Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Md. Akhtaruzzaman

First Appeal No.70 of 1999

Rakesh Chandra Nath being dead his heirs:
1(a) Rani Bala Nath and others ..... appellants
-Versus-
Rafiqul Islam and others ..... respondents

Mr. Sudipta Arjun with Mr. Chanchal Kumar Biswas, Mr. Bidhayok Sarker and Mr. Sougata Guha, Advocates ..... for the appellants

Mr. Belayet Hussain with Mr. Mohammad Ali, Advocates ..... for the respondents 12(b)(i)(j) and 13

Judgment on 14.01.2024

Bhishmadev Chakrabortty, J.

This appeal, at the instance of the plaintiffs, is directed against the judgment and decree of the then Subordinate Judge and Artha Rin Adalat, Sylhet passed on 01.06.1998 in Title Suit No.113 of 1995 dismissing the suit for declaration of title and recovery of possession.

The plaintiffs brought the suit on 30.07.1992 stating facts that the suit land originally belonged to the predecessors of the plaintiffs Golak Nath and Tilak Nath. Tilak Nath died leaving behind his brother Golak Nath and he became the owner of the total land. He died leaving behind his two sons Charitra Nath and Gopi Nath as heirs. Subsequently, Gopi Nath sold his 8 annas share to his daughter Chapala Bala through *kabala* dated 19.06.1948. Charitra Nath died leaving behind his wife Amlo Bala and son Raj Kumar Nath. Chapala Bala sold her share to Amlo and Raj Kumar through registered *kabala*

dated 25.09.1957. In this way they became owner of 16 annas share of the schedule land. The land of schedule 2 was erroneously recorded in the name of the predecessors of defendants 9-13, namely, Hazi Maram Ullah and others and for that reason Amlo Bala and Raj Kumar instituted Title Suit No.362 of 1967 in the Court of Joint District Judge (the then Subordinate Judge), Sylhet which was subsequently withdrawn for formal defects. The defendants of the aforesaid suit forcefully dispossessed the predecessor of the plaintiffs from schedule 1 suit land. The predecessors of the plaintiffs then instituted Title Suit No.147 of 1969 in the Court of the then Second Subordinate Judge, Sylhet for declaration of title and recovery of possession in respect of schedule 1 and for declaration of title and confirmation of possession for schedule 2 land. In that suit the predecessors of defendants 9-13 of this suit as defendants 1-4 filed written statements and claimed the land of schedule 2 while defendant 5 Tara Miah claimed land of schedule 1. To prove the cases both the parties led evidence therein. The trial Court after considering evidence and other materials on record decreed the suit in part on 30.09.1974 declaring plaintiffs' title and confirmation of possession in respect of schedule 2 land but the suit was dismissed, so far it was related to schedule 1 of the plaint. Defendants 1-4 of that suit then preferred Title Appeal No.57 of 1975 before the District Judge, Sylhet. However, the Additional District Judge, Sylhet after hearing allowed the appeal by its judgment and decree dated 30.07.1976 and consequently the original suit was

dismissed as a whole. The plaintiffs of that suit then preferred Second Appeal No.229 of 1978 before this Court and a Bench of this Division by its judgment and decree passed on 01.11.1983 allowed the appeal and set aside the judgment and decree passed by the lower appellate Court. Against the aforesaid judgment and decree the defendants moved to the Appellate Division in Civil Appeal No.57 of 1985. The Appellate Division after hearing by its judgment and decree passed on 08.01.1991 dismissed the appeal and finally declared title of the plaintiffs' in respect of schedule 2 land and also confirmed their possession thereon. After passing the judgment by the Appellate Division, defendants 1-8 herein with the assistance of defendants 9-13, who were the defendants 1-4 of the previous suit, forcibly dispossessed these plaintiffs from schedule 2 land and erected several bamboo made huts therein. The present plaintiffs, who are the heirs of the plaintiffs of the previous suit, tried to resist them but failed. Thereafter, they instituted the instant suit praying for declaration of title and recovery of possession for schedule 2 land.

