

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

First Appeal No. 245 of 2013.

Munshi Abdus Sobhan and another

...Appellants.

-Versus-

Abdul Mannan being dead his legal heirs:

1(a) Samirun Nesa and others

....Respondents.

With

Civil Rule No. 682 (F) of 2013

Munshi Abdus Sobhan and another

...Appellant-petitioners.

-Versus-

Abdul Mannan being dead his legal heirs:

1(a) Samirun Nesa and others

....Respondent-opposite parties

Mr. Tapan Kumar Dutta, Advocate

... For the appellant and petitioners

Mr. Faysal Hasan Arif, Advocate with

Mr. Kaissaruzzaman, Advocates

... For respondent Nos. 8, 9, 11-15/
opposite parties.

**Heard on: 30.01.2024, 31.01.2024, 07.02.2024,
24.04.2024, 25.04.24, 08.05.2024 and 09.05.24.**

Judgment on: 14.05.2024.

Md. Badruzzaman, J:

This Appeal is directed against judgment and decree dated 12.05.2013 (decree signed on 19.05.2013) passed by learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 255 of 2013 dismissing the suit.

During pendency of the appeal Rule was issued and the respondent-opposite parties were restrained by an order of injunction from interfering with the peaceful possession of the appellant-petitioners on the suit land and from transferring and changing the nature and character of the same for a period of 4 (four) weeks which is still in force. The Rule was registered as Civil Rule No. 682 (F) of 2013. Since the appeal and Rule involve identical facts, those have been heard together and now are being disposed of by this common judgment.

Facts, relevant for the purpose of disposal of the appeal and Rule, are that two appellants as plaintiffs on 15.5.2007 instituted Title Suit No. 57 of 2007 in 3rd Court of Joint District Judge, Dhaka praying for a decree of declaration of title to .33 acre suit land and another declaration that R.S Khatian No. 676 of R.S Plot No. 785 in respect of the suit land was wrongly prepared and published in the name of defendant Nos. 1-3 (Abdul Mannan, Fuljan Bibi and Aleka Banu) and not binding upon the plaintiffs contending, *inter alia*, that total 21.40 acre land belonged to Kamaldi in eight ana, Ekbar Ali in four ana thirteen Gonda one Kara one karanti, Amirjan in three ana six Gonda two Kara two Karanti and Soyda Bibi in one ana share. Accordingly C.S Khatian No. 170 was prepared and finally published in their name. Kamaldi transferred .43 acre land out of .86 acre land of C.S Plot No. 637 of C.S Khatian No. 170 in favour of Wahed Box by registered deed of sale dated 30.11.1915 being No. 4844. Rest .43 acre land of C.S Plot No. 637 was owned and possessed by Ekbar Ali, Amirjan and Soyda Bibi according to their respective shares. Wahed Box, thereafter, sold said .53 acre land to Chand Miah, Bashir Uddin, Omar Miah and Shamsuddin by registered deed of sale No. 3401 dated 02.08.1949. By said deed dated 02.08.1949 Wahed Box transferred .10 acre access land. During

S.A operation 17.97 acre land including .43 acre land of S.A Plot No. 637 was recorded in the name of Ekbar Ali and Amirjan along with other co-sharers. During R.S operation in 1974 total .86 acre land of C.S Plot No. 637 was divided into two plots out of which .42 acre land was recorded in R.S Plot No. 784 of R.S Khatian No. 2680 in the name of Chand Mia and others but .33 acre land was wrongly recorded in R.S Plot No. 785 of R.S Khatian No. 676 in the name of Abdul Mannan, Fuljan and Aleka Banu (defendant Nos. 1-3) instead of Ekbor Ali and Amirjan. Moreover, the quantum of land was wrongly recorded as .33 acre instead of .43 acre in R.S Plot No. 785. For such wrong record-of-rights, the title and possession of Ekbar Ali and Amirjan were not affected. Since after transfer, Wahed Box lost his title to .43 acre land, the preparation and publication of R.S Khatian No. 676 in the names of defendant Nos. 1-3 as his heirs was wrong and erroneous and not binding upon the plaintiffs.

