

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 5617 of 2024
Shahanaz Begum....Petitioner
-Versus-
Motiur Rahman, being dead, his heirs
1(Ka) Momotaj Begum and others....Opposite parties
Mr. M.M. Shafiullah, Advocate
....For the petitioner
Mr. Khair Ezaz Maswood, Senior Advocate with
Mr. Sk. Sharifuddin, Advocate
....For the opposite party Nos. 1(Ka) to 1(Ga)
Heard on 15.07.2026, 02.08.2026 and 03.08.2026
Judgment delivered on 06.08.2026

On an application under Section 115(1) of the Code of Civil Procedure, 1908, Rule was issued calling upon the opposite party Nos. 1(ka) to 1(ga) to show cause as to why the impugned judgment and decree dated 29.10.2024 passed by the Additional District Judge, Court No. 1, Mymensingh in Other Appeal No. 329 of 2014 affirming the judgment and decree dated 22.09.2014 (decree signed on 29.09.2014) passed by the Senior Assistant Judge, Sadar, Mymensingh in Other Class Suit No. 315 of 2011 decreeing the suit for declaration of title and recovery of khas possession should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The plaint case, in a nutshell, is that Motiur Rahman, husband of opposite party No. 1(ka) and father of opposite party Nos. 1(kha) and 1(ga) filed Other Class Suit No. 315 of 2011 in the Court of Senior Assistant Judge, Sadar, Mymensingh, impleading the petitioner Shahanaz Begum and opposite parties Nos. 2 to 4 as defendants, praying for a decree of declaration of title and recovery of khas possession, stating that Bajit Sheikh was the C.S. recorded owner of 3.68 acres of land appertaining to C.S. Khatian No. 368, C.S. Dag Nos. 2611 and 2612, including 78 decimals of land of C.S. Dag No. 2736. Said Bajit Sheikh died intestate, leaving behind his four sons (1) Jamirdi Sheikh, (2) Kanu Sheikh, (3) Doyal Sheikh and (4) Hisabdi Sheikh. Jamirdi Sheikh died intestate, leaving behind his sons Mohor, Bohor and Mokku. After the death of Bajit Sheikh, 3.68 acres of land was recorded in the name of Kanu Sheikh, Doyal Sheikh, and Hisabdi Sheikh, all sons of Bajit Sheikh and Mohor, Bohor and Mokku, sons of late Jamirdi Sheikh, in MROR (S.A.) Khatian No. 915, Dag No. 2736, 2611 and 2612 (Exhibit 1). Thereafter, Alal Uddin @ Alfaz, son of Mohor, sold 20 decimals of land of C.S. Dag No. 2736 out of 78 decimals of land in favour of Ujir Ali and Nazir Uddin @ Nazir by deed No. 315 dated 06.01.1967 (Exhibit 4). Thereafter, Nazir Uddin @ Nazir sold 20 decimals of land of C.S. Dag No. 2736 along with 5 decimals of land of another dag to Abdul Gani by deed No. 15748

dated 30.12.1986 (Exhibit 5), and Ujir Ali was the witness to the said deed. Thereafter, B.S. Khatian No. 3610 (Exhibit 2) was prepared in the name of Abdul Gani regarding 25 decimals of land (Exhibit 2). After that, Abdul Gani sold 15 decimals of land by deed No. 4034 dated 27.03.1994 of C.S. Dag No. 2736 (Exhibit 3) in favour of Motiur Rahman. After purchase, 15 decimals of land were recorded in the name of the plaintiff, Md. Motiur Rahman in Khatian No. 4180 (Exhibit 6 series). Thus, the plaintiff Motiur Rahman became the owner of 15 decimals of the suit land. It has been asserted that after purchasing the suit land on 27.03.1994 (Exhibit 3), the possession was handed over by Abdul Gani to the plaintiff Md. Motiur Rahman. Unfortunately, on 27.04.2009, Kamal Ahmed, husband of the defendant Shahanaz Begum, dispossessed the plaintiff, evicting his caretaker and forcibly entered into possession of the suit land. The plaintiff filed a complaint to the police regarding the dispossession, but no steps have been taken by the police, and finding no other alternative, the plaintiff filed the suit for declaration of title and recovery of khas possession.

