Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice A. K. M. Rabiul Hassan

First Appeal No. 200 of 1995

Syed Mohsin Ali, being dead, his legal heirs, 1(a) Syeda Shaira Mohsin and others.

… Appellants

-versus-

Syed Mozammil Ali, being dead, his legal heirs, 1(a) Saira Banu and others.

... Respondents

Mr. Probir Neogi, Senior Advocate with
Mr. Choudhury Murshed Kamal Tipu, with
Mr. A.K. Khan Uzzal, with
Mr. Sumon Ali, and
Mr. Joydeepto Deb Chowdhury, Advocates

... for the appellants

Mr. M. Khaled Ahmed, Senior Advocate with
Mr. Md. Mainul Islam with
Mr.Mridul Datta with
Ms. Nasrin Sultana Rina with
Mr. Md. Al Amin Sheikh and
Ms. Nadia Mehrin, Advocates

...for the respondents

Heard on 20.08.2026; 25.08.2026; 31.08.2026 and 07.09.2026.

Judgment on 14.09.2026

A.K.M. Rabiul Hassan, J:

This first appeal is directed against the judgment and decree dated 28.09.1994 (decree signed on 03.10.1994) passed by the Subordinate Judge, First Court, Moulovibazar, in Title Suit No. 13 of 1990, decreeing the suit in part.

The facts for disposal of the appeal are that the present respondents, as plaintiffs, instituted Title Suit No. 13 of 1990 before the learned

Subordinate Judge, First Court, Moulovibazar, impleading the appellants and others as defendants, seeking the following reliefs:

(ক) নিম্ন ১ম তপশীলের ভূমিতে বাদীপক্ষের মৌরসী দখল ও বিরুদ্ধে দখল জনিত স্বত্ব থাকা সাব্যস্থ হওয়ার;

(খ) এবং২য় তপশীলের ভূমিতে বাদীপক্ষের দখলস্থিরতর থাকার;

(গ) ৩য় তপশীলের ভূমি হইতে ১-১৪নং বিবাদীগনের অন্যায় দখল রহিতক্রমে খাস দখল পাওয়ার;

(ঘ) এবং এই মোকদ্দমা নিষ্পত্তি না হওয়া পর্যন্ত ১ম তপশীলের অন্তর্গত ২য় তপশীলের ভূমি হইতে ১-১৪নং বিবাদীগন বাদীপক্ষকে বলেও বেআইনী মতে বেদখল না করার কি বাদীপক্ষের শান্তিপূর্ণ দখলে কোন প্রকার বাধা বিঘ্নসৃষ্টি না করার মর্মে ১-১৪নং বিবাদীগন উপর অচিরে অন্তবর্তীকালীন বিচারামলে অস্থায়ী এবং বিচারান্তে স্থায়ী নিষেধাজ্ঞা জারী হওয়ার;

(ঙ) আদালতের ন্যায় বিচারে আর যে যে উপকার পাওয়ার যোগ্য সাব্যস্থ হন তদরুপ উপকার পাওয়ার যোগ্য সাব্যস্থ্য হন তদরুপ উপকার পাওয়ার;

(চ) সর্বাবস্থায় আদালত ব্যয়সহ এ মোকদ্দমার ডিক্রি দিতে মর্জি হয়।

The plaintiffs' case is that the suit property, as described in the 1st Schedule, belonged to Taluk No. 49,747/8, Syed Miron, and has, from the very beginning, been recorded as homestead, garden, pond, bamboo grove, fallow land, graveyard, and arable land (*shail* land). During his lifetime, Syed Miron resided in the said land as a homestead, retained possession of the remaining lands, and enjoyed it until his death, leaving his only son, Syed Jowad Ali. Subsequently, Syed Jowad Ali passed away, leaving behind his only son, Syed Teg Ali. Thereafter, Syed Teg Ali died, leaving behind his two sons, Syed Ramzan Ali and Syed Arzan Ali, as his legal heirs. Syed Arzan Ali and Syed Ramzan Ali continued to hold joint possession. While in possession, Syed Ramzan Ali passed away, leaving behind his sons Syed Abdul Mannan, Syed Mozammil Ali alias Aftab Ali, Syed Abdun Nur, Syed Saleh Masud, Syed Cherag Ali, and Syed Tera Miah, and his daughters, named Syeda Nurunnessa and

Syeda Mostora Begum. Syed Arzan Ali passed away, leaving behind Syed Misir Ali and Syeda Salema Begum. Subsequently, Syed Misir Ali passed away, leaving behind his heirs Syed Israil, Syed Jiku Miah, Syed Selim, and his wife, Nurjahan Begum. Later, Syed Abdul Mannan died, leaving behind his sons (Defendant Nos. 4-7), daughters (Defendant Nos. 8-9), and his wife, Plaintiff No. 10, as his surviving heirs. Thus, the Plaintiffs are the successive and present legal heirs of the original owner, Syed Miron.

While these successive legal heirs of Syed Miron were in continuous, uninterrupted joint possession and enjoyment of the suit land for over a century, also using a portion of the land as a graveyard to bury family members. During the official survey, the key possessor, Syed Abdul Mannan, was absent from in the locality due to his government service elsewhere, and no other capable family member was present to look after the land. Taking advantage of this situation, Syed Anfar Ali and Syed Ashraf Ali (now-deceased) fraudulently recorded Dag Nos. 1 to 15 of the 1st Schedule in their names, despite having no right, title, or interest in the suit land. Furthermore, Dag No. 18 of the 1st Schedule was erroneously and fraudulently recorded in the names of Defendant Nos. 15-27 without the knowledge or presence of the Plaintiffs. The said survey records are entirely incorrect. The Plaintiffs are simple-minded individuals, and the said Defendants can't have any right or interest in the suit property, as they had no relation to Syed Miron, nor did any heir of Syed Miron ever transfer any part of the suit land to them. Believing the suit land was correctly recorded in their names, the Plaintiffs made no

enquiries into the survey records. However, in the first week of May 1979, while they went to the Tehsil office to pay land revenue, they learned that 5.80 acres of the suit land had been illegally recorded in equal shares in the names of the aforementioned Syed Ankar Ali and Syed Ashraf Ali. Upon further enquiry, the Plaintiffs discovered that the parent Syed Miron Taluk had been auctioned in 1954 for revenue arrears, that one Alhaj Keramat Ali of Kumra Kapan had purchased it, and that Syed Ashraf Ali had subsequently purchased 10.5 *Kedars* (approximately 3.15 acres) of land from the auction purchaser.

