sons namely, Rafiq, Mafiz Uddin, Jalal Uddin, Falu and 01 (one) daughter, namely, Romija as his legal heirs. Sheikh Mohobbot Ali being owner of 19.67 decimals of land in the disputed plot died leaving behind 03 (three) sons, namely, Razzak, Hekim and Modon Ali as his legal heirs. Razzak Miah being owner of the suit land by inheritance died leaving behind 05 (five) sons, namely, Manik Miah, Nurul Islam, Hanif Miah, Matin, Joynal and 03 (three) daughters namely, Abir Jan, Sayeda and Buri Bibi alias Hawa Bibi as his legal heirs. Hekim Miah being owner of the suit land by inheritance died leaving behind 02 (two) sons namely Musleh Uddin, Easob Ali and 02 (two) daughters namely Mewa Bibi and Abeda as his legal heirs. Modon Ali being owner of the suit land by inheritance died

leaving behind his wife Jabeda, 02 (two) sons namely Shahjalal, Alauddin, and 05 (five) daughters namely Meherjan, Akhterer Nesa, Sufia, Anowara and Romija as his legal heirs. These heirs being owners in the disputed land filed a Title Suit for Partition Suit being No. 2 of 1993 and got a preliminary decree on 20.09.1995. In the said decree, Hajera as defendant No.17 obtained 6 decimals of land, Rafiq, Mafiz, Jalal Uddin, Faru and Rumi Begum as defendant Nos. 12-16 obtained 15.50 decimals of land, Musleh Uddin, Fasob Ali as defendant Nos. 1 and 2 obtained 4 decimals of land, Manik Miah, Nurul Islam, Hanif Miah, Matin, Joynal, Abir Jan, Sayeda and Buri Bibi alias Hawa Bibi as defendant Nos. 7(Ka)-7(Kha) obtained 5 decimals of land in the disputed Plot. Upon submission of the local investigation report by the learned Advocate Commissioner, the partition suit was finally decreed on 22.04.1996. After that, upon filing of the Execution Case being No. 1 of 1996 by the concerned plaintiffs, the said final decree was executed on 06.10.1996. Hajera, Hanif, Matin, Manik, Nurul Islam Nuru and Joynal being owners and possessors in the disputed plot by inheritance and by obtaining saham through the Title Suit No. 2 of 1993, transferred 10 decimals of land of Bikarkandi Mouja to Vikchan Miah and delivered possession by a registered ewaj-dalil vide No. 9145 dated 10.10.1999. It is to be noted that the said owners obtained

possession of 7 decimals of land in Bikarkandi Mouja. The said 10 decimals of land is adjacent to another plot in Bikarkandi Mouja of Vikchan Miah measuring 7 decimals of land. Shahjalal, Hanif, Mafiz Uddin, Jalal, Musleh Uddin and Easob Ali being owners and possessors in the disputed plot by inheritance and by obtaining saham through the Title Suit No. 2 of 1993, sold and delivered possession of 3 decimals of land in the disputed khatian to Hamid Miah by a registered subkobola deed vide No. 10045 dated 09.12.1997. Hamid Miah being owner and possessor of 3 decimals of land sold the same to Vikchan Miah by a registered subkobola deed vide No. 10459 dated 22.11.2000 and delivered possession. Vikchan Miah being owner and possessor of 13 decimals of land in the disputed Plot died leaving behind 01 (one) wife namely, Most Sufia Begum 04 (four) sons namely Md. Salim Miah, Md. Akhter Hossain, Md. Shah Alam and Md. Sani Miah and 03 (three) daughters namely Most. Bina Begum, Most. Minara Begum and Most. Nasima Begum. The above mentioned persons being owners of 13 decimals of land by inheritance possess the same by cultivating and harvesting the land in presence and knowledge of others of the locality. Haji Afsar Uddin, father of the Added-Defendant No.15 was Defendant No.18 in the Title Suit No. 2 of 1993 and though summons was served upon him, since he had no possession over the suit land, he did not appear