The defendant No. 1, Most: Shahanaz Begum, contested the suit by filing written statement denying the assertion made in the plaint, stating that Bajit Sheikh was the C.S. recorded tenant of 3.68 acres of land appertaining to C.S. Khatian No. 368. After the death of Bajit Sheikh, his son Jamirdi Sheikh obtained the suit land. Jamirdi Sheikh died intestate, leaving behind his three sons, Bohordi Sheikh, Shohordi Sheikh and Mokku Sheikh, and three daughters, Surman, Jarimon and Karimon. After the death of Jamirdi Sheikh, in an amicable partition, the heirs of Jamirdi Sheikh obtained the land of the disputed dag. The three daughters of Jamirdi Sheikh obtained 10 decimals of land of the disputed dag No. 2736, and they also obtained 65 decimals of land of Dag Nos. 2524, 2611 and 2612. The daughters of Jamirdi Sheikh used to possess the land through their brothers, but the MROR (S.A.) record (Exhibit 1) was wrongly prepared only in the name of the three sons of Jamirdi Sheikh. While three daughters of Jamirdi Sheikh were possessing the said 75 decimals of land, they sold 75 decimals of land, including 10 decimals of land of C.S. Dag No. 2736, by deed No. 10891 dated 24.12.1966 (Exhibit Ja) to their brother Bohordi Sheikh. After that, Dulal Miah, son of Bohordi Sheikh, sold 5 decimals of land of C.S. Dag No. 2736 purchased by Bohordi Sheikh by deed No. 9516 dated 08.10.1996 (Exhibit Gha) to Md. Harun Ar Rashid, and possession was handed over to him. After purchase, Khatian No. 3373 (Exhibit Zha/3) was prepared in 1997 regarding 5 decimals of land in the name of Md. Harun Ar Rashid, and he paid the rent through DCR (Exhibit Zha/3). Dulal Miah, son of Bohordi Sheikh, sold 5 decimals of land of C.S. Dag No. 2736 to Shahanaz Begum by deed No. 1782 dated 18.02.1997

(Exhibit Uma). After that, Khatian No. 3398, Dag No. 2736 was prepared in the name of Shahanaz Begum in respect of 5 decimals of land (Exhibit Zha/4), and she paid the rent through DCR (Exhibit Zha). Shahanaz Begum purchased 5 decimals of land of C.S. Dag No. 2736 from Md. Harun Ar Rashid by deed No. 9363 dated 29.09.1997 (Exhibit Chha) and took possession of the land. Thereafter, Khatian No. 3517, Dag No. 2736 was recorded on 29.12.1998 regarding 10 decimals of her total purchased land (Exhibit Zha/5), and she also paid rent of 10 decimals of land purchased by her (Exhibit Zha/1). After purchasing 5 decimals of land on 18.02.1997, Shahanaz Begum filled up the land and constructed a house, and after purchasing another 5 decimals of land on 29.09.1997, she again filled up the land and extended her house by constructing a tin-shed semi-pucca building and latrine. She also planted trees on her purchased land. Kamal Ahmed, husband of the defendant Shahanaz Begum, purchased 9 decimals of land of C.S. Dag No. 2736 from Alal Uddin @ Alfaz, son of Shohordi @ Mohordi by deed No. 7042 dated 29.06.2005 (Exhibit Cha). Kamal Ahmed, husband of defendant Shahanaz Begum, died on 22.10.2009 and thereafter, she planted trees on the 9 decimals of land purchased by her husband. After constructing a house, the defendant Shahanaz Begum obtained the electric connection in 2002 in the suit land after complying with due process of law and till today paying the electric bills and rent in favour of the government.