The plaintiffs further contended that they had no knowledge of the auction sale or of Syed Ashraf Ali's purchase. The auction sale was a mere paper transaction, and the auction purchaser never obtained physical possession of the suit land. Consequently, neither the auction purchase nor the subsequent purchase by Ashraf Ali was ever given effect on the ground; both were illegal, collusive, and paper transactions only. Upon learning of the ineffective auction purchase, the Plaintiffs searched for the auction purchaser and found that he had passed away. His son, Habibur Rahman, admitted that his father's auction purchase never resulted in physical possession and that they held no right, title, or interest in the suit property. Regarding his father's deed, Habibur Rahman agreed to execute a registered Deed of Relinquishment (*Na-dabi/Muktipatra*) and did so. He registered a Release Deed/Deed of Relinquishment on May 8, 1979, for 2.76 acres (after excluding 1.5 *Kedar*). In that deed, he acknowledged that the auction purchase was ineffective; that the Plaintiffs had uninterrupted possession and title, and that the auction was merely a collusive paper

transaction. Thus, the Plaintiffs, having denied any ineffective transfer or auction purchase, have been in peaceful, continuous, and uninterrupted possession of the entire 1st Schedule land, asserting their ancestral right and title to the exclusion of all others, for well over a century. However, because the erroneous survey and the wrong records clouded their title, the Plaintiffs initiated a Mutation Case before the Revenue Circle Officer, Moulvibazar, to correct the records for 3.15 acres (10.5 *Kedars*) and 17 decimals erroneously recorded under Defendant Nos. 15-27 with incorrect plot numbers, and to correct the remaining 2.65 acres. The Plaintiffs secured favourable orders up to the Board of Revenue. However, as per a Writ Petition filed by Defendant Nos. 1-7 regarding the 5.80 acres, this Court, by its judgment dated April 6, 1989, observed that the Plaintiffs' mutation matter did not fall under Section 143 of the State Acquisition and Tenancy (SAT) Act and held that such disputes fell within the jurisdiction of the Civil Court. As the records for 5.99 acres of the suit land remain erroneous, a cloud has been cast upon the Plaintiffs' title. Therefore, the Court must declare the Plaintiffs' title to the 1st Schedule land. Furthermore, Syed Ashraf Ali and his brother Syed Anfar Ali partitioned and enjoyed all their movable and immovable properties. As they had no right or interest in the suit land, they did not include it in their deed of partition. Had they possessed any title, they would certainly have included it. The total area of Syed Miron Taluk is 6.16 acres as per the survey (6 acres, 20 pows), not 5.80 acres as claimed by the Defendants.

Plaintiffs further contend that, in the homestead portion of the suit land, they constructed and repaired residential houses in which they have

continuously resided. The holding was duly registered in the Plaintiffs' names in the Municipal records, and they regularly pay municipal taxes. Notably, this Municipal holding was created while Defendant No. 1 was serving as the Municipal Chairman. The Defendants themselves have implicitly acknowledged the Plaintiffs' physical possession in the suit property. The residential houses have electric connections standing in the Plaintiffs' names. A telephone connection was also installed in the Plaintiffs' names in the homestead. The Plaintiffs erected the boundary pillars surrounding the suit property at their own expense, with the Defendants' knowledge. The Plaintiffs also held possession of the agricultural lands through sharecroppers (bargadars). The Plaintiffs made internal transfers of parts of the suit land pursuant to their mutual amicable division, while maintaining overall joint possession. Syed Misir Ali executed a deed on July 21, 1979, in favour of Syed Abdul Mannan and others in respect of Dag Nos. 4131/4906 and 4130/4907, though it was mistakenly recorded as Dag Nos. 4111/4906 and 4110/4907 in the survey map and Khatian. While the Plaintiffs were lawfully in possession during the pendency of Writ No. 425 of 1985 before the Honourable High Court, Defendant Nos. 1-7, accompanied by 100 to 150 hired men, unlawfully dispossessed the Plaintiffs on July 15 and 16, 1987, from their residential house situated in Dag No. 4131 of the 3rd Schedule (part of the 1st Schedule). They looted goods worth approximately Taka 10 Lac, including 10,000 bricks, firewood, concrete pillars, cement, gold ornaments, and clothing, and transported them by trucks. Since then, Defendant Nos. 1-14 have been illegally occupying the 3rd Schedule

residential property and adjoining lands. To cloud the Plaintiffs' title, Defendant Nos. 1-14 have manufactured spurious paper transactions. After the case was disposed of by the High Court, Defendant Nos. 1-14 collusively instituted Title Suit No. 19 of 1980 before the Court of the Senior Munsif, which was pending on appeal. In that suit, the Defendants fraudulently misused the nickname of Plaintiff No. 2 (Syed Mobasshir Ali) to fabricate testimony and evidence, even though Plaintiff No. 2 had never given any such testimony. Additionally, the Plaintiffs were unaware of Dag Nos. 4108/4109 in the names of Defendant Nos. 15-27 until they reviewed the records in the revenue proceedings. Defendant Nos. 15-27 have no right or title to the said plots. The cause of action of the present suit arose on July 15 and 16, 1987 (when the Plaintiffs were dispossessed of the western portion of Dag No. 4131 of the 3rd Schedule), on April 6, 1989 (the date of the Honourable High Court Division's judgment), and finally on March 20, 1990, when the Defendants threatened complete dispossession. Consequently, the Plaintiffs have instituted this suit.

Subsequently, the Defendant Nos. 1–7 entered appearance in the suit by filing a joint written statement, contesting the suit and opposing the relief sought by the Plaintiffs. They denied the material allegations of the plaint and, *inter alia*, that the suit is not maintainable in its present form and manner. Defendants' predecessor-in-interest, Syed Ashraf Ali, purchased the suit land from the auction purchaser, Keramat Ali, under a registered Kabala dated 13th Kartik, 1362 B.S. (corresponding to October 31, 1955), thereby acquiring full 16-anna ownership and possession. As the entire suit land is covered by that Kabala, a deed recognised by the

Plaintiffs themselves, the Plaintiffs acquired no right, title, interest, or possession under the alleged agreement/deed dated May 7, 1979. The deed relied upon by the Plaintiffs is collusive, void, inoperative, and fraudulent, and has no legal effect. The deceased Haji Keramat Ali left three sons and one daughter. The Plaintiffs arranged a marriage between Keramat Ali's son, Habibur Rahman, and the sister of Plaintiff No. 10 (Shamsunnahar Chowdhury). Exploiting this familial relationship and exerting undue influence over Habibur Rahman, who had no title, the Plaintiffs fabricated an inoperative Deed of Relinquishment (La-dabi). As no right, title, or interest of the plaintiffs in the suit land.