and file any written statement in the said Title Suit. Haji Afsar Uddin as plaintiff challenged the Judgment and decree of the Title Suit No. 2 of 1993 in Title Suit No. 37 of 1996 before the Sub Judge, 1st Court, Narsingdi and the same was dismissed upon considering the evidences by judgment passed on 19.06.2000. Hence, the predecessor of the Added-Defendant No.15 never succeeded to establish possession over the suit land which is why the Added-Defendant No.15 in no way is owner or possessor of the suit land either by inheritance or in any other manner. Shahjalal and others as plaintiffs of the Title Suit No. 2 of 1993 obtained possession over the suit land from court on 06.10.1996 and obtained mutation in their names by opening Mutation and Separation Case No. 321/06-07 dated 24.12.2006 and till date in possession of the same as a regular tax payee to the government. The draft publication of the on going B. S. vide Khatian No. 2132 has been prepared in their names as well for an area measuring 12 decimals and 01 (one) decimals of land went into road and 59 decimals of land recorded under C.S. Plot No. 1 has wrongly and incorrectly been recorded in S. A Record No. 10 in the name of one Muhon Puddar, who has no title and possession over the same. In fact, the names of Suna Miah, Lal Miah, Razzak, Hekim ought to have recorded in the S. A. Record No. 10. After that, the same 59 decimals of land under C. S. Plot No.1 was converted to

R. S. Plot No. 1/382 of R. S. Record No. 498 again, wrongly and incorrectly recorded in the name of Muhon Puddar, who has no title and possession of the suit land and in fact, the names of Suna Miah, Lal Miah, Razzak, Hekim ought to have recorded in the R. S. Record No. 498. Defendants neither had nor have any title or possession over the suit land. Plaintiffs went to the local Tahshil Office to provide rent for the current year, the concerned Tahshilder refused to receive the same as because of wrong recording of the S. A. and R. S. Khatians in the name of Rai Muhon Puddar instead of Suna Miah, Lal Miah, Razzak. Hekim and having received the above information and after obtaining certified copies of S. A. Record No 10 and R.S Record No. 498 from local Record Office on 07.03.2011 being properly informed about the incorrect Record of Rights and their title over the suit land being clouded, Plaintiffs have filed the instant Title Suit seeking for declaration of title and correction of records.

Opposite party no. 1 as being added-defendant no.15 contested the suit by filing written statements, denying the plaint case alleging, inter-alia, that Sheikh Jabbor Ali, Sheikh Muksud Ali and Sheikh Mohobbot Ali were owners of 268 decimals of land including the 59 decimals of the disputed land recorded in C. S. Record No. 9 under four different plots and the said names were finally published correctly in the said C.S. Record No. 9.

Sheikh Mohobbot Ali being owner of 89.34 decimals of land including the 19.67 decimals of disputed land died leaving behind 04 (four) sons namely Abdul Hekim, Modon Ali, Abdul Rezzak, and Habiz Uddin as his legal heirs who being inherited of the said 19.67 decimals of land sold the same to one Rai Muhon Puddar by a subkobola Deed No. 4932 dated 21.07.1953 and delivered possession and relinquished their titles over the same. The property of the other two C. S. recorded owners, i.e. Sheikh Jabbor Ali, Sheikh Muksud Ali was auctioned. After that, by auction-purchases, Shri Gagon Chandra Shaha, Shri Mahesh Chandra Shaha, both sons of late Shri Gouri Chandra Shaha obtained 20 decimals of land in the disputed plot and Shri Bipin Chandra Mudak, son of late Bhoirob Chandra Mudak, Shri Dharendra Chandra Mudak and Shri Rabindra Chandra Mudak, both sons of late Chandra Kumar Mudak obtained 19.75 decimals of land in the disputed. Due to natural calamity the aforesaid owners lost their auction-purchase papers thus is unable to submit any papers in this regard in Court and this explanation has been entered in Deed No. 744 dated 28.01.1954. The abovementioned owners having title and possession of 39.75 decimals of land by auction- purchase in the disputed Plot sold the same to Rai Muhon Puddar by two separate a registered Deed Nos. 744 and 6911 dated 28.01.1954 and 27.12.1955 respectively and delivered