During trial, the plaintiff examined 2 P.Ws, and the defendant examined 6 D.Ws to prove their respective cases. After concluding the trial, the trial Court, by judgment and decree dated 22.09.2014, decreed the suit in favour of the plaintiff and against the defendant on contest, against which the defendant filed Other Appeal No. 329 of 2014 in the Court of District Judge, Mymensingh. The Additional District Judge, Court No. 1, Mymensingh heard the appeal and, by impugned judgment and decree dated 29.10.2024, dismissed the appeal, affirming the judgment and decree passed by the trial Court. Thereafter, the defendant obtained the Rule.

Learned Advocate Mr. M.M. Shafiullah, appearing on behalf of the defendant-petitioner, submits that out of the total 3.68 decimals of land of C.S. Khatian No. 368, 92 decimals of land was wrongly recorded only in the name of Mohor, Bohor and Mokku Sheikh, sons of Jamirdi Sheikh, along with brothers of Jamirdi Sheikh in the MROR (S.A.) Khatian No. 915, Dag No. 2736, 2611, excluding three daughters of Jamirdi Sheikh, i.e., (1) Surman, (2) Jarimon and (3) Karimon. In an amicable partition Surman, Jarimon and Karimon obtained 10 decimals of land of C.S. Dag No. 2736 and by deed No. 10891 dated 24.12.1966 (exhibit Ja) sold 10 decimals of land of C.S. Dag No. 2736 along with .65

decimals of other land to her brother Bohordi Sheikh and both the Courts below did not consider the sale of 10 decimals of land by deed No. 10891 dated 24.12.1966 (exhibit Ja). He further submits that Dulal Miah, son of Bohordi Sheikh, sold 5 decimals of land by deed No. 9516 dated 08.10.1996 (Exhibit Gha) to Md. Harun Ar Rashid, who subsequently sold 5 decimals of the suit land to defendant-petitioner Shahanaz Begum by deed No. 1782 dated 18.02.1997 (Exhibit Uma). Dulal Miah also sold 5 decimals of land by deed No. 9363 dated 29.09.1997 (Exhibit Chha) to Shahanaz Begum, and after purchasing 10 decimals of land, she recorded the purchased land in Khatian No. 3517, Dag No. 2736 on 29.12.1998 (Exhibit Zha/5). He also submits that Kamal Ahmed, husband of the defendant Shahanaz Begum, purchased 9 decimals of land by deed No. 7042 dated 29.06.2005 (Exhibit 6) from Alauddin @ Alfaz, son of Shohordi @ Bohordi Sheikh. Thus, the defendant Shahanaz Begum purchased 10 decimals of land and inherited 9 decimals of land from her husband, Kamal Ahmed. Although the record was prepared in the name of Bohordi Sheikh, father of Dulal Miah, and purchaser Md. Harun Ar Rashid, vendor of Shahanaz Begum, but the trial Court, on misreading and non-reading of the material evidence, illegally arrived at a finding that no record was prepared in the name of the vendors of the defendants. Having drawn the attention of this Court to the demand note (exhibit Kha), security deposit (exhibit Kha/1), certificates issued by the PDB (exhibits Ka and Ka/1) and electric bills (exhibits Ga to Ga/95) submits that after constructing a house in 2002, the defendant-petitioner Shahanaz Begum was possessing the suit land through her tenant, but both the Courts below miserably failed to consider those exhibits and illegally arrived at a finding as to the possession of the plaintiff. Finally, he submits that both the Courts below did not consider the deed No. 10891 dated 24.12.1966 (exhibit Ja) and the exhibits Ka, Ka/1, Kha, Kha/1, Ga to Ga/95, Gha, Umo, Chha and Zha and arrived at a perverse finding as to the title of the plaintiff. Having drawn the attention of this Court to the plaint and the deed No. 315 dated 06.01.1967 (exhibit 4) and deed No. 15748 dated 30.12.1986 (exhibit 5) he humbly submits that there is no nexus between the plaint and the boundary of the said deeds (exhibits 4 and 5), and the plaintiff failed to prove the boundary of the suit land, and he is not entitled to get a decree of title and recovery of khas possession. The learned Advocate lastly submits that without partition of the joint property of Bajit Sheikh, the suit for declaration of title and recovery of khas possession is not maintainable in law. He prayed for making the Rule absolute by setting aside the impugned judgments and decrees passed by the Courts below.

