

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

Present

Mr. Justice Md. Riaz Uddin Khan

And

Mr. Justice Raziuddin Ahmed

First Appeal No. 17 of 2012

IN THE MATTER OF:

Abul Kashem and another

... Defendant-Appellants

-Versus-

Sufia Begum being died her heirs 1(1) Abul Hossain and others

... Plaintiff-Respondents

Mr. Zulfiqur Ahmed, Advocate

... For the Defendant-Appellants

Mr. Mr. S.R.M. Lutfor Rahman Akhand, Advocate

... For the Respondent Nos. 1(1) - 1(7)

Judgment on: 12.05.2026

Md. Riaz Uddin Khan, J:

This first appeal is directed against the judgment and decree dated 26.10.2011 (decree signed on 02.11.2011) passed by the Joint District Judge, 1st Court, Narayangonj in Title Suit No. 102 of 2003 decreeing the suit for partition.

Succinct facts for disposal of this first appeal are that the respondent No.1 as plaintiff filed title Suit No. 102 of 2003 before the trial court for partition of the land of CS and SA plot nos.797, 798, 799, 1054, 1100 and 1101 measuring 279 decimals of land claiming half of the share measuring 139½ decimals under C.S Khatian no.307 of Kushiara Mouza, Police Station-Bandar, District-Narayangonj as successor of CS recorded tenant Rahim Ali Sheikh and for further declaration that the S.A and R.S records in the names of the defendants are wrong. The defendants in three sets contested the suit by filing separate written statements. However, the defendant No.1 fully supported the plaintiff's case who is the full sister of the plaintiff and did not adduce or produce any witness or evidence before the court. The case of the defendant No.2 and 19 is that the C.S. recorded tenant transferred the suit land of CS dag no.1100 and 1101 measuring 86 decimals to one

Monohor and delivered possession. After the death of Monohor and his wife the suit land measuring 86 decimals was rightly recorded in the S.A Khatian and thereafter Atarjan, daughter of Monohor transferred 47½ decimals of land to Shahad Ali and Abdul Kader in 1948 by a registered deed No.3857 dated 29.03.1948 and thereafter the suit land was rightly recorded in R.S Khatian and the present defendants are the successors of S.A and R.S Khatain. The plaintiff along with defendant no.1 earlier tried to mutate the suit land and after being informed the defendants had filed objection and plaintiff's mutation was cancelled. The defendants' further case is that they are in possession in the suit land for more than 50 years and are enjoying the possession of the land by paying rent to the Government. The case of the another set of defendant Nos. 8, 9(Ka) to 9(Ga), 10, 11, 12(Ka) to 12 (Ga), 13 to 18 is that the C.S recorded tenant Rahim Ali Sheikh transferred 63 decimals of land of CS dag no.1054 to one Awlad Hossain by an unregistered deed in the year 1935, as at that time the registration was not compulsory which value was less than Tk.100, hence it was not registered. Thus Awlad Hossain became the owner and his name was rightly recorded in S.A khatian. Thereafter, the Government acquired 20 decimals of land from the said suit plot and paid compensation to Zakir Hossain, the son of Awlad Hossain and thus this set of defendants are in possession of 43 decimals of land. Another set of defendants 21-29/37-43 filed written statements contending *inter alia* that CS recorded tenant Rahim sold entire suit land of CS dag nos.797, 798 and 799 to one Ashrab Ali by deed no.99 dated 06.01.1910, deed no.310 dated 01.04.1916, deed no.6222 dated 27.11.1917, deed no.1570 dated 03.02.1917, deed no.1494 dated 31.01.1922, deed no.1139 dated 27.01.1922 along with non-suited dag no.1417. Thereafter, Ashrab Ali died leaving 5 sons namely Akkas Ali, Atab Ali, Newaz Ali, Anar Ali and Sadar Ali and one daughter Afzaler Ma as his heirs and accordingly the SA and RS Khatian have been published rightly in their names. Thereafter through series of

transactions by the SA and RS recorded owners these defendants got the land and possessing the same by erecting dwelling house and paying rent to government.

Upon these pleadings the trial court framed 07 issues-

1. whether the suit is maintainable in its present form and has been filed with insufficient court fees;
2. whether the suit is bad for defect of hotchpotch;
3. whether the suit is bad for defect of parties;
4. whether the plaintiff has title and possession in the suit land;
5. whether S.A and R.S records are wrong and the plaintiff is entitled to get such declaration that S.A and R.S records are wrong;
6. whether the plaintiff is entitled to get partition of 139½ decimals of land and
7. whether the plaintiff is entitled to any other relief or reliefs.