possession. Rai Muhon Puddar by 03 (three) deeds became owner of the disputed 59 decimals of land and the S. A. Record No. 10 in this regard has been correctly prepared in his name. The same area of land has been converted to R. S Plot No. 382 in R. S. Record No. 498 which was recorded correctly. Rai Muhon Paddar being the owner in the disputed Plot died leaving behind 02 (two) sons namely, Gouranga Lal Puddar and Rashik Puddar and each of the sons obtained 29.50 decimals of land. Rashik Lal Puddar being owner of 29.50 decimals of land by inheritance died leaving behind 02 (two) sons Shukumar Puddar and Ranjit Lal Puddar. But during the lifetime of Rashik Lal Puddar, one of his sons, Ranjit Lal Puddar left the Country before 1970 and thereafter the said Rashik Lal Puddar made a gift of the whole of 29.50 decimals of land to his other son Shukumar Puddar by a Deed of Gift vide No. 6029 dated 09.08.1988 and delivered possession of the same. Gouranga Lal Puddar and Shukumar Puddar being owners and possessors of 59 decimals of land in total by inheritance and by gift respectively, transferred the same to the predecessor of the added defendant namely Al-Haj Afsar Uddin Bhuiyan by a registered Subkobola Deed No. 7947 dated 06.09.1992 and delivered possession. That the said father of the added defendant being owner of the suit land by purchase enjoyed the same in the knowledge of the Plaintiffs and others of the locality, died leaving



behind 02 (two) wives namely Nurjahan Begum and Mumtaz Begum and 06 (six) sons, namely, Sentu Bhuiyan, Monir Bhuiyan, Tufazzal Bhuiyan, Sohel Bhuiyan, Shajahan Bhuiyan, Mufazzal Bhuiyan, and Awal Bhuiyan and 10 (ten) daughters namely Asma Begum, Shirina Begum, Shahana Begum, Beauty Begum, Bobita Begum, Tazma Begum, Karoni Begum, Moslema Begum, Halima Begum and the contesting defendant Sathi Begum. Hence, each wife obtained 3.69 decimals, each son obtained 4.30 decimals, and each daughter obtained 2.15 decimals of land. Awal Bhuiyan being owner of 4.30 decimals of land by inheritance died leaving behind 01 (one) son namely Mamun Bhuiyan and 01 (one) daughter namely Moushumi. Thus the said son obtained 2.86 decimals of land and the daughter obtained 1.44 decimals of land even though the wives of Afsar Uddin were owner in the disputed Pot through their husband but they were not added as necessary parties in the instant suit and hence, the suit suffers from defect of parties. Predecessors of the instant plaintiffs filed a suit for partition regarding the suit land being Title Suit No. 2 or 1993. In the said suit for partition, the father of the added-defendant Haji Afsar Uddin was added as a necessary party but no summons of the same had been served properly and the Plaintiffs in connivance with the process server, at the back of Afsar Uddin shown the summons to be served accordingly. Afsar Uddin could

not contest the said partition suit since he had no knowledge about the same. Predecessor of the added-defendant, Shukumar Puddar has been added as Defendant No. 1 in the instant suit, who left the Country permanently to live in India in 1996 but the plaintiffs in connivance with the process server have shown the summons to be served accordingly upon him through defendant no 2, which is frivolous. The deeds of ownership of the plaintiffs vide Ewaj Deed No. 9145 dated 10.10.1999, registered Subkobola Deed No. 10045 dated 09.12.1997 and registered Subkobola Deed No. 10459 dated 22.11.2000 are fake, illegal, frivolous and ineffective. The 04 (four) sons of Sheikh Mohobbot Ali namely Abdul Hekim, Modon Ali, Abdul Razzak and Habiz Uddin being owner of 19.66 decimals of land sold 19.75 decimals of land to Rai Muhon Puddar by a subkobola Deed No. 4932 dated 21.07.1953 and the heirs of the recorded owners have no title over the suit land and thus they could not have the right to transfer the suit land elsewhere. Plaintiffs in connection with the said vendors have frivolously created the deeds and had never obtained possession of the suit land by those deeds. The added-defendant being owner of 2.15 decimals of suit land by inheritance enjoys the possession of the same by cultivating and harvesting seasonal crops and the heirs of Haji Afsar Uddin are in possession of the 59 decimals of disputed land for long time and the Plaintiffs have no title and

possession over the same. Plaintiffs are not entitled to any relief from the instant suit, the narration in the plaint and the deeds submitted by the Plaintiffs are false, concocted and frivolous and the suit is liable to be dismissed with costs.

Learned Senior Assistant Judge, Narsingdi Sadar, Narsingdi dismissed the suit on contest by its judgment and decree dated 25.02.2015.

Challenging the said judgment and decree, plaintiff-petitioners preferred Title Appeal No. 52 of 2015 before the Court of District Judge, Narsingdi, who by the impugned judgment and decree dated 11.08.2016 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree plaintiff-petitioners obtained the instant rule.