The contesting Defendants' further case is that, through a chain of successive transfers, their mother, Most. Akhtarunnessa Khatun, became the owner-in-possession of Plot Nos. 1–15, while their father, Syed Ashraf Ali, held 16-anna title and possession of Plot Nos. 16 and 17. When the entire property was auctioned for land revenue arrears, Md. Keramat Ali of Kamalpur purchased the entire 1st Schedule (Plot Nos. 1–17) and became the absolute owner in possession. Thereafter, the auction purchaser was in possession, Syed Ashraf Ali was employed in Kolkata. Consequently, his full brother, Syed Ankar Ali, was entrusted for managing the suit property and supervising all the family's movable and immovable assets. Taking advantage of Syed Ashraf Ali's absence in the country during the field survey, Syed Ankar Ali fraudulently added his own name alongside Syed Ashraf Ali's in the survey records. Upon returning to the country, when Syed Ashraf Ali sought an accounting of the properties from his brother, he discovered that Ankar Ali had recorded

his name jointly and had created single and joint deeds using funds provided entirely by Syed Ashraf Ali. This led to a dispute between the brothers. Local relatives intervened and mediated, deciding that jointly purchased properties, or those in Ankar Ali's name, should be partitioned. Accordingly, they executed an agreement (Ekrarnama) on July 10, 1964, followed by a registered Deed of Partition on August 1, 1964. Under the terms settled by the mediators, any property exclusively purchased by Syed Ashraf Ali, or belonging to his wife as Dower (Kabin), was to be excluded from the partition. Conversely, if any document or property registered in Ankar Ali's name was proven to belong to him, it would be subject to partition; however, any single deed in Ashraf Ali's name discovered after the partition would remain under his exclusive 16-anna title and possession. Later, the legal heirs of Syed Ankar Ali, influenced and funded by the Plaintiffs, filed Title Suit No. 19 of 1980 in the Munsif Court of Moulvibazar on January 12, 1980, claiming 3.21 acres of land listed in the 1st Schedule. In that suit, Plaintiff No. 2 (Syed Mobasshir Ali, alias Syed Abdul Nur) gave evidence admitting the contesting Defendants' right, title, and possession of 3.21 acres of the Syed Miron Taluk. Furthermore, in Title Suit No. 11 of 1980, the Plaintiff No. 2 appeared, signed, and deposed, explicitly admitting the contesting Defendants as the absolute owner of 5.80 acres of land. The Defendants' predecessor, Syed Ashraf Ali, purchased the entire land of Syed Miron Taluk from the auction purchaser, Md. Keramat Ali. However, the suit land, comprising Plot Nos. 1–17 of the 1st Schedule, falls squarely within the boundaries (Chouhaddi) described in the purchase deed dated 13th

Kartik, 1362 B.S. (October 31, 1955). A physical inspection confirms that the land matches these boundaries. Although the area was mistakenly stated, the boundary descriptions remain accurate and controlling. Exploiting the void Deed of Relinquishment dated May 7, 1979, Syed Abdul Mannan and others illegally influenced revenue officials and, without serving any notice on the contesting Defendants, fraudulently mutated 2.76 acres out of the 3.21 acres (wherein the Defendants' title was established) into their names behind the Defendants' backs. Upon discovering this, the contesting Defendants filed objections before the Circle Officer (Revenue). The C.O. (Revenue) rejected the mutation on the ground that complex questions of title were involved. The Plaintiffs filed subsequent appeals before higher revenue authorities, culminating in the Ministry of Land Enforcement, which declared the Plaintiffs' mutation illegal. When the Plaintiffs filed a Writ Petition before the High Court Division, the contesting Defendants also filed Writ Petition No. 1634 of 1988. The Honourable High Court Division then declared the Plaintiffs' mutation illegal by its judgment dated April 6, 1989.

The contesting Defendants' further case is that the original co-owners of the Syed Miron Taluk transferred their rights by various registered deeds dated 17th Ashwin, 1295 B.S.; 13th Kartik, 1331 B.S.; 1st Magh, 1342 B.S.; 29th Falgun, 1342 B.S.; and 9th Ashwin, 1360 B.S. (September 29, 1953). Syed Ashraf Ali purchased 1 Kani, 1.5 Ganda, and 10 Kora of land from Rezan Ullah and others. On 29th Falgun, 1342 B.S. (March 13, 1936), he purchased another ।। Powa of land by his own money. Although Syed Ankar Ali illegally included his name in that deed,

he subsequently executed a Deed of Relinquishment on April 4, 1936, acknowledging Ashraf Ali's sole ownership. Furthermore, on 9th Ashwin, 1360 B.S. (September 29, 1953), Syed Ankar Ali purchased।6।।Rekh of land in the name of Syed Anfar Ali using Syed Ashraf Ali's money, which Ashraf Ali later acquired through the aforementioned partition deed. Additionally, Syed Misir Ali, a permissive occupant under the Defendants' predecessor over 2।। Jyesthi of land, surrendered his permissive possession and executed a Deed of Relinquishment in favour of the Defendants' predecessor on September 3, 1964. Thus, Syed Ashraf Ali became the absolute owner-in-possession over Plot Nos. 1–15 of the 1st Schedule and later transferred it to his wife instead of her deferred Dower (Mahar). Syed Ashraf Ali was a well-established businessman living in Kolkata. Syed Abdul Mannan, the Plaintiff, was his nephew. As the Plaintiffs' predecessors had sold their properties and become destitute, Syed Ashraf Ali took their family to Kolkata and supported them. Later on, Syed Ashraf Ali returned to Bangladesh, constructed residential houses on the suit land, paved the pond ghat, and resided there. In 1964, he granted permissive occupation of a portion of the homestead land to the Plaintiffs, subject to their promise to vacate upon demand. In 1965, he mutated the suit property in his name under Mutation Case No. 331 of 1965, with the Plaintiffs' full knowledge. The contesting Defendants have since maintained ownership and possession of the homestead land through tenants. The Plaintiffs voluntarily surrendered possession of the homestead to the contesting Defendants. However, a few days later, at the instigation of enemies of the Defendants, Plaintiff No. 10 (Shamsunnahar

Chowdhury) filed a false criminal case (C.R. Case No. 290 of 1987 / C.R. No. 1187 of 1987) on August 1, 1987, before the Upazila Magistrate Court, Moulvibazar, falsely alleging forcible eviction and seeking recovery of possession. On January 27, 1990, the learned Court dismissed the false criminal case after trial. In fact, before the alleged date of the incident in that complaint, the Plaintiffs voluntarily handed over possession of their permissively occupied houses to the Defendants and left. Except for the permissively occupied homestead portion, the contesting Defendants have been in peaceful, open, and continuous possession of the suit property, cultivating paddy on the agricultural lands and leasing the homestead to tenants, for a period that far exceeds the statutory limitation period. Exploiting his permissive occupation, Plaintiff No. 10's husband, Syed Abdul Mannan, colluded with municipal employees and the then Municipal Chairman, Sajjadur Rahman Putul Miah (who was hostile towards Defendant No. 1, a competing candidate for the chairmanship), to illegally obtain a municipal building permit and to create a municipal holding record. He also obtained electricity and telephone connections in his name while acting as a permissive occupant. Regarding Plot Nos. 18 and 19 of the suit land, one Mashuk Miah is currently in possession by virtue of successive transfers from the legal heirs of Syed Ramzan Ali. The Plaintiffs had voluntarily abandoned the suit property and were living in rented accommodation elsewhere. The Defendants therefore pray that the suit be dismissed with costs.