To prove their respective cases the plaintiff adduced two witnesses including the plaintiff through her attorney and produce three documents C.S, S.A and R.S khatian beside the power of attorney by which the PW-1 was empowered to adduce as witness on behalf of plaintiff. On the other hand the contesting defendants adduced two witnesses, one on behalf of the defendant No.10 and another on behalf of the defendant No.2 and they have produced documents which have been marked as Exhibits-Ka-1 to Gha-1.

After conclusion of trial the trial court decreed the suit by his impugned judgment and decree dated 26.10.2011 on the findings that since the defendants could not prove that land of CS recorded tenant was transferred by producing any title deed hence the case of the plaintiff is proved as successor of CS recorded tenant. The trial court further found that though the PW-2 claimed the plaintiff is in ejmali possession of the suit land but could not specifically said in which dag and khatian she is in possession and since the defendants did not produce any

witness to prove their possession hence by oral evidence the possession of the plaintiff is proved.

Being aggrieved by and dissatisfied with the said judgment and decree dated 26.10.2011 the defendants 3 & 19 filed the instant first appeal before this Court.

This first appeal was fixed for hearing on the instance of the learned advocate for the respondents 19, 22, 27-28, 36-38, 42 & 45.

Mr. Zulfiquir Ahmed, the learned Advocate appearing for the appellants submits that it is the admitted case of the defendant Nos.8 to 18 that Rahim Ali Sheik was the C.S recorded owner of 2.79 acres of land including 63 decimals in C.S dag No.1054 under C.S Khatian no.307 and the name of Rahim Ali Sheikh was recorded in C.S Dag No.1054 in respect of 63 decimals of land who transferred said 63 decimals for a consideration of Tk.63.00 in the year 1935 by an unregistered sale deed in favour of Md. Awlad Hossain and delivered possession to him and since then Awlad Hossain was in peaceful possession of the said 63 decimals of land for more than 12(twelve) years and accordingly his name was correctly recorded in the S.A Khatian No. 265 and subsequently his name was also recorded in the R.S Khatian No.314, R.S Dag Nos.540 and 1541 and after the death of Awlad Hossain the defendants 8,9(Ka) to 9(Ga) 10, 11, 12(Ka) to 12(Ga), 13 to 18 became owners in possession of the said land as heirs of late Awlad Hossain who received compensation from government for acquisition of their land. It is undeniable that the Government has acquired 20 decimals out of said 63 decimals of land and defendant no.12, Zakir Hossain, one of the heirs of Awlad Hossain received compensation money and the same clearly reveals that the above defendants being the owners of the said land received compensation money from the Government. Recording of S.A Khatian and R.S Khatian in the name of Awlad Hossain, the predecessor of the defendant Nos.8 to 18 were made in accordance with law without any objection whatsoever and as such recording of both S.A and R.S in the name of the predecessor of the above defendants was not

rebutted by the plaintiff, the same be treated to have been made in accordance with law. Such recording in the name of the predecessor of the above defendants palpably established right, title and interest in respect of said 63 decimals of land by operation of section 144A of the State acquisition and Tenancy Act, 1950 and the above defendants being the heirs of late Awlad Hossain established their right, title, interest and possession in the said land and non consideration of the above aspect of the case the trial court passed the impugned judgment and decree which is liable to be set aside.

The learned advocate next submits that it is the case of the defendant Nos.2 and 19 that their predecessor Monohor Ali purchased 86 decimals of land from C.S Dag Nos.1100 and 1101 and said Monohor died leaving behind 2(two) sons namely Shahad Ali and Abdul Kader and 3(three) daughters namely Rahatun, Ahitun and Asimun and accordingly Rahatun became the owner of 3 anna shares by way of inheritance and thereafter as an owner Rahatun transferred 47½ decimals of land in Dag Nos.1100 and 1101 in favour of Abdul kadir, father of defendant No.2 and Shahad Ali father of defendant No.19 by a registered sale Deed No.3857 dated 29.3.1948 and since then Abdul Kadir and Shahad Ali are in peaceful possession of the said land and after the death of Abdul Kadir and Shahad Ali the defendants 2 and 19 became the owner of 47½ decimals in dag no.1100 and 39 decimals in Dag No.1101 totaling 86 decimals of land by inheritance and purchase and they mutated their names in respect of the said land and non consideration of the above facts the impugned judgment and decree is liable to be set aside.