Mr. M. Mushfiqur Rahman, the learned advocate appearing for the petitioners drawing my attention to the judgment of the court below submits that when admittedly it is found by the court below that defendant could not prove the story of their auction sale and purchase by their predecessor by producing any documents and thereby defendants contention was not proved. On the contrary, although the court below concurrently found that

plaintiffs predecessor got a valid decree and plaintiff obtained the suit by purchase from the admitted C.S. recorded tenant and subsequently they have contested a suit and their title was confirmed in a Partition Suit being No. 02 of 1993 and that decree was although been challenged by the predecessor of the defendant but lost in, thereby their title and possession into the suit land is been confirmed through court even then most arbitrarily dismissed the suit on making out a presumptive assertion, which is not sustainable in law.

Learned advocate further submits that when the court below held that suit was barred by limitation since it was filed beyond 06 years from the date of their knowledge but it is now settled by the decision of our Apex Court that plaintiff is not required to file a suit from the date of their knowledge of recording the khatians but from the time when his title as being threatened in any way by the defendant as being ascertained by their lordships in 10 MLR (AD) 2005 at page 313. The impugned judgment is thus not sustainable in law, which is liable to be set aside and plaintiffs may get a decree as prayed for.

Although the matter is posted in the list for several days with the name of the learned advocate of the opposite party but no one appears to oppose the rule.

Heard the learned Advocate of the petitioners and perused the impugned judgment and the L.C. Records.

This is a suit for declaration of title. Since the S.A. and R.S. khatian were wrong and plaintiffs went to pay rent for the current year, which was refused and not been accepted by the local Tahsildar. Plaintiff was compelled to file the suit for declaration of title and further declaration that the said S.A and R.S khatina was wrong. Admittedly Suit property was belonged to Sheikh Jabbor Ali, Sheikh Maksud Ali and Sheikh Mohobbat Ali. C.S. Khatian was correctly recorded into their name. Maksud Ali being the owner of 19.67 decimals of land died leaving behind his 02 sons Suna Miah and Lal Miah. Suna Miah died leaving behind 01 daughter Hajera and brother Lal Miah. Lal Miah died leaving behind 04 sons namely Rafiq, Mafiz Uddin, Jalal Uddin and Falu and 01 daughter Ramija Begum. Sheikh Mohobbat Ali was owning of 19.67 decimals of land died leaving behind 03 sons Razzak, Hekim and Modon Ali. Razzak died leaving behind 05 sons Manik Miah, Nurul Islam, Hanif Miah, Matin and Joynal and 03 daughters Abir Jan, Sayeda and Buri Bibi alias Hawa Bibi. Hekim died leaving behind 02 sons Musleh Uddin and Easob Ali and 02 daughters Mewa Bibi and Abeda. Modon died leaving behind 01 widow Jabeda, 02 sons Shahjalal and Alauddin and 05

daughters Meherjan, Akterer Nessa, Sufia, Anowara and Ramija. One heirs of Modon being plaintiff filed a Partition Suit being no. 02 of 1993, which was decreed on compromise. In that suit, defendant no. 17 Hajera got .0600 ajutangsha of land. The heirs of Lal Mia, the son of Maksud Ali Rafik, Mafiz, Jalaluddin, Falu and Ramija Begum became were the defendant no. 12-16 got .1550 ajutangsha land. The heirs of Hekim, the son of C.S. recorded tenant Mohobbat Ali, son of Hekim, Mosleh Uddin, Easob Ali got .0400 ajutangsha land. The heirs of Razzak, the son of Mohobbat Ali, 05 sons and 03 daughters of defendant nos. 7(ka)-7(Jha) got .0500 ajutangsha land. Hajera, the daughter of Muksud Ali and Hanif and others, the 05 sons of Razzak, the heirs of Mohobbat Ali sold .0100 ajutangsha land to Vick Chan Miah by way of registered Ewaj deed no. 9145 dated 10.10.1999. The heirs of Modon Ali named shahjalal; Hanif, the son of Razzak; Mafiz Uddin and Jalal Uddin, the son of Lal Miah; Mosleh Uddin and Easob Ali, the son of Hekim getting a saham in Partition Suit being no. 02 of 1993 transferred from .0300 ajutangsha land to Hamid Miah by way of registered sale deed no. 10045 dated 09.12.1997. Said Hamid Miah transferred the said .0300 ajutangsha land to Vick Chand Miah by way of registered sale deed no. 10459 dated 22.11.2000. By this way Vick Chand Miah while becoming the owner and possessor of .01300 ajutangsha