On the pleadings above, the trial court framed the following issues:

1. Whether the Plaintiffs maintain symbolic possession of the suit land.
2. Whether Defendant Nos. 1–7 hold symbolic possession of the suit land.
3. Whether the Plaintiffs' symbolic possession of the suit land carries greater weight and legal significance than that of Defendant Nos. 1–7.
4. Whether the Plaintiffs have been in actual physical possession of the suit land continuously since before the State Acquisition (S.A.) survey, dating back to their predecessors-in-interest.
5. Whether Defendant Nos. 1–7 have acquired any ancestral right, title, interest, or any other legally enforceable right in the suit land.
6. Whether the Plaintiffs possess subsisting ancestral (*mourusi*) right, title, and interest in respect of the suit land.
7. Whether the Plaintiffs are entitled to a decree declaring their title in respect of the 1st Schedule land, a permanent injunction in respect of the 2nd Schedule land, and the recovery of khas (exclusive physical) possession in respect of the 3rd Schedule land, as prayed for.

During the trial, on behalf of all plaintiffs, plaintiff No. 2, as PW.1, gave evidence and exhibited the relevant documents marked as Exhibit Nos. 1, 2, 3(ক), 3(খ), 4 to 4(ট), 5 to 5(ঘ), 6 to 6(ঘ), 7 to 7(ঙ), 8, 9, 9(ক), 10 to 10(খ), 11, 11(ক), 12, 13, 14, 15, 15(ক), 16, 16(ক), 17, 17(ক), 18, 18ক, 19 to 19(ছ), 20, 21, 22, 22(ক), 23, 24, 25, 26, 26(ক), 28, 28(ক), 29, 30, 21, 32, 33 to 33(ঝ) and 34 to 34(ঘ). Eight other witnesses gave evidence for

the plaintiffs as PW-2 to PW-9. On the other hand, on behalf of the contesting defendants Nos. 1 to 7, defendant No. 4 deposed as D.W.1 and marked the relevant documents as Exhibit Nos. ক, খ, গ, ঘ, ঙ, চ, ছ, ঝ, ঞ, ট, ঠ, ড to ড-৩, ঢ, ণ, ত, থ, থ-১, দ, ধ, ন, প to প-৪, ফ, ব, ভ, ম, য, য-১, র, র-১, ল, ব, ব-১, শ, ষ, স, হ, ড়, and ঢ় to ঢ়-১২. Nine other witnesses gave evidence on behalf of the contesting defendants as DW-2 to DW-10.

Upon conclusion of the trial, the trial court decreed the suit partially in favour of the plaintiffs against defendant Nos. 1 to 7, ex parte against defendant Nos. 8 to 17, and against defendant Nos. 28 to 29 on compromise, by its judgment and decree dated 28.09.1994 (decree signed on 03.10.1994).

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 28.09.1994, the defendant Nos. 1 to 7, herein as appellants, preferred the present First Appeal No. 200 of 1995 before this Court.

Mr. Probir Neogi, the learned Senior Advocate, and Mr. Choudhury Murshed Kamal Tipu, learned advocate for the appellants, submit that the reliefs prayed for in Prayer-ক, namely, a declaration of title by inheritance and by adverse possession, are not legally maintainable. A claim founded on two diametrically opposite grounds cannot stand. When the plaintiffs claim a *rayati* settlement, they cannot set up adverse possession. They are not entitled to a declaration of title. Pleas of lawful entry and adverse possession cannot go together. A person cannot approbate and reprobate.

Mr. Neogi further submits that, as reflected in Exhibit - 'ঢ়/১১', the judgment and order dated 06.04.1989 passed by the High Court Division

in Writ Petition No. 425 of 1985 (filed by Plaintiff No. 23, Syed Ashfaque Hossain, son of Plaintiff No. 1, along with others against the present defendants, heard analogously with Writ Petition No. 1634 of 1988 filed by the deceased Defendant No. 1, Syed Mohsen Ali, along with others), it is on record that the petitioners (Plaintiff No. 23 and others) explicitly stated in their writ petition that “The said Keramat Ali auction-purchased the entire land measuring 5.80 acres under Khatian No. 1358 on 25.09.1954 for arrears of rent. The auction purchaser, Keramat Ali, however, sold only 3.15 acres out of the said 5.80 acres to late Syed Ashraf Ali, father of Respondent No. 4. The remaining 2.65 acres of ancestral homestead continued to remain in the possession of the petitioners and their predecessors. The predecessors of the petitioners subsequently obtained a registered Muktipatra dated 08.05.1979 from Habibur Rahman, one of the sons of the auction purchaser, Keramat Ali”. These unequivocal admissions established that the Zamindar sold the suit land at a public auction for arrears of revenue, and that Keramat Ali purchased it on 25.09.1954. Keramat Ali subsequently transferred 3.15 acres of the land to Syed Ashraf Ali by a registered deed dated 31.10.1955. Following this purchase, Syed Ashraf Ali duly obtained mutation in his name and regularly paid rent to the Government. The Trial Court produced these supporting documents and admitted them into evidence without the plaintiffs' objection. Accordingly, the plaintiffs' own pleadings, prior judicial statements, applications, and documentary evidence unequivocally acknowledge the auction sale, Keramat Ali's

purchase, and the subsequent transfer in favour of Syed Ashraf Ali, thereby completely demolishing their present contradictory claims.

Mr. Neogi further submits that the impugned decree, which declares the plaintiffs' title to the land described in the First Schedule while excluding 0.14 acres from the claimed 0.29 acres in Plot No. 4107, is unexecutable and legally unsustainable for want of identification. Passing a decree for the remaining 0.15 acres without defining, demarcating, or specifying the exact boundaries of either the decreed portion or the excluded 0.14 acres creates fatal ambiguity. The absence of such specification renders the entire suit liable to be dismissed.

Mr. Neogi further submits that pursuant to the judgment dated 06.04.1989 (Exhibit No. 'চ/১১') in Writ Petition No. 425 of 1985, heard analogously with Writ Petition No. 1634 of 1988, the High Court Division directed the restoration of the Record-of-Rights in favour of the petitioners in the latter writ petition (Syed Mohsen Ali and others) to the extent of their original 5.80-acre recording. In compliance with that direction, the records were duly restored and now stand recorded in the names of the present defendant-appellants, as conclusively established by the relevant Record-of-Rights produced, admitted into evidence, and marked as Exhibits 'ঞ' and 'ঙ/১' in the suit.

In support of his submissions, the learned Senior Advocate refers to the cases of *Salma Khatun & Ors. v. Zilla Parishad, Chittagong*, reported in 51 DLR (AD) 257; *Abdul Kader v. A.K. Noor Mohammad,* reported in 5 BLD (AD) 33; *Mrs. Parveen Banu v. Bangladesh House Building Finance Corporation*, reported in BCR 1990 AD 186; *Bangladesh*

Parjatan Corporation v. Mofizur Rahman, reported in 46 DLR (AD) 46; *Mahaprabhu Ram v. Gopal Ram*, reported in 42 DLR (AD) 154 and *Abdul Gafur Sardar vs. Wazedul Talukdar and others*, reported in 19 DLR 33.