Defendants 9-13 contested the suit by filing written statement denying the statements made in the plaint. They further contended that they have been possessing the schedule suit land for more than 95 years. They got the suit land by way of *pattan* from its original owner. They were *jote* tenant under sebayet Shyamsundar Daity. Although the plaintiffs obtained a decree in the previous suit but they never enjoyed and possessed schedule 2 suit land. The defendants during

their possession and enjoyment in the suit land sought permission of the municipality authority to build houses thereon and accordingly they obtained it. They installed meter of electricity, opened holding numbers, erected houses there and have been possessing enjoying the same by paying rents to the concerned. Although the plaintiffs obtained a decree of title and confirmation of possession in schedule 2 land in the previous suit but they were not in actual possession of the same. Since this is a suit for declaration of title and recovery of possession and the plaintiffs did not assert in the plaint the time, place and date of their dispossession and as such they are not entitled to get a decree in the suit. The trial Court correctly dismissed the suit which may not be interfered with in appeal.

The trial Court framed as many as 10 issues to adjudicate the matter in dispute. During trial, the plaintiffs examined 4 witnesses while the defendants examined 5. The documents of the plaintiffs were marked as exhibits-1-5 and those of the defendants' were exhibits-Ka-Cha. However, the learned Subordinate Judge by the judgment and decree dismissed the suit giving rise to this appeal.

Mr. Chanchal Kumar Biswas, learned Advocate for the appellants taking us through the plaint, written statement, evidence of witnesses and the documents exhibited submits that the trial Court in its judgment found that in the previous suit the plaintiffs' lawful possession in the suit land has been established up to the Apex Court but at the same time dismissed the suit on the ground that the

plaintiffs failed to prove their previous possession and subsequent dispossession by evidence. The above findings of the trial Court is totally perverse and tends to give possessory right to the defendants who are trespassers in the suit land. The trial Court did not at all consider the findings of the High Court Division given in Second Appeal No.229 of 1978 and the Appellate Division in Civil Appeal No.57 of 1985 regarding title and possession of the plaintiffs' predecessors over the suit land and thereby came to an erroneous conclusion both in facts and law. The trial Court had no scope to make any findings in this suit adverse to the High Court Division and Appellate Division. He then submits that the plaintiffs instituted the instant suit under section 8 of the Specific Relief Act and as such it is not barred by limitation. Since some of the defendants of the present suit were not made parties to the previous suit, the instant suit is not also barred by *res judicata*. He refers to the provisions of Order 21 Rule 32 of the Code and the provisions of sections 42 and 54 of the Specific Relief Act and submits that the findings of the trial Court that the present plaintiffs could have filed an execution case for recovery of possession on the strength of the judgment and decree passed in the previous suit is beyond the provisions of law. In the present suit, the plaintiffs successfully proved their possession and dispossession from the suit land. In the premises above, the trial Court earred in law in dismissing the suit which is required to be interfered with.

Mr. Belayet Hussain, learned Advocate for respondents 12 (b) (i) (j) and 13 on the other hand opposes the appeal. He submits that in the plaint the plaintiffs asserted the fact that they were dispossessed from schedule 2 land in the first part of March, 1991 but instituted the instant suit on 29.07.1992 *i.e.,* after more than 1½ years of their alleged dispossession. Since the previous suit was for the declaration of title and confirmation of possession and the plaintiffs' title has been declared therein, and as such this suit would have been filed under section 9 of the Specific Relief Act within 6(six) months from the alleged dispossession. The instant suit for recovery of possession is, therefore, hopelessly barred by limitation. Mr. Hussain then takes us through the plaint and referring to the provisions of Order 7 Rule 1(e) of the Code submits that the plaintiffs are to make positive assertion in the plaint about the cause of action. But no date and time of dispossession has been mentioned in the plaint of this suit. The plaintiffs also failed to prove the date and time of dispossession by adducing evidence. He refers to the cases of Surat Sarder and others Vs. Afzal Hossain and others, 49 DLR (AD) 99 and the case of Superintendent Musrat Dhulia Dakhil Madrasha Vs. Md. Rafiqul Islam and another, 8 ADC 488 and submits that the incidence of cause of action must be antecedent to the bringing of the suit at a time when the right to sue arose for the first time. Since this is a suit for declaration of title and recovery of possession, it must be written in the plaint and to be proved in evidence. Mr. Hussain then refers to the