land died leaving behind plaintiffs as legal heirs, who enjoying the suit property by cultivation and plantation. Defendant's father Afsar Uddin was the defendant no. 18 in the said Partition Suit being no. 02 of 1993, who thereafter filed Title Suit No. 37 of 1996, challenging the said decree of the partition suit, which was ultimately dismissed on contest by the judgment and decree dated 19.06.2003. During B.R.S operation plaintiffs correctly recorded their name in V.P. khatian no. 2132 but plaintiff was refused to pay rent by the local Tahshildar saying that S.A. and R.S record was wrongly been recorded. Plaintiff's title become clouded and hence he filed this suit.

According to the contested defendant no. 15, suit property was originally belonged to Sheikh Jabbor Ali, sheikh Muksud Ali and Sheikh Mohobbot Ali in equal share according to C.S. khatian No. 9. Sheikh Mohobbot Ali while owning and possession 19.67 decimals of land along with other land total 89.34 decimals of land died leaving behind 04 sons namely Abdul Hekim, Modon Ali, Abdul Rezzak, and Habiz Uddin, who transferred 19.67 decimals of land to Rai Muhon Puddar by registered sale deed no. 4932 dated 21.07.1953. The property of Sheikh Jabbor Ali and Sheikh Muksud Ali were sold in auction due to arrears of rent of 20 decimals of land from the said auction property Shri Gagon

Chandra Shaha and Shri Mahesh Chandra shaha purchased 20 decimals of land and 19.75 decimals of land were purchased by Bhoirob Chandra Mudak, Shri Dhirendra Chandra Mudak and Shri Rabindra Chandra Mudak but the original papers of the said sale were lost on natural disasters. But according to them the said contention were written in the deed no. 744 dated 28.01.1954. Said Shri Bipul Chandra Madok, Shri Direndra Chandra Modak and Shri Rabindra Chandra Modak transferred their purchased 19.75 decimals of land in auction sold to Shri Ray Mohon Poddar vide registered sale deed No. 6911 dated 27.12.1955. Shri Gogon chandra Saha and Shri Mohem Chandra Shaha sold 20 decimals of land to Rai Muhon Puddar by registered sale deed no. 744 dated 28.01.1954. By these way Rai Muhon Puddar became owner of 59 decimals of land and S.A. khatian was correctly been recorded into his name thereon. Rai Muhon Puddar died leaving behind 02 sons namly Gouranga Lal Poddar and Rashik Lal Poddar who thus acquired to 29.50 decimals of land each. Rashik Lal Poddar thereafter died leaving behind 02 sons namely Sukumar Poddar and Ranjit Lal Poddar. Ranjil Lal Poddar, the son of Rashik Lal Poddar left this country and permanently resided in India before 1970. Thereafter Sukumar Poddar the owner of his share on measuring 29.50 decimals of land, which was gifted to him by way of registered deed of gift no. 6029 dated 09.08.1988. The said



Gouranga Lal Poddar and Sukumar Poddar thereafter transferred the said 59 decimals of land to Afsar Uddin Bhuiyan, the father of the defendant by registered sale deed no. 7947 dated 06.09.1992. Afsar Uddin died leaving behind 02 widows, 06 sons and defendant no. 15 along with other 10 daughters, who are now owning and possessing the suit property. Plaintiff admittedly filed the suit for partition. In the said suit although Afsar Uddin made party but no notice was served upon him. The added defendant no. 15 is owning and possessing of 2.56 decimals of land since the plaintiff's predecessor sold their entire share to Roy Mohon Poddar and handed over the possession to him. Plaintiffs being a subsequent purchaser thus did not acquire a right title and possession over the suit land. Plaintiffs title is false and liable to be dismissed with cost.

Although courts below framed different issues but practically in the suit main question to be considered whether plaintiffs became the subsequent purchaser from the C.S recorded tenant have acquired any title and their title and possession being confirmed through Partition Suit being no. 02 of 1993 and the S.A. and R.S. recording was wrong or not. Alternatively whether the defendant acquired the property through Afsar Uddin, who purchased the property from Rai Muhon Puddar, who purchased

the property from the auction purchaser when the suit property was sold in auction due to arrears of rent or not. Both the courts below concurrently dismissed the suit.