Omar Miah transferred .1075 acre land by registered deed of sale No. 13737 dated 30.12.1989 to Somsher Ali. In said deed it was mentioned that the land of Ekbar Ali was situated to the Northern side of the land sold by Omar Miah. Similarly Somsher Ali purchased land from Md. Boshir Uddin vide registered sale deed No. 13736 dated 30.12.1989 and in said sale deed it was mentioned that Ekbar Ali was owner to the Northern portion of said land and thereafter, Somsher Ali transferred .05 acre land out of .3275 acre land of R.S Plot No. 784 to Abdul Matin by registered sale deed No. 1696 dated 04.02.1996.

Earlier Maleka Khatun filed Title Suit No. 293 of 1972 in respect of .33 acre suit land in the Court of 1st Munsif, Dhaka against present defendant Nos. 1-3 and others which was renumbered as Title Suit No. 83 of 1985 in the Court of 2nd Munsif and thereafter, was renumbered

as Title Suit No. 45 of 1989 in the Court of 3rd Additional Assistant Judge, Dhaka. The suit was dismissed on contest vide judgment and decree dated 23.09.1992 against which Melaka Khatun preferred Title Appeal No. 501 of 1992 before the learned District Judge, Dhaka which was transferred to learned Additional District Judge, 10th Court, Dhaka and was allowed on contest. In that appeal the title and possession of the plaintiffs of that suit in respect of the suit land was confirmed and the title and possession of defendant No. 1 Abdul Mannan was not proved. The plaintiffs by registered sale deed No. 8679 dated 11.06.1998 purchased said .33 acre suit land from Ekbar Ali and the heirs of Amirjan and thereafter, got their names mutated and paid rents in the concerned Revenue Office of the Government and the same was recorded in the name of the plaintiffs in recent City Jarip D.P Khatian No. 4230 in Plot No. 42701. During the City Jarip defendant Nos. 4-15 by claiming their title to the suit land made obstruction to record the suit land in the name of the plaintiffs and in spite of obstructions made by them, the concerned Revenue Officers recorded the suit land in their favour in the City Jarip Khatian. Thereafter, the predecessor of defendant Nos. 8-15, namely Salauddin, by challenging the City Jarip Khatian filed objection and appeal cases under Rules 30 and 31 of the SAT Rules against the plaintiffs and lost. Appeal Case No. 29747 of 2000 was dismissed on 11.09.2007. Plaintiff No. 1 filed application before Assistant Commissioner (Land), Mirpur Circle, Dhaka on 26.07.2007 for cancellation of mutations of defendant No. 1 and their predecessors obtained vide Mutation Case Nos. 4361 of 1977-78 dated 17.02.1978, 7287 of 1997-98 dated 23.10.1997, 23455 of 1998-99 dated 23.08.1997 and 745 of 1997-98 dated 31.07.1997. The Assistant Commissioner (Land) directed the Assistant Land Officer, Cantonment Land Office,

Dhaka to inquire the matter who, after inquiry submitted report on 13.08.2007 recommending to cancel the mutation of defendant No.1. But the Assistant Commissioner (Land) did not cancel the mutation of defendant No.1 due to pendency of Title Suit No. 57 of 2007. The plaintiffs on 18.04.2007 went to the Office of defendant No. 17 for correction of impugned wrong R.S Khatian. But the Officials opined that wrong R.S Khatian was required to be corrected from civil Court. After collecting the certified copy of the R.S Khatian the plaintiffs came to learn that the R.S Khatian (as described in Kha schedule of the plaint) was wrongly prepared and published in the name of defendant Nos. 1-3. The cause of action of the suit firstly arose during preparation of City Jarip Khatian when the plaintiffs came to learn that Kha schedule R.S Khatian was wrongly prepared and published in the name of defendant Nos. 1-3 and then on 19.04.2007 when they failed to correct the R.S Khatian from the Office of defendant No. 17 and came to learn about the wrong record after collecting certified copy thereof.

Defendant No. 7 separately and defendant Nos. 8-10 and 12-15 jointly filed written statements to contest the suit. Except their respective purchased deeds, the genealogy and the way of acquisition of their title are more or less same.