Conversely, Mr. M. Khaled Ahmed, Senior Advocate, and Mr. Md. Mainul Islam, learned Advocates appearing for the respondents, submit that the suit as framed is fully maintainable in law, and the appellants' contention regarding inconsistent pleas is misconceived. Although the prayer clause contained a formal reference to adverse possession alongside title by inheritance, the plaint is totally devoid of any specific factual averments to establish adverse possession; consequently, the trial court neither framed an issue on the point under Order XIV, Rule 1 of the Code of Civil Procedure (CPC) nor was any evidence adduced thereon. The trial court adjudicated and decreed the suit strictly on the primary substantive ground of title by inheritance, leaving the alternative prayer unpressed, unargued, and unadjudicated. Furthermore, the decision in *Salma Khatun v. Zilla Parishad, Chittagong* (51 DLR (AD) 257), relied upon by the appellants, is entirely inapplicable, as the observation therein is *obiter dictum* rather than *ratio decidendi* and has no binding effect on the present facts. As settled by binding precedents, including *1 MLR (AD) 360*, *28 DLR (AD) 61*, *53 DLR (AD) 45*, and *14 BLT (AD) 26*, where an unpleaded or alternative prayer is not adjudicated, the suit remains fully maintainable on its primary substantive ground, rendering the doctrine of approbation and reprobation inapplicable to the present case.

Mr. Rahim further submits that the suit remains fully maintainable in law and that the appellants' objections must fail on three distinct legal grounds. *First*, under Order VII, Rule 7 of the Code of Civil Procedure, the Court is fully empowered to grant general or alternative relief as it deems fit, in light of the facts and evidence demonstrating title by inheritance. *Second*, the omission of a separate prayer for rectification of records is not fatal to the suit, as the Court effectively adjudicates and regulates both title and existing possession, rendering formal consequential relief unnecessary. *Third*, because the defendants-appellants failed to specifically deny the plaintiffs' core assertions of inheritance and possession in their written statement, such evasive non-denial amounts to an admission under Order VIII, Rules 3, 4, and 5 of the Code of Civil Procedure, thereby waiving their right and barring them from raising new maintainability objections for the first time at the appellate stage.

Mr. Ahmed further submits that the S.A. Record-of-Rights prepared under the State Acquisition and Tenancy Act in favour of Syed Ashraf Ali is an absolute nullity and devoid of title, as it is wholly unsupported by valid foundational documents. The alleged auction purchase by Keramat Ali and the subsequent unregistered paper transaction in favour of Syed Ashraf Ali were merely fraudulent and collusive, through which the auction purchaser never obtained actual physical possession on the ground. Furthermore, the doctrine of approbation and reprobation applies squarely against the defendants-appellants, who are legally barred from claiming title both as an auction purchaser and through an independent purchase from the original owner, as a party-litigant cannot be permitted

to blow hot and cold or assume mutually destructive positions in a court of law.

Mr. Ahmed submits that the defendants-appellants have utterly failed to prove the due execution and authenticity of their purported title deed (Exhibit "ঝ"), as no attesting witness was examined to establish its execution, nor was any handwriting expert or secondary verification evidence produced to corroborate the document. Consequently, Exhibit "ঝ" fails to satisfy the mandatory statutory requirements under Sections 67, 68, 69, and 71 of the Evidence Act, 1872, thereby rendering the purported deed unproved, inadmissible, and legally void.

Mr. Ahmed further submits that the appellants' reliance on the deposition of PW Syed Abdur Noor (@ Mobasir Ali) in Title Suits No. 11/1980 and 19/1980 is wholly misplaced and legally untenable. Abdur Noor deposed in those earlier proceedings strictly in his personal capacity as a Power of Attorney holder for Kamrunnahar (wife of the late Syed Ankar Ali) concerning individual share rights, and not as an authorised representative of the present plaintiffs-respondents. Consequently, statements made under a limited Power of Attorney in a separate partition suit have no binding effect and are wholly irrelevant to the independent title and co-ownership rights of the plaintiffs in the present appeal.

Mr. Ahmed further submits that key defendants' witnesses made damaging admissions during cross-examination, fully corroborating the plaintiffs' continuous possession and subsequent illegal dispossession from the suit land. Specifically, DW-1 (Moharram Ali) admitted that Ashraf Hossain, Shamsunnahar, and Sayma Akter were owners in

possession; DW-2 (Ataur Rahman) admitted that Plaintiff Moula Miya (Syed Abdul Mannan) continuously resided on the suit land with his family for years together until their forcible dispossession around eight years prior; DW-3 acknowledged that Ashraf Ali left his sister and nephew in the suit home before relocating to his ancestral house; DW-6 unequivocally admitted, "এই বাড়িতে মৌল্লা মিয়া থাকিতেন পরিবার নিয়ে"; and DW-7 stated that the suit property measures 20–22 *Kedars*, precisely matching the plaintiffs' claim of 6.01 acres, which suggests directly demolishing the defendants' own assertion of owning merely 10.5 *Kedars*.

Mr. Ahmed further submits that the plaintiffs-respondents have adduced overwhelming documentary and oral evidence establishing their continuous, settled possession in the suit land before their illegal dispossession. The plaintiffs' long-standing physical occupation is conclusively proved by formal building permission and an approved map issued by Moulvibazar Pourashava on 14.07.1979 (Exhibit 22/33) under Abdul Mannan's holding; government rent receipts (*Dakhilas*, Exhibits 10, 10-a, and 10-b) demonstrating rent payment under Khatian No. 1368 for 2.76 acres for the years 1982 to 1984; and utility records, including electricity bills (Exhibits 15 and 15-a) and telephone bills (Exhibit 16), issued in the names of the plaintiffs' predecessors. Furthermore, the testimony of independent and neutral witnesses (PW-2 to PW-7) unequivocally corroborates that defendant Nos. 1–7 forcibly dispossessed the plaintiffs from the Third Schedule land on 15–16 July 1987, thereby fully substantiating the plaintiffs' claim for restoration of possession. Mr. Ahmed further submits that the defendants-appellants have failed to

discharge the statutory burden of proof under the Evidence Act to substantiate their claim of "permissive possession". Significantly, neither the alleged auction-purchaser Keramat Ali nor the heirs of Syed Ashraf Ali ever obtained or recovered actual physical possession of the suit property within the mandatory twelve-year statutory period prescribed under Article 138 of the Limitation Act, 1908. As firmly established in 44 DLR (HC) 364 (Para 29), title disputes of this nature must be determined primarily on the basis of actual physical possession on the ground, which the plaintiffs-respondents have conclusively proved through continuous, uninterrupted ancestral possession dating back long before the S.A. Survey, thereby completely defeating the defendants' shadow claim of title.

In support of his submissions, the learned Advocate for the respondents refers to the case of *Syed Ashfaque Hossain & others vs. Bangladesh & Others*, reported in 41 DLR 364; *Salma Khatun v. Zilla Parishad, Chittagong*, reported in 51 DLR (AD) 257; 1 MLR (AD) 360; *Lal Meah, being dead, his heirs Momena Khatun & Others vs. Haji Md. Ibrahim Meah & Others,* reported in 28 DLR (AD) 61; *Erfan Ali vs. Joynal Abedin*, reported in 35 DLR (AD) 217; *Abdul Moib vs. Bangladesh, represented by the Secretary, Ministry of Law, Secretariat Building & Others*, reported in 53 DLR (AD) 45; *Fazar Ali Tendal vs. Fazal Mia and others*, reported in 10 BCR (AD) 247; *Government of Bangladesh vs. MA Khair Bhuiyan*, reported in 55 DLR (AD) 23; *Abdus Sattar Khgondaker vs. Premlata*, reported in 49 DLR (HC) 23 and *Moudud Ahmed vs. State and another*, reported in 68 DLR (AD) 118.