The learned advocate then submits that before filing the instant suit the plaintiff and her sister defendant no.1 filed a suit being Title Suit No.36 of 2003 in the Court of Assistant Judge, Bandar, Narayangonj seeking a decree for declaration of Title in respect of the same scheduled 2.79 acres of land. The defendants on receipt of summons appeared in that suit and filed an application under Order-VII, Rule-11 of the Code of Civil

Procedure for rejection of the plaint of the said suit. The plaintiffs on receipt of the copy of the said application under Order-VII, Rule-11 of the Code of Civil Procedure withdrew the said suit on 27.8.2003 and ultimately filed the instant suit for partition *simpliciter* without declaration of title and from the above aspect of the case it is very much clear that the plaintiff and defendant no.1 have no right, title and possession in the suit land. The plaintiff and defendant No.1 earlier fraudulently mutated their names vide Mutation Case No.51 of 1999-2000 and while the above defendants came to know about mutation in the name of the plaintiff, they filed Misc. Case No. 01 of 2000 and ultimately after hearing, the said Misc. case was allowed by an order dated 04.04.2001 cancelling the mutation of the plaintiff and defendant no.1 as they have no possession in the suit land. On the other hand the defendant Nos.2 and 19 being in possession of 86 decimals of land mutated their names vide Mutation Case Nos. 840 of 2000-2001 and 842 of 2000-2001 both dated 11.2.2001 and obtained D.C.R. in respect of the said land. The documents filed by the defendants are of the year 1935 and in respect of the same mutation has been made which palpably creates right, title, interest and possession of the defendants.

Mr. Ahmed lastly submits that to succeed in the case, the plaintiff is to prove her case in respect of her right, title, interest and possession and weakness of the defendants' case is no ground to succeed. Jamindari dakhila and rent receipts though not documents of title but are important documents of possession and may be used as collateral evidence of possession, since possession generally follows title. In the instant case the plaintiff failed to produce any documentary evidence in respect of her right, title and possession of the suit land save an except the C.S Khatian in the name of Rahim Ali. On the other hand the defendants produced a title document of 1948 which has been produced from the proper custody though the defendants did not produce any document showing that the C.S recorded tenant has transferred the suit land but from

the exchange of subsequent documents the names of the predecessor of the defendants has been appearing in the S.A khatian and thereafter in the R.S khatian which shows that the defendants are in possession and the plaintiffs have totally failed to produce any document to show that they are in possession and admittedly the plaintiff lives in Chattogram and in that view the trial court ought not to have passed a decree in favour of the plaintiff considering only the C.S record inasmuch as it is a salutary principle of law that in the event of conflict between old record and recent record, recent record of right would prevail inasmuch as presumption of record loses its weight with passage of time and entry in the subsequent Khatian which would be more acceptable than the entry in the earlier Khatian. Moreover, the suit is not maintainable in its present form as admittedly the plaintiff claimed that she should be put into possession by dispossessing the defendants and of all sorts of obstructions hence the plaintiff should have claimed title of the suit land and non consideration of the above aspect the impugned judgment and decree is liable to be set aside.

On the other hand the learned advocate for the plaintiff-respondent did not appear during the hearing but he came before this Court when we took up this matter for delivery of the judgment.

We have heard the learned advocate for the appellants, perused the memorandum of appeal, the lower court records including the plaint, 3 sets of written statements, the depositions of the parties and the exhibited documents. We have also carefully examined the impugned judgment passed by the trial court.

The present appeal has arisen from a suit for partition *simpliciter*. Partition is the division made between several persons of joint lands which belong to them as co-proprietors, so that each becomes the sole owner of the part which is allotted to him. A partition is the adjustment of diverse rights regarding the whole by distributing them on particular portion of the aggregate.

This follows from the principle that partition signifies the transformation of joint possession into separate possession. Partition converts joint enjoyment into enjoyment severally. It is the redistribution of pre-existing rights among co-owners and not the acquisition of rights. A suit for partition determines the share of the co-sharers *inter se*. The partition in a suit is an equitable right, and it should be seen while decreeing a partition suit, how much equity can be done to the parties without asking them to go to another suit. Partition may be effected either of the following two ways: i) by amicable settlement by the co-owners themselves; or ii) through civil courts in a properly framed suit for partition. It may be mentioned here that an amicable partition may not get effect in the eye of law if dispute arises within limitation period. Because a co-sharer in possession of land less than his share is always entitled to pray for partition by bringing properly framed suit for partition in a competent court, he is entitled to get land partitioned through court and defiantly, a co-sharer in possession of excess land than his share is bound to part with the same.