documentary evidence of the defendants exhibits Ka-Cha and submits that by those documents the defendants proved their possession over the suit land from long before and the plaintiffs were required to disprove those documents which they failed. He refers to the provisions of sections 4 and 80 of the Evidence Act and submits that the documents produced by the defendants has presumptive value unless the presumption is rebutted by the plaintiffs. He placed before us 'actual possession' and 'constructive possession' as defined in the Black's Law dictionary and submits that although in the previous suit plaintiffs' possession was declared up to the Appellate Division but they were not in actual physical possession in the suit land. The learned trial Judge correctly found that although the plaintiffs' had legal possession but they had no physical possession over the suit land and consequently dismissed the suit. He further submits that within 1½ years of the alleged dispossession, the plaintiffs did not take any step to any authority or in the criminal Court and thus failed to prove the alleged dispossession from the suit land. This appeal, therefore, having no merit would be dismissed and the judgment and decree passed by the trial Court be upheld.

We have considered the submissions of both the sides and gone through the evidence and other materials on record.

It is admitted fact that there was a suit between the predecessors of the present plaintiffs and predecessor of defendants 9-13. The defendants of this suit also admit that in previous Title Suit No.147 of

1969, the predecessors of the present plaintiffs got a decree of declaration of title and confirmation of possession in respect of schedule 2 land of plot No.710 measuring an area of .09 acres. The lower appellate Court allowed Title Appeal No.57 of 1975 and set aside the aforesaid judgment and decree passed by the trial Court and consequently the suit was dismissed as a whole against which the predecessors of the present plaintiffs preferred Second Appeal No.229 of 1978 before this Court. A Bench of this Division after full fledged hearing allowed the appeal and affirmed the judgment and decree passed by the trial Court i.e., title in respect of schedule 2 property of the plaint was declared and possession of the plaintiffs therein was confirmed. Exhibit-4 is the judgment and decree passed by the High Court Division in the aforesaid second appeal which was affirmed by the Appellate Division in Civil Appeal No.57 of 1985 exhibit-5. The above fact is also admitted by the parties. But here the defendants' case is that although the plaintiffs' predecessors got a decree of declaration of title and confirmation of possession but they had ever no possession over the suit property. The defendants' were and are in possession of the suit land and they did not dispossess the plaintiffs as alleged.

The learned Advocate for the respondents vehemently argued that the instant suit would have been dismissed for want of not mentioning and proving the cause of action. In the plaint the plaintiffs stated that defendants 1-8 in connivence with defendant 9-13, who

were defendants of the original suit, in the first part of March, 1991 entered into the suit land and dispossessed them therefrom by erecting bamboo made huts which constrained them to file the instant suit for declaration of title and recovery of possession. In the written statement, the contesting defendants denied the aforesaid fact of dispossession and asserted the fact that they were and are in possession of the suit land for last 95 years. The plaintiffs did never possessed the suit land. They (defendants) took permission from the municipality authority and erected houses thereon in the year 1977. They admitted the fact of passing the judgment and decree in the previously instituted suit but stated that they were in possession of schedule 2 suit land all along but the plaintiffs by misleading the Court obtained a decree in the previous suit. The plaintiffs did not state the date and time of his dispossession, the plaintiffs failed to prove his previous possession as such they are not entitled to obtain a decree in this suit.