Now let us see how the judgment of the court below is justified.

Courts below concurrently upon discussing the evidence on record found that defendants contention regarding the selling the property in auction due to arrears of rent was not been proved by any evidence. Appellate Court being the last court of fact although found that plaintiff has submitted original document of his title deeds on purchasing the suit property is the original heirs of C.S. recorded tenant but since these documents were not formally been proved, he disbelieved these documents. All these documents were not been challenged by defendant as are null and void. Moreover, both the courts below concurrently found that plaintiffs by himself instituted earlier a partition suit being Partition Suit No. 02 of 1993 and got a compromise decree and that decree was made final and formally been executed through the advocate commissioner in court and they are in possession and that decree is still in existence. Although this decree was challenged by the Afsar Uddin, the father of the defendant, who are also defendant in the earlier suit but that suit being Title Suit No. 37 of 1996 was

dismissed on contest by the judgment and decree dated 19.06.2000 as would apparent from the document exhibited in court as exhibit no. 9. Judgment and decree of the said partition suit was exhibited in court as exhibit No. 3 and 4 and final decree of the said partition suit being Partition Suit No. 02 of 1993 was also been exhibited in court as exhibit no. 6. Upon perusal of the said decree it appears that plaintiff Md. Salim Miah and others got their share separated by way of metes and bounds through advocate commissioner through court on 11.01.1996. All these are lying in the records but it is surprising to notice that the learned District Judge while dismissing the appeal without noticing all these documents most arbitrarily held that

"দেওয়ানী ২/১৯৯৩ নং মোকদ্দমায় সোলে সূত্রে যে রায় ও ডিক্রী হয় তাহাতে মদন আলীর ওয়ারীশগন নালিশী দাগে কোন ছুমি প্রাপ্ত হন নাই। কাজেই মদন আলীর ওয়ারিশ শাহজালাল, উক্ত দলিল মূলে নালিশী ছুমি হস্তান্তর করে তাহা বৈধ নহে। প্রদর্শনী-১৩ ও ১৪ মূলে ভিকচান এবং হামিদ মিয়ার স্বত্ব যেখানে প্রতিষ্ঠিত হয় নাই সেখানে পরবর্তী হস্তান্তরের কোন বৈধতা নাই। কাজেই বাদীপক্ষ নালিশী জমিতে তাহাদের স্বত্ব প্রমাণে ব্যর্থ হইয়াছে।"

This observation is nothing but a non-reading of the evidence. When the plaintiff's title and possession has been affirmed through court in an earlier instituted suit and the said suit being Partition Suit No. 02 of 1993 and the said decree is still in existence (although being challenged by defendant's predecessor in earlier instituted Title Suit No. 37 of 1996 but failed) and the defendants failed to prove their story of purchasing the suit property as well as the auction proceedings, the plaintiff is entitled to get a decree as prayed for, failing which both the courts below concurrently committed an error of law resulting error in the decision occasioning failure of justice. Moreover, in the case of Government of Bangladesh Vs. Har Chandra Nath and others reported in 10 MLR (AD) 2005 at page 313, it is held by our Apex Court that

"a real or rightful owner in possession of land is not required to file a suit merely because his land has been wrongly recorded in the record of rights until a claim is raised on the basis of the said wrong recording or e.g. the Tahshilder refuses to accept rent from the owner because of such wrong recording of the khatian."

In the instant suit, plaintiffs claimed that since he was refused to accept rent by the local Tahshildar, his title became clouded and he was compelled to file this suit on 15.03.2011 mentioning that cause of action on 07.03.2011 and accordingly this suit can not be said to be barred by limitation. Both the courts below concurrently and arbitrarily as well as illegally held that suit was barred by limitation. The said findings is not sustainable in law.

Regard being had to the above law, facts and circumstances of the case, I am of the opinion that both the courts below concurrently committed error of law in not decreeing the suit in favour of the plaintiff. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

In that view of the matter, I find merits in this rule. Accordingly the Rule is made absolute without any order as to costs. The judgment and decree passed by the courts below are hereby set aside and the suit is decreed in favour of the plaintiffs and recording of S.A. and R.S khatians are not correct and the plaintiff has valid title over the suit land and the title and possession of the plaintiff is hereby affirmed.

Send down the L.C.Records and communicate the judgment to the court below at once.