We heard learned advocates from both parties and perused the materials on record. It appears that the plaintiff-respondents in F.A. No. 200 of 1995 (appellants in F.A. No. 56 of 1995), Syed Mozammil Ali and others, instituted Title Suit No. 13 of 1990 before the First Court of the Subordinate Judge (now the Joint District Judge), Moulvibazar. The plaintiffs sought:

- A declaration of title by way of inheritance as well as by adverse possession over 6.01 acres of land described in the *First Schedule*;
- Confirmation of possession over 5.74 acres of land described in the *Second Schedule*;
- Recovery of *khas* possession over 0.27 acre of land described in the *Third Schedule*; and
- A decree for perpetual injunction in respect of the *Second Schedule* land.

The trial court decreed the suit in part on contest against defendants Nos. 1 to 7, ex parte against defendants Nos. 8 to 17, and on the basis of a compromise (*solenama*) against defendants Nos. 28 and 29, as prayed for:

> (1) The plaintiffs' title is declared in respect of the remaining land, excluding 14 decimals of land in Plot No. 4107, as described in *Schedule 1* of the plaint.
>
> (2) A decree of permanent injunction is passed against the defendants, restraining them from creating any obstruction or disturbance to the plaintiffs' possession of the remaining land,

excluding 14 decimals of land in Plot No. 4107, as described in *Schedule 2* of the plaint.

(3) The plaintiffs' right to exclusive/khas possession of the land described in *Schedule 3* of the plaint is declared by evicting/recovering possession from defendant Nos. 1 to 14.

Both parties admit that the suit property originated in the Syed Miron Taluk (Taluk No. 49747/8) and that the Plaintiffs are the hereditary descendants of the late Syed Miron.

A comparative perusal of the oral evidence on record reveals a stark contrast in credibility and probative value between the witnesses called by the respective parties. On the one hand, the plaintiffs have adduced the testimony of highly credible, disinterested, independent witnesses. P.W.-4 (Sajjadur Rahman), a former Municipal Chairman, formally proved the official municipal records marked as Exhibits 20, 21, and 22 series, and the defendants-appellants failed to establish any personal malice or bias on his part. P.W.-2 (Motlib Uddin) and P.W.-5 (Mizanur Rahman), adjoining landowners whose properties lie directly south and west of the suit land, respectively, provided cogent ocular evidence. P.W.-2 corroborated the plaintiffs' generational physical possession and the incident of mob looting in 1987, while P.W.-5 was a direct eyewitness to the forced dispossession on July 15, 1987. Furthermore, P.W.-6 and P.W.-7, local residents and nearby occupants of the locality, provided unchallenged independent corroboration of the existence and continuous maintenance of the ancestral graveyard on the suit land.

On the other hand, D.W.-1 (Moharram Ali) gave evidence directly at odds with the defendants' written pleadings. Financial dependence and pecuniary bias permeate the defendants' evidence: D.W.-2 (Ataur Rahman) was awarded municipal contracting work during Defendant No. 1's tenure as Municipal Chairman and demonstrated complete ignorance of key physical features, such as the family graveyard in Plot No. 4126, while D.W.-4 (Ajmal Ali) lives a mile away, is physically disabled, and remains financially indebted to Defendant No. 1 for funding his medical treatment.

Furthermore, the remaining witnesses lack geographic proximity and basic factual credibility: D.W.-3 (Dhan Ullah), who lives 2 to 4 miles away, lacked basic geographical accuracy regarding local landmarks. Non-residents living outside the municipal limits failed to substantiate their claims: D.W.-5 (Mortuja) claimed to have constructed houses on the site 30 years ago but produced no wage receipts, building permits, or voter records, while D.W.-6 (Hanif), a rickshaw puller, made statements that directly contradicted the defendants' case regarding ancestral residence and demonstrated complete ignorance of essential physical facts. Finally, D.W.-7 (Md. Masud Ahmed), a non-resident political ally and former Chhatra League President aligned with Defendant No. 1's position as Awami League Vice-President, candidly admitted to having no personal knowledge of the suit land.

The defendants' witnesses also made crucial admissions during cross-examination that directly corroborate the plaintiffs' continuous possession and subsequent illegal dispossession of the suit land.

Specifically, DW-1 (Moharram Ali) admitted that Ashraf Hossain, Shamsunnahar, and Sayma Akter were owners in possession of the suit property; DW-2 (Ataur Rahman) acknowledged that Plaintiff Moula Miya (Syed Abdul Mannan), together with his wife and children, resided continuously on the suit land for years until they were forcibly dispossessed approximately eight years ago; DW-3 admitted that Ashraf Ali left his sister and nephew in the suit home before relocating to his ancestral house; DW-5 and DW-6 further substantiated this occupancy, with DW-6 unequivocally admitting, *"This home was inhabited by Moulla Miya along with his family"* ("এই বাড়িতে মৌল্লা মিয়া থাকিতেন পরিবার নিয়ে"); and DW-7 testified that the suit property measures 20–22 *Kedars*, a figure that matches the plaintiffs' claim of 6.01 acres while contradicting the defendants' assertion of merely 10.5 *Kedars*. Therefore, the defendants' witnesses' testimony fails to inspire confidence, as evident bias, material contradictions, non-residence, and a complete lack of direct knowledge of the suit land systematically discredit it. Consequently, the oral evidence adduced by the defendants is wholly unreliable and devoid of probative value.

Significantly, while the plaintiffs supported their case with the testimony of immediate boundary owners, the defendants committed a fatal evidentiary omission by failing to produce a single adjoining landowner or immediate neighbour from Sultanpur Mohalla to substantiate their claim of possession. Consequently, the oral evidence tendered by the plaintiffs inspires full confidence, whereas the defendants' witnesses' testimony carries no evidentiary weight.

Plaintiffs' Exhibits 20, 21, 22, 25, and 29 conclusively establish Plaintiffs' continuous ownership, lawful possession, and long-standing permanent residence in the suit property. Exhibit 20 (dated January 4, 1978), the Ward Nos. 5 & 6 Reassessment List, explicitly records Holding No. 121 as being in the ownership and possession of Syed Abdul Mannan, a fact duly corroborated by P.W.-4's signature [Exhibit 20(a)]. This continuous occupation is also supported by Exhibit 21 (dated January 28, 1981), an official Municipal Nationality Certificate confirming the permanent residency of Plaintiff No. 10's family within Ward No. VI. Moreover, Exhibits 22 and 25 (dated July 14, 1979) evidence the Plaintiffs' exercise of ownership rights, showing that the municipal authority granted a formal Building Permit (Memo No. 497-P) and approved plans for a 1,115 sq. ft. residential structure at Holding No. 213 in their favour. Finally, Exhibit 29 (dated January 23, 1979; Memo No. 1356/749-P) dispels any ambiguity regarding the land's identity and historical continuity. This municipal certificate confirms that Holding No. 195 in Ward VI was recorded in the names of Syed Abdul Mannan and Syed Mozammil Ali, while affirming that municipal holdings under the Plaintiffs' predecessors date back to 1953. Most significantly, local physical spot inquiries conducted by municipal authorities verified the actual existence of these holdings on C.S. Plot No. 4131, appertaining to Khatian No. 1358, thereby linking the documentary entries directly to the physical locus in quo.