Section 143B of the State Acquisition and Tenancy Act, 1950 provides that when any recorded owner dies, his/her heirs may amicably effect partition of the property left by said *propositus* among them taking their respective shares, and after such partition, they may register it. As per this section it is a substantive right of a co-sharer raiyat/owner of land to get partitioned thereof. If we minutely read section 143B along with chapter XVII under part-V of the State Acquisition and Tenancy Act it is revealed that partition of lands can be sought for only by those persons who are or whose predecessors were recorded owners in the latest record-of-rights. If the persons who or whose predecessor's name were recorded in the former record of rights, to get partition he must seek correction of the wrong latest record first or to seek declaration of title to the suit land. If the present record-of-rights is not in the name of the plaintiff as per his share but

actually he has right and title in the said Kkatian/holding, he cannot seek simple partition without another prayer for declaration of title and both can be sought in a single suit, in view of section 54 of SAT Act read with rules 1-3 of Order II of the Code of Civil Procedure.

In the case of Rezaul Karim and others Vs. Shamsuzzoha and others reported in 49 DLR (AD) 68 our Supreme Court (Appellate Division) observed that *in a suit for partition the court will no doubt consider the title of the plaintiff to the suit land in some details more than in a suit for permanent injunction, but it cannot in either case convert itself into a court for determination of the respective titles of the parties if a serious dispute emerges from the pleadings as to the title of the plaintiffs to the partible property and if it is not possible to effect partition without formally determining the plaintiffs' title to the property claimed in the partition suit.* However, in a partition suit, the plaintiff can establish his title, if necessary. To settle a dispute properly among the co-sharers of joint properties, suit for partition is the best form of suit. It is also known as the mother suit. It has been settled by a catena of decisions by our Supreme Court that all types of disputes may be settled in a single suit for partition, e.g. whether a deed is forged or false, legal or even acted upon, whether a person has acquired title over some land in the jote/holding by adverse possession. However, the connotation 'mother suit' signifies only that in a suit for partition *simpliciter*, title and shares between the parties in the joint properties can be considered and ascertained, not to giving all sorts of reliefs. Because, when plaintiff's title is disputed/clouded in any way, either by dispossession or by wrong record of latest record-of-rights, in that case a simple partition is not enough, he must seek recovery of possession and/or declaration of title as the case may be within a statutory limitation period. If there is any impediment in getting the relief,

the plaintiff must have to pray also for removing those impediments. To our view, the 'mother suit' does not necessarily means to grant all necessary further and/or consequential reliefs in a suit for simple partition without properly framed suit.

Only co-owner or co-sharer of a holding/jote/khatian in the land can seek partition. As the law stands today according to sections 81, 82, 143B, 144 and 144A of the SAT Act, 1950, the person in whose name the last record-of-rights has been recorded is the owner of the lands of the holding/jote/khatian until and unless it is proved to be incorrect. In view of section 54 of the SAT Act read with section 53C of the Transfer of Property Act, 1882 only this record-of-rights is tantamount to title until and unless it is declared incorrect by competent authority. In view of section 144 and 144A of the SAT Act after publication of latest record-of-rights, the former record-of-rights loses its entity and effect, and all rights and liabilities laid down in part-V of the SAT Act will divest to the holders of latest record-of-rights. It has already been mentioned that to claim that the plaintiff is co-owner in the suit partible property, he must show that he has rightful shares in the suit property in the latest record-of-rights. However, if actually he has right and title in the latest Kkhatian/holding, he can seek partition only by another prayer for declaration of title within 6(six) years and must state regarding the position of the latest record-of-rights. In the case reported in 56 DLR (AD) 53 our Supreme Court held that against the wrong record of rights the person whose interest is affected by such wrong recording he is required to file suit seeking declaration of title within six years from the date the person in whose name record has been wrongly prepared and finally published raises claim denying his claim on the basis of wrong record.