Learned Senior Advocate Mr. Khair Ezaz Maswood, appearing along with the learned Advocate Mr. Sk. Sharifuddin on behalf of the opposite party Nos. 1(Ka) to 1(Ga) submits that Mohor, son of Jamirdi Sheikh, inherited 20 decimals of land of C.S. Khatian No. 368, C.S. Dag No. 2736 out of 78 decimals of land and by deed No. 315 dated 06.01.1967 (exhibit 4) Alauddin @ Alfaz, son of Mohor transferred 20 decimals of land of C.S. Dag No. 2736 in favour of Nazir Uddin @ Nazir and Ujir Ali and they transferred 20 decimals of land of C.S. Dag No. 2736 along with 5 decimals of land of another dag by deed No. 15748 dated 30.12.1986 (exhibit 5) to Abdul Gani. In an amicable settlement, Nazir Uddin @ Nazir obtained the entire 20 decimals of land purchased by Nazir Uddin @ Nazir and Ujir Ali, and he acknowledged the sale of 20 decimals of land as an attesting witness to the said deed. Subsequently, Abdul Gani sold 15 decimals of land of C.S. Dag No. 2736 by deed No. 4034 dated 27.03.1994 (Exhibit 3) to the plaintiff and handed over possession, and the plaintiff is now possessing the suit land, and 15 decimals of land were recorded in the name of the plaintiff Md. Motiur Rahman in Khatian No. 4180 (Exhibit 6), who paid the rent of the suit land, but unfortunately, Kamal Ahmed, husband of the defendant Shahanaz Begum, on 27.04.2009 dispossessed the plaintiff by evicting his caretaker from the suit land. Having drawn the attention of this Court to the impugned judgments and decrees passed by the Courts below, learned Advocate submits that both the Courts below, considering the evidence of both the parties, arrived at a concurrent finding of fact that the plaintiff got the title to the suit land and no record was prepared in the name of the vendors of the defendant. He lastly submits that the plaintiff purchased the land on 27.03.1994 and continuously possessed the suit land for more than 12 years, i.e. till the dispossession on 27.04.2009. Therefore, he is not required to file a suit for partition. Having drawn the attention of this Court to the written statement filed by the defendant, learned Advocate submits that the defendant made a contradictory statement in the written statement as to the date of entering into the possession of the suit land, which proved that the defendant had no possession before alleged dispossession of the plaintiff from the suit land. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. M.M. Shafiullah, who appeared on behalf of the defendant-petitioner, and the learned Senior Advocate Mr. Khair Ezaz Maswood, who appeared along with the learned Advocate Mr. Sk. Sharifuddin on behalf of the opposite party Nos. 1(Ka) to 1(Ga), perused the evidence adduced by both the parties, the impugned judgments and decrees passed by the Courts below, and the records.

On perusal of the evidence, it is revealed that admittedly Bajit Sheikh is the owner of 3.68 acres of land appertaining to C.S. Khatian No. 368, C.S. Dag Nos. 2611 and 2612, including 78 decimals of land of C.S. Dag No. 2736, and Bajit Sheikh died intestate, leaving behind his four sons (1) Jamirdi Sheikh, (2) Kanu Sheikh, (3) Doyal Sheikh and (4) Hisabdi Sheikh. It is also admitted that after the death of Bajit Sheikh, 92 decimals of land were recorded in the name of Kanu Sheikh, Doyal Sheikh and Hisabdi Sheikh each, and 92 decimals of land were jointly recorded in the name of Mohor, Bohor and Mokku, sons of late Jamirdi Sheikh, in MROR (S.A.) Khatian No. 915, Dag No. 2736. 2611 and 2612 (Exhibit 1). Nothing has been stated in the plaint that 78 decimals of land of C.S. Dag No. 2736 is inherited by Mohor, Bohor and Mokku, sons of late Jamirdi Sheikh. In the absence of evidence, this Court is unable to arrive at a finding as to the total land inherited by Jamirdi Sheikh or Mohor, Bohor and Mokku, sons of Jamirdi Sheikh, in Dag No. 2736.