Their common case is that the suit is not maintainable in its present form; that the suit is bad for defect of parties and barred by limitation and the principles of estoppel, waiver and acquiescence. Their positive case is that total 21.40 acre land was owned and possessed by Kamaldi, Ekbar Ali, Amirjan and Soyda Bibi in which Kamaldi had eight anna share and the heirs of Ayen Uddin i.e. Ekbar Ali, Amirjan and Soyda Bibi had eight anna share jointly out of which Ekbar Ali had four anna thirteen Gonda one Kara one karanti, Amirjan had

three ana six Gonda two Kara two Karanti and Soyda Bibi had one ana share. C.S Khatian No. 170 in respect of 21.40 acre land was jointly prepared and finally published in their names as per their respective shares. Out of her two ana share from her husband, Soyda Bibi transferred two pakhi (.56 acre) land in favour of Wahed Box by registered deed of sale No. 3629 dated 02.10.1915 from C.S Plot No. 637 and handed over possession thereof to him. On the other hand, Kamaldi transferred one and half pakhi (.43 acre) land in favour of Wahed Box by registered sale deed No. 4844 dated 30.11.1915 and accordingly, Wahed Box became owner in possession of total .86 acre land of C.S and S. A Plot No. 637 and while he was owning and possessing the same died during S.A operation leaving behind one son namely Abdul Mannan (defendant Nos. 1), One wife namely Fuljan (defendant No. 2) and six daughters namely Motijan, Kadbanu, Sobjan, Melaka Bibi, Khodeja Bibi and Aleka Bibi (defendant No. 3) as his legal heirs but their names could not be recorded in S.A Khatian No. 502 as some of them were minors and others were illiterate at the relevant time and the same was wrongly recorded in the name of Jalil Box. Motijan, Kadbanu and Sobjan transferred .60 acre land including .15 acre land of C.S Plot No. 637 to their brother Abdul Mannan (defendant No. 1) by registered sale deed No. 23137 dated 02.12.1967. Melaka Bibi and Khodeja Bibi transferred .07 acre land of C.S and S.A Plot No. 637 in favour of their brother defendant No. 1 by registered sale deed No. 2990 dated 17.02.1968. In the aforesaid way defendant No. 1-3 became owners in possession of total .33 acre suit land of C.S Plot No. 637 by way of inheritance and purchase. While they were owning and possessing .33 acre suit land by way of inheritance and purchase the same was rightly recorded in their name in R.S Plot No. 785 of R.S

Khatian No. 676. To avoid future complications the heirs of Jalil Box namely Abdul Matin and two others executed and registered a deed of Nadabi Nama dated 03.09.1998 being No. 13159 in favour of defendant No. 1 stating that they have no right, title or interest in .34 acre land and the S.A Khatian No. 502 was wrongly prepared and published in the name of their predecessor, Jalil Box. Thereafter, defendants Nos. 1 and 3 transferred .2410 acre land in favour of Md. Salauddin (predecessor of defendant Nos. 8-15) by registered sale deed No. 13798 dated 22.9.1998 and handed over possession thereof to him and while he was owing and possessing the same mutated his name in the concerned Revenue Office of the Government and paid rents thereof and thereafter, he died on 26.06.2006, leaving behind defendant Nos. 8-15 as his heirs. During City Jarip operation said .2410 acre land was recorded in the name of Md. Salauddin. Defendant Nos. 8-15 have been owning and possessing .2410 acre land by demarcating the same with boundary and by erecting tin shed hut therein.

Earlier, land of C.S Plot No. 831 of C.S Khatian No. 170 was acquired by the Government vide L.A Case No. 1961-62 and Ekbar Ali received the compensation (award) against which defendant No. 1 by claiming his title therein filed an application to include his name in the Award List. The matter was resolved by amicable settlement and a compromise petition was filed on 24.02.1971 before the L.A Authority. In the compromise petition, Ekbar Ali and Amirjan declared that they had or have no right, title and possession in the land of C.S and S.A Plot No. 637. After hearing, the L.A. Authority cancelled the Award of Ekbar Ali on 12.04.1972 and directed him to refund back the compensation money to the concerned authority which was then refunded by Ekbar Ali. The plaintiffs by fraudulent means got their names mutated vide

Mutation Case No. 222 of 2007 which was cancelled by order of the Assistant Commissioner (Land) dated 15.05.2007. The plaintiffs had or have no right, title and possession in the suit land and as such, the suit is liable to be dismissed.