It may be mentioned here that as per section 103B(5) of the Bengal Tenancy Act, 1885 applicable for the then East Bengal (now Bangladesh) CS record has presumptive

value of correctness while as per section 144A of the State Acquisition and Tenancy Act, 1950 RS record has presumptive value of correctness. At this stage let us examine section 103B(5) of the Bengal Tenancy Act, 1885 and section 144A of the SAT Act, 1950 which run as follows:

Section 103B(5) of The Bengal Tenancy Act, 1885-

Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

Section 144A of the State Acquisition and Tenancy Act, 1950-

Section 144A. Presumption as to correctness of record of rights- Every entry in record-of-rights prepared or revised under section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

From the plain reading of the above two provisions of the two laws it is crystal clear that language of both the provisions are almost similar. So, both has presumptive value of correctness but this correctness is not absolute rather rebuttable. Now, the question arises in case of dispute which one will prevail. It may be mentioned that by promulgation of SAT Act, 1950 the BT Act, 1885 has been repealed. As per section 144A of the SAT Act the last record-of-rights is the evidence and certificate of possession which usually follows title/ownership unless it is proved incorrect. The burden of proof regarding the incorrectness of such record heavily lies upon who claims so and most importantly by simple showing the CS record the incorrectness of RS record cannot be proved automatically. The claimant must prove it by adducing positive evidence. The latest record of rights excludes the previous record of rights as per section 144A of the SAT Act, 1950. Therefore, when in latest RS Khatian the plaintiffs' or their predecessors' names are total absent, rather it stands in

the names of outsiders having no genealogical connection with the previous recorded owners, it can obviously be said that the plaintiff's title to the suit land has been clouded/disputed by such latest record and certainly strong presumption is that they are not in possession of the same. In such case he/they must seek declaration of title and or recovery of possession along with partition of his/their share. In a suit for partition the parties must seek his/their share in the jote or ejmali properties.

It is long settled that in a partition suit, the status of a plaintiff and the defendant is almost identical. In other words the plaintiff and the defendant stand in the same position and that a party in a partition suit whether a plaintiff or defendant, is at the same time a plaintiff as well as a defendant and this dual capacity arises from the very nature of a partition proceeding where each party who is a co-sharer be he in the category of the plaintiff or of the defendant is entitled to ask for partition of his share and separate allotment.

In a suit for partition, ejmali possession with co-sharer is not only important but also necessary. However, it is well settled that among co-sharers themselves possession of one co-sharer is possession of all. The general rule is that the suit for partition usually is not barred by limitation but this is not absolute. When the plaintiff is excluded from joint possession of the suit land and it continues for more than statutory period of 12 years, the suit should be barred by limitation as mandated under Article 144 read with section 28 of the Limitation Act. This ouster of possession may occur by excluding his name in the last record-of-rights which has been recorded in the name of stranger having no genealogical connection with the plaintiff and the plaintiff does not challenge the said wrong record published excluding his name within statutory limitation period. Adverse possession cannot be claimed against a co-sharer, though other co-sharer is long time out of possession, unless there is a denial of their right to their knowledge by the person in possession, and

exclusion and ouster following thereon for the statutory period of 12 years. A wrong record-of-rights can be corrected either by- i) a decree for declaration of title and or possession by a civil court as mandated under section 54 of the SAT Act or ii) a decree for correction of the record by Land Survey Tribunal under section 145A of the SAT Act. For that reason, in our view, if the record is wrong, the same cannot be corrected in a suit for simple partition without a declaration of title.

Now, in the light of above position of law let us consider the present case.

In the present suit the plaintiff claimed partition of the property of CS recorded tenant Rahim Ali Sheikh as his successor and on the other hand one set of defendants claimed that the property measuring 86 decimals was transferred to one Monohor whose name was finally recorded in SA Khatian and thereafter Abdul Kader and Shahad Ali became owners by way of inheritance and purchase on 29.03.1948 and accordingly RS record was prepared in their names. Another set of defendants claimed that suit land measuring 63 decimals was transferred to one Awlad Hossain in the year 1935 on consideration of Tk-63/- whose name was recorded in SA Khatian no.265 and subsequently in RS Khatan no.314 as per section 144 of the SAT Act, 1950. The defendants claimed suit property in total denial of the title of the plaintiff.

It appears from the impugned judgment and decree that the trial court in a very slipshod manner decreed the suit without discussing the evidence on record on the finding that since the defendants could not produce any document regarding the transfer of property from CS recorded tenant, the basis of SA record as claimed by them, the defendants failed to prove their case and as successor of CS recorded tenant the plaintiff is entitled to get a decree of partition. In deciding so the trial court missed the position of law that plaintiff has to prove her case and cannot stand on the weakness of the defendant's case.