In paragraph 12 of the plaint, we find that the cause of action has been asserted- "১২. নালিশের কারণ ১৯৯১ ইং মার্চ মাসের প্রথম ভাগ ও তারপর হইতে অত্রাদালতের এলাকায় উপজাত হইয়াছে।" In paragraph 11 of the plaint the plaintiffs stated that the defendants dispossessed them from the suit land on the alleged day. The plaintiffs' witnesses PWs 1-4 in evidence corroborated the aforesaid statements made in the plaint particularly mentioning time from 10.00 am to 2.00 pm in the first part of March, 1991. Thus we can safely hold that the cause of action has been

proved successfully. Minor discrepancies in the evidence of the plaintiffs' witnesses in no way effect their positive case of dispossession. The submission of Mr. Hussain, therefore, bears no substance and *ratio* of the cases cited by him to that effect do not match this case.

The moot point is to be decided here whether the plaintiffs were in possession of the suit land and the defendants dispossessed them on the day as claimed. The statement of dispossession has been made in paragraph 11 of the plaint as- "উপরোক্ত মোকদ্দমা মহামান্য সুপ্রীম কোর্ট আপীল বিভাগে নিস্পত্তি হওয়ার পর নালিশা ভুমিতে পুর্বাপর স্বত্ববান দখলকার থাকায় ১৯৯১ ইং মার্চ মাসের প্রথম ভাগে বাদীগনের প্রতিবাদ সত্বেও ৯-১৩ নং বিবাদীগনের প্ররোচনায় ও যোগতায় তাহাদের একদল ভুক্ত ১-৮ নং বিবাদীগন ঐ ৯-১৩ নং বিবাদীগন সহ অন্যায় যোগতায় মিলিত হইয়া তাহারা সকলে নালিশা ভুমিতে প্রবেশ করিয়া ছাপরা ঘর তৈরি করিয়া তাহাতে দখল সংস্থাপন করিয়াছে এবং বাদীগনের সকল বাধা সত্বেও তাহারা ছাড়িয়া যাইতেছে না। মহামান্য সুপ্রীম কোর্ট উভয় বিভাগ পর্যন্ত হারিয়া যাওয়া ৯-১৩ নং বিবাদীগন আক্রোশান্বিত হইয়া বাদীগনকে হয়রান ও ক্ষতিগ্রস্থ করার জন্য তাহাদের একদলস্থ ১-৮ নং বিবাদীগনের সংগে যোগসাজসে তাহারা সকলে মিলিয়া বাদীগনকে নালিশা ভুমি হইতে বেদখল করিয়াছে।"

The aforestated statement in the plaint has been corroborated by the evidence of plaintiffs' witnesses. Plaintiff as PW1 in evidence stated- "এর পর ১৯৯১ সালের মার্চ মাসের প্রথমভাগে নালিশা ৭১০ দাগ থেকে বেদখল করেছে। বেদখল করেন ৯-১৩ নং বিবাদী যাদের বিরুদ্ধে রায় ও ডিক্রী হয়। তারা ১-৮ নং বিবাদীর সহযোগে আমাদের বেদখল করে। বেদখল করে বাঁশ গাছ কেটে কয়েকটা ছাপরাঘর তৈরী করে এবং দখল করতে থাকে। এর আগে তারা বেদখলিয় নালিশা জায়গায় দখলে ছিল না।" In cross-examination by the defendants he stated- "৮.০১.১৯৯১ ইং

তারিখে সুপ্রীম কোর্টে মামলা নিস্পত্তির পর ১৯৯১ ইং সনের মার্চ মাসের প্রথম ভাগে বিবাদীগন আমাদিগকে বেদখল করে নালিশা ভূমি থেকে। .....। রমিজ, জিতেন, দিদার, সুবল সহ আরো অনেকে দেখি যাইয়া।" He denied the suggestion of the defendants that they were not dispossessed on the alleged date and time.