Although MROR (S.A.) Khatian No. 915, Dag Nos. 2736, 2611 and 2612 were jointly prepared in the name of Mohor, Bohor and Mokku Sheikh along with their three uncles, but on perusal of Deed No. 10891 dated 24.12.1966 (exhibit Ja) reveals that (1) Surman, (2) Jarimon and (3) Karimon, daughters of Jamiruddi Sheikh, sold 10 decimals of land of Dag No. 2736 and 65 decimals of land of other dag to their brother Bohordi Sheikh, son of Jamirdi Sheikh, which is not disputed by the plaintiff. The above evidence depicts that the MROR (S.A.) Khatian No. 915 was wrongly prepared, excluding three daughters of Jamirdi Sheikh, i.e. (1) Surman, (2) Jarimon and (3) Karimon.

Alal Uddin @ Alfaz, son of Mohor, transferred 20 decimals of land of Dag No. 2736 by deed No. 315 dated 06.01.1967 (exhibit 4) without stating any basis of inheritance from his father Mohor to Ujir Ali and Nazir Uddin @ Nazir. By amending the written statement, the defendant No. 1 asserted that in an amicable partition, Jamirdi Sheikh obtained the suit land. It is found that the plaintiff prayed for declaration of title on 15 decimals of land of C.S. Khatian No. 368, Dag No. 2736. In deed No. 9516 dated 08.10.1996 (exhibit Gha), it has been stated that Dulal Miah and Jalal Miah sold 5 decimals of land purchased by their father, Bohordi Sheikh, to Harun-Ar-Rashid by deed No. 10891 dated 24.12.1966 (exhibit Ja). No record was prepared in the name of Dulal Miah and Jalal Miah, sons of Bohordi Sheikh, and Alal Uddin @ Alfaz, son of Mohordi Sheikh. No evidence is adduced as to the total land inherited by Mohor from Dag No. 2736 and subsequently by Alal Uddin @ Alfaz, son of Mohor. Similarly, no statement is made in the written statement, or by D.Ws, as to the total land inherited by Bohordi Sheikh from Dag No. 2736. I am of the view that there is no basis of

ownership of 20 decimals of land sold by Alal Uddin @ Alfaz, son of Mohor, to Ujir Ali and Nazir Uddin @ Nazir by deed No. 315 dated 06.01.1967 (exhibit 4) and sale of 5 decimals of land by Dulal Miah and Jalal Miah, sons of Bohordi Sheikh, in favour of Md. Harun Ar Rashid by deed No. 9516 dated 08.10.1996 (exhibit Gha) and 5 decimals of land by deed No. 1782 dated 18.02.1997 (exhibit Uma) to defendant-petitioner Shahanaz Begum.

It is found that Alal Uddin @ Alfaz subsequently sold 9 decimals of land to Kamal Ahmed, husband of the defendant-petitioner Shahanaz Begum, by deed No. 7042 dated 29.06.2005 (Exhibit Cha) without any basis of title. It is apparent on the face of the records that there is no clear title of Dulal Miah and Jalal Miah, sons of Bohordi Sheikh, and Alal Uddin @ Alfaz, son of Mohordi, regarding the total land sold by them from C.S. Dag No. 2736. Therefore, the title of the plaintiff and the defendant-petitioner Shahanaz Begum could not be ascertained by this Court without partition of 78 decimals of land of C.S. Khatian 368, C.S. Dag No. 2736 amongst the heirs of C.S. recorded tenant Bajit Sheikh. I am of the view that the suit for declaration of title without partition of 78 decimals of land of C.S. Khatian No. 368, Dag No. 2736 amongst the heirs of Bajit Sheikh, the present suit for declaration of title is not maintainable.