In his written statement, defendant No. 7 endorsed the contention of defendant Nos. 8-15 and further stated that defendant No. 1 Abdul Mannan, transferred .0990 acre land out of .33 acre land to Firoja Begum by registered sale deed No. 4807 dated 31.3.1997 and handed over possession thereof to her and while she was owning and possessing the same after mutating her name in the concerned Revenue Office of the Government upon payment of rents, transferred the same to Azizunnessa, defendant No. 7 by registered sale deed No. 24144 dated 2.11.2006 and handed over possession thereof to her and she is owning and possessing the same after mutating her name in the concerned Revenue Office of the Government and paying rents thereof. The plaintiffs have no right, title, interest and possession in the suit land and as such, the suit is liable to be dismissed with costs.

The suit was transferred to 5th Court of Joint District Judge, Dhaka for disposal and renumbered as Title Suit No. 255 of 2013.

During trial the plaintiffs examined five P.Ws and on the other hand the defendants examined six D.Ws and also produced documentary evidence to prove their respective case and those documents were marked as exhibits.

The trial Court, upon considering the evidence and materials on record, by judgment and decree dated 12.05.2013 dismissed the suit against which this appeal has been preferred by the plaintiffs.

Defendant respondent Nos. 8, 9, 11-15 have entered appearance by filing Voklatnama to contest the appeal.

Mr. Tapan Kumar Dutta, learned Advocate appearing for the plaintiff-appellants submits that though the plaintiffs could prove their title to and possession in the suit land by adducing oral and documentary evidence and the suit was filed within the period of limitation but the trial Court upon misconception of law and misreading the evidence wrongly held that the suit is barred by limitation and the plaintiffs could not prove their title to and possession in the suit land. Learned Advocate further submits that though the interested persons from R.S recorded tenants have been impleaded as defendants in the suit but the trial Court wrongly held that the suit is bad for defect of parties. Learned Advocate further submits that the trial Court without deciding the issue of maintainability of the suit with reference to any evidence available on record wrongly held that the suit is not maintainable. Learned Advocate further submits that the decree passed in Title Appeal No. 501 of 1992 is binding upon the defendants because the predecessors of the plaintiffs and the predecessors of the defendants were parties to said suit and the appellate Court decided the issue that sale deed dated 02.10.1915 was not acted upon, and as such, that issue cannot be decided further in this suit but the trial Court without taking into consideration of the judgment passed by another competent Court illegally dismissed the suit and as such, committed illegality. Learned Advocate finally submits that since the plaintiffs could able to prove their title to and possession in the suit land and since the suit has been filed within the period of limitation, the trial Court should have decreed the suit.

In support of his contention learned Advocate has referred to the case of Abdul Hafez and another vs. Lal Miah and others 8 BLD 497 and

the case of Bangshadhar Mitra and others vs. Natabar Sarder and others 1 BCR 393.

On the other hand, Mr. Faysal Hasan Arif, learned Advocate appearing for defendant-respondent Nos. 8, 9, 11-15 submits that the suit land is unspecified and as such, a decree of declaration of title to an unspecified land cannot be passed in view of the provisions under Order VII rule (3) of the Code of Civil Procedure. Learned Advocate further submits that admittedly impugned R.S Khatian was prepared and finally published in the name of defendant Nos. 1-3 out of whom defendant Nos. 2 and 3 died before institution of the suit and the plaintiffs impleaded those dead persons as defendants and after knowing that fact they did not implead their legal heirs in the suit and as such, the trial Court rightly held that the suit is bad for defect of parties. Learned Advocate further submits that during City Jarip operation in 1998 the predecessor of the defendants by claiming their title to and possession in the suit land raised objection against the preparation of City Jarip Khatian in the name of the plaintiffs and thereafter, filed objection case and appeal case against such record and as such, the counting of period of limitation of filing of the suit started in 1998 but the plaintiffs filed the suit in 2007 which is barred by limitation as prescribed under Article 120 of the Limitation Act and accordingly, the trial Court rightly held that the suit is barred by limitation. Learned Advocate further submits that the plaintiffs could not prove their exclusive possession in the suit land because the witnesses of the plaintiffs made contradictory statements in respect identification of the suit land as well as the manner of possession of the plaintiffs and the Revenue Officers in the objection case also stated that .33 acre land could not be traced out as the same was under water as