PW 2 Md. Didar Hossain, a witness of dispossession deposed on 23.03.1998 who stated- "আমি বাদী বিবাদীকে ও নালিশা জায়গা চিনি। নালিশা জায়গা থেকে আমার বাড়ী ৫০/৬০ ফুট দুরে। ৩০/৩২ বৎসর যাবত নালিশা জমি চিনি। নালিশা জায়গা বাদীগনের পূর্ববর্তী রাজকুমার নাথ দখল করতেন। রাজকুমার নাথ ১২ বৎসর আগে মারা গিয়েছেন। ..... প্রায় ৭ বৎসর ধরে এই জায়গা বাদীদের দখলে নাই। এই ৭ বৎসর ধরে বিবাদীরা নালিশা জমি দখল করে। ৭ বৎসর আগে বিবাদীরা যে দিন দখলে যায় সেদিন আমি বাড়ীতে ছিলাম। বাদীদের চিৎকার শুনে আমি নালিশা জায়গায় যাই। সেখানে গিয়ে দেখি যে বিবাদীরা গাছ কেটে ছোট ছোট খন্ড করতেছে এবং ঘর করতেছে। ৭ বৎসর আগে মার্চ মাস ছিল। মার্চ মাসের প্রথম ভাগ ছিল। সকাল ১১ টায় হবে বেদখল করে। এর আগে কোন দিন বিবাদীদের এই জায়গা দখল করতে দেখি নাই।" In cross-examination he stated- "আমি চিৎকার শুনে সরজমিনে নালিশা জায়গায় গেলে তথায় ২০/২৫ জন লোক দেখতে পাই। বাদীপক্ষে বাদীকে এবং বিবাদীপক্ষের সিরাজ মিয়া, নাজিম মিয়া, খুরশিদ মিয়া, ফখরুল ইসলাম এবং আমিন মিয়াকে দেখি। ..... বিবাদীরা প্রায় ২ ঘন্টা ধরে দখল কার্য্যক্রম করে এবং ৮ টা চালা ঘর তোলে।"

PW3 Ramiz Ali who deposed on 23.03.1998 stated-"আমি বাদী বিবাদী ও নালিশা জায়গা চিনি। নালিশা জায়গা ২৫/২৬ বৎসর ধরে চিনি। নালিশা জায়গা রাজ কুমার নাথ দখল করতো। ..... ৭ বৎসর পূর্বে মার্চ মাসের ১ম ভাগে বিবাদীদের বেদখল করেছে। আমি বাদীদের সবজি খেত থেকে মাল নিয়ে এসে দেখি যে, নালিশা জায়গায় চিৎকার হচ্ছে। এটা দিনের বেলা ১১/১২ টা হবে। বিবাদীরা বাঁশ কেটে চালাঘর বানায়।" In cross-

examination he stated- "ফাল্গুন মাসের মাঝামাঝি বেদখলের ঘটনা ঘটে। মার্চ মাসের মাঝামাঝি ঘটনা ঘটে। কোন বৎসরের ফাল্গুন মাসের মাঝামাঝি তা স্বরন নাই তবে ১৯৯১ ইং সনের মার্চ মাসের মাঝামাঝি হবে ঘটনা ঘটে।"

PW4 who deposed on 29.03.1998 stated that he was a mechanic of autorickshaw and used to repair the tempu of the plaintiffs. On that day he came to the plaintiffs' house. He further stated- "নালিশা জায়গা ১০/১১ বৎসর যাবৎ চিনি। ১০/১১ বৎসর আগে আমি বাদীদের দখল করতে দেখেছি। বাদীরা বাঁশ গাছ কেটে এনে তাদের বাড়ীতেই ব্যবহার করতো। ৭ বৎসর আগে মার্চ মাসের ১ম ভাগে বিবাদীরা বাদীদের বেদখল করেছে। আমি ঐদিন দশটা/সারে দশটা হবে টেম্পু মেরামতের কাজের জন্য বাদীদের বাড়ীতে যাই। ১১/১২ টার সময় বেদখল করে আমি সে সময় উপস্থিত ছিলাম। বিবাদীরা নালিশা জমির বাঁশ কেটে এই জায়গায় চালা ঘর করে আছে বেদখল করিয়া। " In cross-examination he stated- "বাদীরা বাধাদেয় এবং এতে অনেক রাগারাগি হয়। ২ টা পর্যন্ত বিবাদীরা বেদখলের কাজে ছিল।" *(emphasis added)*