The above view of this Court is supported by the decision made in the case of Enjaheruddin Mia alias Md. Enjaheruddin Mia Vs. Mohammad Hossain and others reported in (1998) 18 BLD (AD) 77 = 50 DLR (AD) 84, in which it has been held as under:

“The proviso to section 42 of the Specific Relief Act, 1877 (Act 1 of 1877) provides that no court shall make any declaration as to the plaintiff's legal character or his right to any property where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. So far as the instant case is concerned, the plaintiffs could have asked for either joint possession or partition as a co-sharer of the defendants in the disputed land, but they did not take any such stand in the lower appellate Court or even before the High Court Division. In such view of the matter it will not, at all be fair to put blame either upon the lower appellate court or the High Court Division that they did not declare plaintiffs' title to the part of the suit land.”

In this respect, it is relevant here to rely on a decision made in the case of Jahangir Alam (MD) and others vs Sabdir Ahmed and others reported in 22 BLC

(AD) 75, judgment dated 07.12.2016, in which our Apex Court (Syed Mahmud Hossain, J), as his Lordship was then, has held that;

“The principle expounded in the cases is that in the absence of partition of the undivided jote, the plaintiff cannot pray for simple declaration of title without praying for partition by impleading all the co-sharers. The plaintiff-appellants in the case in hand could have asked for joint possession in the disputed undivided jote left behind by Samadullah but they omitted to do so at any stage of the suit. Thus they are not entitled to declaration of title within the specific boundary in the undivided jote left behind by Samadullah in the absence of left out co-sharers”.....“The plaintiffs, without impleading all the heirs of Samadullah, prayed for declaration of title in the undivided jote left behind by Samadullah. The plaintiffs should have prayed for not only declaration of title but also for partition, impleading all the co-sharers of Samadullah.”

In the case of Mrs. Sabiha Khanom vs Jaitun Bibi @ Mrs. Syed Moazzem Hossain being dead, her heirs: Syed Nurul Hasan, (1998) reported in 3 MLR (AD) 15 = 3 BLC (AD) 175 in which our Apex Court has held as under;

“It must, however, be said that in the absence of any evidence of partition of CS plot No. 42 the plaintiff-petitioner is not without right and title to his portion of purchased land. Admittedly, his purchase is through a co-sharer. But he cannot claim declaration of title simpliciter unless he claims a partition for determining the respective shares of the four brothers in CS plot No. 42 and thereafter his own share of 0.13 acres therein. Hence, although the suit has ultimately been dismissed, the issue is still open, and the plaintiff is free to agitate the question of his title and entitlement to the specific portion of 0.13 acres from CS plot No.42 in a properly framed partition suit.”

It is found that Surman, Jarimon and Karimon, daughters of Jamirdi Sheikh, transferred 10 decimals of land by deed No. 10891 dated 24.12.1966 (exhibit Ja) to their brother Bohordi Sheikh and the plaintiff, although denied, did not dispute said deed executed by three daughters of Jamirdi Sheikh. I am of the view that MROR (S.A.) Khatian No. 915, Dag Nos. 2736, 2611 and 2612 (Exhibit 1) was wrongly recorded, excluding the daughters of Jamirdi Sheikh. MROR

(S.A.) record is not the basis of title. Therefore, the title of Surman, Jarimon and Karimon is not affected due to the wrong record of MROR (S.A.) Khatian No. 915 (Exhibit 1) excluding Surman, Jarimon and Karimon.