The back to back municipal tax receipts from 1960 to 1980s (Exhibits 19, 19ক–19ছ, 33, 33-33ঝ, and 4-ট) demonstrates continuous tax

payments across Holding Nos. 121, 195, 196, 196/1, 213, and 233, establishing uninterrupted symbolic possession. Land revenue receipts (Exhibits 10 series and 5 series) for Khatian Nos. 1358 and 1349 prove the regular payment of revenue to the State in respect of the suit homestead land. Furthermore, active utility installations, including Power Development Board electricity meters (Exhibits 15, 15ক, 18, and 18ক) and registered landline telephone connections, conclusively corroborate the actual residential occupation of C.S. Plot No. 4131 under Khatian No. 1358, further solidifying the Plaintiffs' continuous and unbroken physical and symbolic possession.

The mutated Khatian (*Khariji Khatian*) records stand in the names of Defendant Nos. 1–7, originating from the S.A. record of their predecessor, and valid land revenue receipts (Exhibits 'র' and 'র-1') demonstrate their payment of land revenue for Khatian No. 1358. This evidence has strictly circumscribed legal import. It is a well-settled principle of law that mutation entries and revenue dakhilas do not confer title, nor do they establish actual physical occupancy. At best, revenue receipts maintained under a mutated record prove symbolic possession only to the extent of fulfilling fiscal obligations to the State, and cannot extend to, override, or substitute for actual physical or municipal holding possession of the suit property.

The complete omission from the written statement of any assertion by Defendant No. 1 that a municipal holding was ever recorded in the Defendants' name in respect of the suit land operates as a fatal bar to their claim. Without foundational pleadings, and given their failure to adduce

any valid public records establishing municipal tax assessments or holding registrations in their favour, the Defendants' claims to municipal holding and possession of the suit property remain wholly unproved and are accordingly rejected.

When evaluating competing claims to urban homestead property, municipal assessment records and tax receipts carry greater evidentiary weight than survey-based land revenue receipts (*dakhilas*). Revenue officers issued land revenue receipts mechanically, based on existing survey entries, without a mandatory on-site inspection. By contrast, municipal holding registrations and tax assessments are generated only after physical field inspections, localised verifications by municipal staff, and administrative hearings. Consequently, while revenue *dakhilas* establish fiscal compliance with the State, municipal records provide direct, verified proof of physical location and occupancy and therefore take precedence in determining continuous physical and symbolic possession.

The Defendants' claim to actual physical possession of the homestead portion of the suit land through tenants appears wholly unproven and untenable. In their written statement, Defendant Nos. 1–7 pleaded that they were in possession of the suit homestead through tenants, a material fact explicitly denied by the Plaintiffs. However, during cross-examination, Defendant Witness No. 1 (D.W.-1) directly contradicted his own pleaded case by testifying that he personally resided on the suit land. Furthermore, the Defendants failed to call any tenant as a witness to corroborate their plea of tenancy. The testimony of D.W.-1 is

thus fundamentally irreconcilable with the Defendants' pleadings, establishing that Defendant Nos. 1–7 were never in physical possession of the homestead portion of the suit land through tenants.

The credibility as to evidence of D.W.-2 (Ataur Rahman) is seriously undermined by his evident ignorance of the physical features of the suit property. During cross-examination, D.W.-2 asserted that no graveyard existed on the suit land. Yet the Defendants themselves relied on Khatian No. 1358 as correct, which explicitly records Plot No. 4126 as a graveyard, which was admitted by both parties. This glaring contradiction demonstrates that D.W.-2 had no personal familiarity with the locus in quo, rendering his testimony legally unreliable.

The testimony of D.W.-2, D.W.-4, and D.W.-7 is superfluous given demonstrable bias, financial interest, and political alignment with Defendant No. 1. During cross-examination, D.W.-2 admitted that he worked as a municipal contractor and received payments authorised by Defendant No. 1 during the latter's tenure as Municipal Chairman. Given his financial dependence on Defendant No. 1, D.W.-2 cannot be regarded as an independent witness. D.W.-4 (Ajman Ali) admitted that Defendant No. 1 financed his medical treatment following an amputation. Living one mile away and remaining financially indebted to Defendant No. 1, D.W.-4 is an interested and biased witness. D.W.-7 (Md. Masud Ahmed) acknowledged that he recognised only the agricultural portion of the suit land (which he does not cultivate) and confirmed close political ties with Defendant No. 1.

It is a settled principle of evidence that the best evidence of physical possession of real property is the testimony of immediate neighbours and adjoining landowners. Crucially, the Defendants failed to examine a single local resident, immediate neighbour, or adjoining landowner. Given that Defendant No. 1 was an elected Municipal Chairman, local neighbours would naturally have come forward to testify in his favour to prove his actual possession. In the absence of any plea or evidence that the neighbours were hostile, the Defendants' failure to call independent local witnesses draws a strong adverse inference against them. Therefore, the evidence of D.W.-1 through D.W.-7 is inconsistent, biased, contradicted by documentary records, and derived from non-resident witnesses lacking personal knowledge of the suit land.

The Defendants’ claim that the Plaintiffs were mere permissive occupants who voluntarily surrendered the suit property is legally unsound and factually unproven. A plea of permissive occupancy requires cogent evidence establishing the licence's creation, terms, and nature. However, the Defendants produced no documentary or oral evidence that the Plaintiffs or their predecessors were admitted to the property as permissive occupants. A claim of permissive occupation spanning nearly a century across multiple generations, maintained without any written agreement, licence, or formal revocation, is inherently untenable. Furthermore, the Defendants' claim is severely undermined by internal contradictions, including unsubstantiated assertions about family burials, leaving their theory of permissive occupancy entirely unsupported by evidence.

The Plaintiffs' continuous, open, and uninterrupted ancestral possession of the suit property predating the S.A. survey is conclusively established by the consistent testimony of local witnesses and former Municipal Chairman P.W.4. This long-standing occupation across generations is corroborated by tangible acts of ownership, including residential construction, regular agricultural cultivation, both direct and through sharecroppers, and the re-excavation of the western pond. Critically, the undisputed presence of the family graveyard on the bank of the eastern pond, where the Plaintiffs' predecessors were buried, serves as irrefutable physical proof of their unbroken ancestral domain over the suit land.

The admitted lineage of the parties confirms that the suit property originally belonged to Syed Miron Taluk and that the Plaintiffs are Syed Miron's direct hereditary heirs. Supported by historical records and P.W.-7's testimony, this undisputed succession conclusively establishes the Plaintiffs' ancestral title (*mourusi*).