To support their case of previous possession and denying alleged dispossession, the defendants examined 5 witnesses. More or less all of them stated that the defendants were in possession of the suit land from before and they did not dispossess the plaintiffs from the suit land in the alleged day as mentioned by the plaintiffs. In support of their possession by erecting huts from 1977 they produced some documents exhibits Ka-Cha. In evidence DW 1 stated- "আমরা ১৯৭৭ ইং সন থেকে এখানে গৃহাদি নির্মানে বসবাস করে আসছি।" In cross-examination he stated-"প্রদর্শনী খ এর মধ্যে কয়টা ঘর কি মাপে হবে তা উল্লেখ নাই"। He denied the plaintiffs' suggestion as- "ইহা সত্য নয় যে, মামলা করার উদ্দেশ্যে

পারমিশনের কাগজ পৌরসভা থেকে আনায়ন করা হইয়াছে।" He further denied that they have created the documents in support of their illegal possession over the suit land.

DW2 Hazi Abdul Gaffar, an inhabitant of the village in evidence supports the previous possession of the defendants over the suit land. In cross-examination he stated- "যুগল টিলার দেবতার সংগে আমার জায়গা নিয়া মামলা চলছে এবং যা হাইকোর্টে বিচারাধীন আছে। ইহা সত্য যে, আমার উপরে পৌরসভা থেকে একটা নোটিশ হয়।"

DW 3 Md. Mashon Miah, a neighbour of the defendants in evidence supports the case of the defendants. In cross-examination he stated "বিবাদীরা ঘর বাড়ী বানানোর সময় আমি ছিলাম না।"

DW 4 Abdul Malik and DW 5 Faruk Ahmed are the tenants of defendant 9. In examination-in-chief they supports the case of the defendants. In cross-examination PW 4 stated-"কোতয়ালী পুলিশ কেস নং ২৬(২২০)১৯৯৮ ঘটনার তারিখ ০২/০৩/১৯৯৮ তে আমি আসামী এবং জামিনে আছি"। DW 5 Faruk Ahmed in examination-in-chief supports the case of the defendants. He further stated-"রাকেশ এই মোকদ্দমা চলাকালে আমরা মারপিট করেছি মর্মে আমার উপর ফৌজদারী মোকদ্দমা করে। এই ফৌজদারী মোকদ্দমা দায়েরের পূর্ব থেকে আমরা মানিত সাক্ষী। আমাদিগকে মিথ্যা ভাবে মোকদ্দমায় জড়িত করেছে।" He denied other suggestions put by the plaintiffs. (*emphasis supplied*)

The specific case of the plaintiffs are that they were dispossessed from the suit land in the first part of March 1991. In support of it PW1 led evidence in the dock which has been

corroborated by PWs 2, 3 and 4 as quoted above. Although they failed to disclose the exact date of dispossession but all of them stated that in the first part of March, 1991 the defendants dispossessed the plaintiffs from the suit land. By cross-examining them the defendants admitted the plaintiff's dispossession on the alleged day in 1991. The defendants led corroborative evidence that it happened within 11:00 am to 2:00 pm. Although, there are some minor discrepancies in the evidence of the plaintiffs' witnesses about the time and date but those cannot be taken as a weapon to brush aside the definite case of the plaintiffs. The evidence of the plaintiffs to that effect is corroborative on material point. On scanning of evidence of defendants' witnesses regarding their possession, we find that they tried to prove their possession from 1977 but failed. We do not believe the evidence of DWs 4 and 5 because there were criminal cases against them by the plaintiffs for attacking upon PW 1 which has been admitted by them in evidence. In the similar reason evidence of DW2 is discarded.