The plaintiff claimed partition on the basis of CS record but did not claim partition from the latest record-of-rights in total denial of the title of the defendants except her sister, defendant no.1. We have already observed that only co-owner or co-sharer of a holding/jote/khatian in the land can seek partition. As the law stands today according to sections 54, 81, 82, 143, 143B, 144 and 144A of the SAT Act, 1950, the person in whose name the last record-of-rights has been recorded is the owner of the lands of the holding/jote/ khatian until and unless it is proved to be incorrect. In view of section 54 of the State Acquisition and Tenancy Act coupled with section 53C of the Transfer of Property Act only this record-of-rights is tantamount to title until and unless it is declared incorrect by competent authority. In view of section 144 and 144A of the SAT Act after publication of latest record-of-rights, the former record-of-rights loses its entity and effect, and all rights and liabilities laid down in part-V of the SAT Act will divest to the holders of latest record-of-rights. It has already been mentioned that to claim that the plaintiff is co-owner in the suit partible property, he must show that he has rightful shares in the suit property in the latest record of rights. However, if actually he has right and title in the latest Khatian/holding, he can seek partition only by adding another prayer for declaration of title and must state regarding the position of latest record of rights. In the present suit the plaintiffs did not seek partition of property of latest record-of-rights, that is, RS record which does not stand in her name. In such circumstances the simple suit for partition is not maintainable without declaration of title. Because, since the name of the plaintiff or her predecessor has not been recorded in SA Khatian admittedly published in 1962 and most importantly RS Khatian, the latest record-of-rights admittedly published in 1970 also did not publish in her predecessors or her name. The plaintiff has totally failed to show any document of jamindary Dakhila or rent receipts from the government.

Further, with regard to possession, the plaintiffs claimed in the plaint total possession in denial of the defendants but PWs admit possession of the defendants by erecting dwelling house and the plaintiff resides in Chattogram. So, the possession as claimed by the plaintiff orally, are contradictory and admittedly without any supporting documents. The plaintiffs do not recognize the contesting defendants as co-owners of the suit holding/Khatian. As such the plaintiff and the defendants are not co-sharers of the suit property as it reveals from the pleadings of the parties. If the contesting parties claim their title to the suit land from the same heading of title, i.e. from same/common predecessor-in-interest, only then it can be said that the parties have community of interest in the suit properties. But if the root of adverse party's title is disputed by any party, then complicated question of title arose and suit for partition *simpliciter* is not maintainable. In other words if there is no community of interest, that is, if disputing parties have no joint ownership or interest in the suit property, rather the contesting parties have adverse claim over the suit property, or parties claim from different heads of title, suit for simple partition is not the option for resolving the dispute. In the instant suit there is no community of interest of the plaintiff in the suit land scheduled for partition with the contesting defendants. Their claims are not from the same/common predecessor-in-interest. In that view, the plaintiffs have failed to establish the community of interest in the suit holding with the defendants.

It appears from the impugned judgment that the learned Judge in a wrong contention at the very outset said that this is a suit for declaration of title and partition which is clearly a wrong finding. After meticulous examination of the plaint we do not find that the plaintiff sought title over the suit land rather she specifically prayed for partition *simpliciter* with a declaration that the record of S.A and R.S khatian are wrong. Since the plaintiff did not produce any document other than the

03(three) khatian: C.S, S.A and R.S she could not prove her title and possession over the suit land for at least 50-60 years, the suit land is recorded in the names of the defendants' predecessors. On the other hand though the defendants claimed title and possession over the suit land by producing some subsequent deeds and rent receipts but they have also failed to produce sufficient documents or sufficient evidence to prove their title in the suit property.

In such view of the matter since it is a suit for partition and in our considered view, in the given facts simple suit for partition is not maintainable, hence we think the suit should be sent on remand for re-trial giving a chance to the plaintiff to amend the plaint claiming title after paying proper court fees.

In the result the appeal is allowed. The impugned judgment and decree dated 26.10.2011 passed by the trial court is set aside. The suit is sent back on remand for re-trial giving a chance to the plaintiff to amend the plaint claiming title and in that case the trial court should give chance to all the parties to amend their pleadings, if necessary and adduce and produce documents and evidence. Since it is a case of 2003, the trial court is directed to dispose of the suit as early as possible without unnecessary adjournments.

Send down the Lower Court Records along with a copy of this judgment at once.

Raziuddin Ahmed, J:

I agree.