It is found that MROR (S.A.) Khatian No. 915, Dag Nos. 2736, 2611 and 2612 (exhibit 1) was wrongly prepared in the name of Mohor, Bohor and Mokku along with their three uncles, excluding Surman, Jarimon and Karimon, daughters of Jamirdi Sheikh. No record was prepared in the name of Alal Uddin @ Alfaz, son of Mohor, and Dulal Miah and Jalal Miah, sons of Bohordi Sheikh. The plaintiff claimed title through purchase from Alal Uddin @ Alfaz, and the defendant-petitioner claimed title by purchasing 5 decimals of land from Dulal Miah, son of Bohordi Sheikh, and 5 decimals of land from Harun-Ar-Rashid, who purchased from Dulal Miah and Jalal Miah, sons of Bohordi Sheikh. After selling 20 decimals of land by Alal Uddin @ Alfaz to Nazir Uddin @ Nazir and Ujir Ali, Alal Uddin @ Alfaz again transferred 9 decimals of land by deed No. 7042 dated 29.06.2005 (Exhibit Cha) to Kamal Ahmed, husband of the petitioner. B.S. Khatian No. 3610 in respect of 25 decimals of land was prepared in the name of Abdul Gani (Exhibit 2), and 15 decimals of land were recorded in the name of Md. Motiur Rahman in Khatian No. 4180 (Exhibit 6). Khatian No. 3373 (Exhibit Zha/3) was prepared in respect of 5 decimals of land in the name of Md. Harun Ar Rashid, vendor of the defendant Shahanaz Begum. Therefore, the finding arrived at by the trial Court that no khatian was prepared in the name of the vendors of the defendant-petitioner is incorrect, since both the plaintiff and the defendant purchased the land from the heirs of Mohor and Bohor, who are the MROR (S.A.) recorded owners. Only the C.S. record is undisputed, and the C.S. recorded owner is not bound to prove the basis of such record. The S.A. and R.S. records do not create any title, and such records will not prevail over the right and title of the real owner. If the plaintiff claims title based on the S.A. or R.S. record, he shall prove the basis of such records.

The above view of this Court is supported by the decision made in the case of Guru Charan Mondal and others vs. Sree Bhaba Sindhu Sarkar, and others reported in 13 MLR (AD) 6, in which it has been held that;

“In view of the fact that the kabala dated 9.5.1927 in favour of Chapala Bala is an admitted kabala and it has not been set aside by any competent court and in view of the fact that the plaintiffs proved their possession and also in view of the fact that the High Court Division after taking into consideration that the same land though has been recorded in R.S. and S.A. Khatian in favour of the defendants, but

such record will not prevail over the title of the plaintiffs, we do not find any reason to interfere with the judgment of the High Court Division.”

In this respect I recall the observation made by our Apex Court in the case of the Government of the People’s Republic of Bangladesh, represented by the Deputy Commissioner, Feni Vs. Har Chandra Nath and others, reported in 10 MLR (AD) 313, in which the Appellate Division has held that;

“It may be mentioned, the law is now settled that a real owner is not required to file the suit merely because his land has been wrongly recorded in the record of rights and he can very much wait until the person in whose name the record of rights has been wrongly prepared raised claim in the land of the rightful owner. In the instant case, the plaintiffs felt that their title to the land in suit has been clouded on and from April 6, 1989, when the Tahsildar refused to accept the rent from them, referring to the khatian in which their land was recorded in the name of the Government, and thereupon they were constrained to file the suit seeking declaration of title in the land in suit.”

On perusal of the deed No. 315 dated 06.01.1967 (Exhibit 4) sold by Alauddin @ Alfaz to Uzir Ali and Nazir Uddin @ Nazir and the deed No. 15748 dated 30.12.1986 (Exhibit 5) sold by Nazir Uddin @ Nazir, it appears that there is no boundary in those deeds. No evidence is adduced regarding partition of 78 decimals of land of C.S. Khatian No. 368, Dag No. 2736. Nothing has been stated in the plaint and by P W 1 as to how the boundary stated in the plaint attracts Exhibits 4 and 5.

Both the Courts below failed to consider that Surman, Jarimon and Karimon, daughters of Jamirdi Sheikh, sold 10 decimals of land of C.S. Khatian No. 368, C.S. Dag No. 2736 by deed No. 10891 dated 24..12.1966 (exhibit Ja) to Bohordi Sheikh, predecessor of the vendors of defendant-petitioner Shahanaz Begum and that Bohordi Sheikh also inherited land of suit dag No. 2736 from his father Jamirdi Sheikh. The plaintiff failed to prove the basis of ownership of 20 decimals of land sold by Alal Uddin @ Alfaz, son of Mohor, by deed No. 315 dated 06.01.1967 (exhibit 4) to Uhir Ali and Nazir Uddin @ Nazir, who sold suit land to Abdul Gani, vendor of the plaintiff. Therefore, I am of the view that the appellate Court below arrived at a wrong finding that the plaintiff purchased the suit land from the person who had title to the suit land.