In the judgment and decree passed in Second Appeal No.229 of 1978 exhibit-4 we find that the High Court Division found possession of the predecessors of the present plaintiffs over schedule 2 suit land. In taking such decision this Division relied on the rent receipts, the oral evidence of the witnesses and other documents submitted in that suit. In that suit the title of the plaintiffs was declared and their possession was confirmed. In this suit there is no scope to hold that they were not in actual possession of schedule 2 land or they had only

legal possession over it. There was no scope for the trial Court to hold that the plaintiffs were not in possession of the suit land. Such findings of the trial Court appears contemptuous. They had been in possession as it appears from the judgment and decree passed by the Appellate Division in Civil Appeal No.57 of 1985 which was disposed of on 08.01.1991. So the dispossession made by the defendants is surely after 08.01.1991. The interpretation and findings of the learned Joint District Judge on possession is totally wrong.

In this suit, the defendants produced a series of documents in support of their possession over the suit land by erecting huts since 1977. We have gone through those documents. The plaintiffs raised objection in exhibiting most of them. On perusal of exhibit-Kha, a sanction letter of municipality authority dated 03.01.1977; exhibit-Ga series electric meter in the name of Sirajul Islam and others; exhibit-Gha series the electricity bills; exhibit-Uma assessment list of the municipality; exhibit-Cha rent receipt of municipality and exhibit-Uma 1&2 assessment list, we find that those were not produced in the previous suit which was finally disposed of by the Appellate Division in 1991. We do not find that those documents attract the suit land because those bear no plot and holding number. Moreover, those were procured from 1977 to 1996. Therefore, the plaintiffs' case as made out in the plaint- "বাদীগন সংবাদ পাইয়াছেন বিবাদীগন নিঃস্বত্ববান ব্যক্তিগনের সংগে অবৈধ যোগতায় তাহাদের অন্যায় দখলের পোষাকে কৃত্রিম মূল্যহীন জাল প্রবৃত্তিহীন কাগজাত সৃষ্ঠি করিয়াছে। তাহা সম্পূর্ণ জাল antedated ও মিথ্যা ও প্রবৃত্তি বিহীন বটে।" and the

plaintiffs' evidence supporting it that those have been created only to grab the property can safely be believed.

The learned Advocate for the respondents argued that since the earlier suit was for declaration of title and confirmation of possession and the title of the plaintiffs having been declared in the suit, this suit would have been a suit under section 9 of the Specific Relief Act for recovery of possession only. But fact remains that defendants 1-8 of this suit, who assisted and took part in dispossessing the plaintiffs in the first part of March, 1991, were not made parties in the previous suit. Therefore, the present suit for declaration of title and recovery of possession under section 8 of the Specific Relief Act is well mentionable. The findings of the trial Court that the present plaintiffs could have filed an execution case for recovery of possession on the strength of the judgment and decree passed earlier in Title Suit No.147 of 1969 is totally wrong and misconceived because the earlier suit was for declaration of title and confirmation of possession which was filed under section 42 of the Specific Relief Act. If a suit for permanent injunction is decreed and the plaintiffs are dispossessed subsequently in that case an execution case under Order 21 Rule 32 of the Code may be filed for recovery of possession. But here the previous suit was for declaration of title and confirmation of possession and as such the plaintiffs cannot file an execution case for recovery of possession as observed by the trial Court. The plaintiffs have chosen to file this suit for declaration of title and recovery of

possession for redressing their grievances. Non filing of any criminal case and not informing the fact to any other authority in no way debar them from filing this civil suit in the form and manner. Learned Joint District Judge failed to appraise, assess and sifting evidence of the witnesses in its legal perspective and thereby erred in law in dismissing the suit.

The defendants are illegal possessors of schedule 2 land. They trespassed into the land of the plaintiffs and dispossessed them therefrom in the first part of March, 1991. The plaintiffs by evidence both oral and documentary succeeded in proving their case of dispossession. It was just and proper for trial Court to decree the suit relying on the evidence of the parties. The judgment and decree passed by the trial Court dismissing the suit is perverse which cannot be sustained in law and requires to be interfered with.

Accordingly, this appeal succeeds. The judgment and decree passed by the trial Court is hereby set aside and the suit is decreed. However, there will be no order as to costs. The plaintiffs may take appropriate steps to get possession in schedule 2 suit land.

Communicate the judgment and send down the lower Court records.

Md. Akhtaruzzaman, J.

I agree.