Upon reviewing the evidence from both the PWs and the DWs, we find the PWs' evidence credible, reliable, and acceptable.

Mr. Neogi, the learned Senior Advocate for the appellants-defendants, raised an objection regarding maintainability, he contend that the suit is barred because Prayer (ক) seeks mutually exclusive reliefs: title by inheritance (*mowrosi*) and, in the alternative, title by adverse possession. However, this Court finds the submission of the learned Advocate to be unpersuasive and misconceived for the following reasons:

First, a meticulous reading of the plaint reveals that the plaintiffs have nowhere pleaded the essential factual ingredients of adverse possession within the body of the pleadings. The term appears strictly as a standard drafting inclusion within the prayer clause. *Second*, the learned trial court framed no issue regarding adverse possession, and both parties proceeded to trial fully aware that the core dispute centered on title by inheritance and uninterrupted physical possession. *Third*, after a full-fledged trial wherein evidence was adduced primarily on inheritance, continuous municipal tax payments, and actual physical possession, a mere incongruity in the prayer clause, unsupported by foundational facts in the body of the plaint, cannot defeat the suit on technical maintainability grounds.

However, Mr. Neogi did not identify any error in the trial court's judgment, confining his challenge solely to maintainability.

It appears from the Exhibit - 'ঘ/১১', the judgment and order dated 06.04.1989 passed by the High Court Division in Writ Petition No.425 of 1985 (filed by Plaintiff No. 23, Syed Ashfaque Hossain, son of Plaintiff No. 1, along with others against the present defendants, heard analogously with Writ Petition No. 1634 of 1988 filed by the deceased Defendant No. 1, Syed Mohsen Ali, along with others), it is on record that the petitioners (Plaintiff No. 23 and others) explicitly stated in their writ petition that "*The said Keramat Ali auction-purchased the entire land measuring 5.80 acres under Khatian No. 1358 on 25.09.1954 for arrears of rent. The auction purchaser, Keramat Ali, however, sold only 3.15 acres out of the said 5.80 acres to late Syed Ashraf Ali, father of Respondent No. 4. The*

remaining 2.65 acres of ancestral homestead continued to remain in the possession of the petitioners and their predecessors. The predecessors of the petitioners subsequently obtained a registered Muktipatra dated 08.05.1979 from Habibur Rahman, one of the sons of the auction purchaser, Keramat Ali".

From this, it appears that the Zamindar sold the suit land at a public auction for arrears of revenue, and that Keramat Ali purchased it on 25.09.1954. Keramat Ali subsequently transferred 3.15 acres of the land to Syed Ashraf Ali (the predecessor of the defendants Nos. 1 to 7) by a registered deed dated 31.10.1955. Following this purchase, Syed Ashraf Ali duly obtained mutation in his name and regularly paid rent to the Government. In the trial court, these supporting documents were produced and admitted into evidence without objection from the plaintiffs.

Therefore, it appears that, earlier, the present plaintiff No. 23 and others herein, as respondents, asserted in the said writ petition that they owned 2.65 decimals of land from the present suit land, while the present contested defendants herein, appellants, owned 3.15 acres of land from the present suit land.

Exhibit No. 2 (the Deed of Relinquishment / Muktipatra Deed dated May 7, 1979), produced by the plaintiffs, shows that the executants explicitly stated that, owing to financial necessity, their father, Md. Keramat Ali, sold a portion of his auction-purchased lands, comprising the whole of Plots 4094, 4124, and 4135, along with a part of Plot 4142 under Final Khatian No. 1358, measuring 10.5 kedars (approximately 3.21 acres) of single-crop, double-crop, and former bamboo-grove land,

excluding the schedule detailed therein, to Syed Ashraf Ali (predecessor-in-interest of Defendant Nos. 1 to 7) via a registered sale deed dated 13 Kartick 1362 BS, corresponding to October 31, 1955, for a consideration of Tk. 300 (three hundred Taka). Consequently, the plaintiffs were fully aware of Md. Keramat Ali's relationship to the predecessor of Defendant Nos. 1 to 7.

It was further stated in Exhibit No. 2 (the Deed of Relinquishment / Muktipatra Deed dated May 7, 1979), executed by the plaintiffs, that, apart from the 3.21 acres (10.5 kedars) of land sold by their father to Syed Ashraf Ali, the remaining 16-anna interest (comprising 2.76 acres across all other categories of land in the Mahal, specifically the lower scheduled lands) has been continuously, peacefully, uninterruptedly, and adversely possessed and enjoyed by the plaintiffs under their own absolute title for well over twelve years

Registered sale deed of 1955 (Exhibit ‘ঝ’) and the Deed of Release, 1979 (Exhibit ‘2’) are intrinsically connected legal instruments that delineate a crucial exception and boundary adjustment within the broader property history of Taluk Syed Miran (No. 4747/8) in Moulvibazar. Specifically, while the 1979 Release Deed formally relinquishes 2.76 acres of land to the original Syed family, acknowledging that the auction-purchaser's family never attained actual physical possession, it expressly carves out and excludes the distinct portion previously conveyed to Syed Ashraf Ali (predecessor of the defendant Nos.1 to7) under the 1955 deed, encompassing specific plots such as 4094, 4124, 4135, and a part of 4142, totalling approximately 10.5 kedars

(3.21 acres). This harmonises the boundaries between the lawfully alienated parcels and those re-vested through long-standing possession.

After an exhaustive evaluation of the evidence on record, the learned trial court found that the plaintiffs established their title and possession over the suit land, except for a specific portion measuring 14 decimals. However, during the appeal hearing, a notable development arose. Learned Advocates for the respondents-plaintiffs, Mr. M. Khaled Ahmed, Senior Advocate, along with Mr. Md. Mainul Islam, jointly stated on record that the plaintiffs have no objection to relinquishing or awarding 3.15 acres of the suit land in favour of the appellants-defendants. Conversely, Mr. Choudhury Morshed Tipu, learned Advocate for the defendants, concedes that the defendants hold valid right, title, and interest over the entirety of the suit property. Nevertheless, the record shows that the defendants have failed to substantiate this overarching claim beyond bare assertions.

Considering the facts and circumstances, the submissions, the decisions cited by the respective parties, the exhibits, and the observations made above, it appears to this Court, in the interests of justice, that this Court is inclined to modify the judgment and decree of the appellate Court below as follows:

The judgment and decree dated 28.09.1994 (decree signed on 03.10.1994) passed by the trial court is hereby modified to the extent that the plaintiffs have the right and title to the land measuring 2.65 acres in the First Schedule of land, in place of the judgment and decree passed by the trial court declaring 5.87 acres in the First Schedule of land.

Permanent injunction is granted against the defendants, restraining them from obstructing or disturbing the plaintiffs' possession of the land measuring 2.65 acres, as set out in the First Schedule.

In light of the foregoing observations and findings, the instant First Appeal is disposed of.

However, there is no order as to costs.

Send down the Lower Court Records (LCR) along with a copy of this judgment and decree forthwith.

Sheikh Abdul Awal, J

I agree.