On perusal of the evidence, it transpires that the defendant-petitioner Shahanaz Begum purchased 5 decimals of land by deed No. 1782 dated 18.02.1997 (exhibit Uma) and accordingly Khatian No. 3398, Dag No. 2736 was recorded in the name of Shahanaz Begum (exhibit Zha/4). She also purchased 5 decimals of land by deed No. 9363 dated 29.09.1997 (exhibit Chha), and finally, Khatian No. 3517, Dag No. 2736 (exhibit Zha) was recorded on 29.12.1998 in her name in respect of 10 decimals of land purchased by her through exhibits Uma and Chha, and she paid the rent through DCR (exhibit Zha/1).

In the written statement, D.W. 1 specifically stated that after purchasing 5 decimals of land, she filled up the land and constructed a house, and after purchasing another 5 decimals of land, she extended the house and constructed a tube-well. It has been specifically asserted by D.W. 1 that she got the electric connection in the suit land in 2002 and proved the demand note regarding the electric connection as exhibit Kha, security deposit regarding the electric connection as exhibit Kha/1, the certificate issued by the PDB regarding payment of the electric bills as exhibits Ka and Ka/1, and the electric bills as exhibits Ga to Ga/95. It has been asserted in the plaint and by P.W. 1 that after purchase, the plaintiff is possessing the land, making a ছাপরা ঘর through his caretaker. No statement is made in the plaint and by P.W. 1 that after purchase, he got the electric connection in his ছাপরা ঘর. The electric connection and the subsequent payment of electric bills by the defendant-petitioner Shahanaz Begum are not disputed by P.W. 1. I am of the view that after purchase 10 decimals of suit land in 1997 by Exhibits Umo and Chha, the defendant-petitioner Shahanaz Begum has been possessing 10 decimals of land, constructing a house therein. I do not find any evidence of dispossession of the plaintiff on 27.04.2009 by Kamal Ahmed, husband of the defendant-petitioner Shahanaz Begum. Therefore, the finding of the Courts below that before dispossession on 27.04.2009, the plaintiff was in possession of the suit land is hereby set aside.

In a suit for declaration of title and recovery of khas possession, the plaintiff shall prove his possession in and subsequent dispossession from specific boundary of the suit land. D.W. 2 Priyatosh Chandra Pal stated that he set up 14 RCC pillars in the suit land in favour of the defendant No. 1. D.W. 4 stated that after purchase, the defendant filled up the land and constructed a house. Both the courts below, without considering the exhibits Ka, Ka/1, Kha, Kha/1, Ga to Ga/95, Gha, Umo, Chha, Ja and Zha, arrived at a wrong finding as to the possession of the plaintiff before alleged dispossession. I am of the view that after purchase in 1997, the defendant-petitioner Shahanaz Begum has been possessing the suit land, getting an electric connection in her house constructed on 10

decimals of land, and the plaintiff failed to prove his possession in and subsequent dispossession from the suit land.

In view of the above evidence, findings and observations, I hold the view that both the Courts below, without considering the exhibits Ka, Ka/1, Kha, Kha/1, Ga to Ga/95, Gha, Umo, Chha, Ja and Zha, arrived at a wrong decision as to the title and possession of the plaintiff before alleged dispossession. The impugned judgments and decrees of both the Courts below suffer from misreading and non-reading of material evidence and thereby both the Courts below committed an error of law resulting in an error in the decision in decreeing the suit, occasioning failure of justice. The title of the parties can only be decided after partition of 78 decimals of land of C.S. Khatian No. 368, C.S. Dag No. 2736 amongst the heirs of Bajit Sheikh. However, purchasers of the suit land or the heirs of C.S. recorded tenant Bajit Sheikh are at liberty to file a suit for partition regarding 78 decimals of land of C.S. Khatian No. 368, Dag No. 2736.

With the above findings and observations, the Rule is made absolute.

The impugned judgments and decrees passed by the Courts below are hereby set aside.

The order of stay granted earlier by this Court at the time of issuance of the Rule on 26.11.2024 is hereby vacated.

Send down the lower Court's records at once.