well as was not recorded in a separate plot but it was recorded along with 11.4856 acre land in Plot No. 42701 in 79 separate D.P Khatians and accordingly, the trial Court committed no illegality in dismissing the suit. Learned Advocate further submits that earlier suit being Title Suit No. 293 of 1972 was filed by one Jamila Khatun claiming .4550 acre land of C.S and S.A Plot No. 831 of C.S Khatian No. 170 against defendant No. 1 of this suit as well as the predecessor of the plaintiffs namely Ekbar Ali and Amirjan. He further submits that the title to the land of present suit was not an issue to be decided in that suit and there was an issue for deciding title to or possession of .4550 acre land of Jamila Khatun and the Court of Appeal made a passing comment that the deed dated 02.10.1915 executed by Soyda Bibi in favour of Wahed Box was not acted upon. Learned Advocate submits that even if said finding of the Court of appeal passed in another suit is taken as legal but such finding is not binding upon defendant No. 1 or their successors in interest in deciding title to and possession in .33 acre land of C.S Plot No. 637 in this suit and as such, in this suit there is no bar to decide title to and possession of the parties upon deciding an issue whether the sale deed dated 2.10.2015 was acted upon or not.

Learned Advocate further submits that Wahed Box acquired title to .43 acre land by sale deed dated 2.10.1915 from Soyda Bibi and after his death his heirs got the said land and thus his son Abdul Mannan, defendant No. 1 has acquired title by way of inheritance and by purchase by two registered deeds of sale being No. 23137 dated 02.12.1967 and deed No. 2990 dated 17.02.1968 from his five sisters and defendant Nos. 2-3 acquired title as wife and daughter of Wahed Box and on the basis of said title documents and inheritance the impugned R.S Khatian No. 676 was rightly prepared and finally

published in the names of defendant Nos. 1-3 but the plaintiffs did not challenge those three sale deeds and as such, this suit for declaration of title simplicitor without seeking consequential relief is not maintainable. Learned Advocate also submits that since the plaintiffs could not prove the basis of S.A Khatian and City Jarip Khatian, they could not acquire any right, title or interest to the suit property on the basis such khatians. Learned Advocate further submits that issue of maintainability of a suit depends upon the facts and circumstances of a particular case and in this case, upon evaluation of the evidence and materials on record the trial Court rightly held that the suit is not maintainable because on other counts the suit is barred by limitation, bad for defect of parties and that the plaintiffs could not prove their title to and possession in the suit land. Learned Advocate finally submits that the impugned judgment is based upon proper appreciation of the evidence and materials on record and as such, interference is not called for by this Court.

In support of his contention learned Advocate has referred to the cases of Government of Bangladesh vs. A.K.M Abdul Hye and others 56 DLR (AD) 53, Government of Bangladesh vs. Har Chandra Nath and others 10 MLR (AD) 313, Government of Bangladesh vs. Md. Mahiruddin Sarker and others 6 MLR (AD) 49, Faiz Ahmed vs. Shafiul Alam and another 2 BLC 195, Hasenuddin (Md) vs. Government of Bangladesh and others 6 BLC 54, Nurul Islam Chowdhury vs. Morshedul Alam 64 DLR (AD) 3, Jahangir Alam (Md) and others vs. Shabdir Ahmed and others 22 BLC (AD) 75 and Tayeb Ali vs. Abdul Khaleque and others 43 DLR (AD) 87.

We heard the learned Advocates, perused the impugned judgment, the evidence, both oral and documentary, the cases cited by

the learned Advocates and relevant provisions of law to come to a proper conclusion. The trial Court, upon considering the pleadings of the parties, framed the following issues:

- i. Whether the suit is maintainable in its present form and manner.
- ii. Whether the suit is bad for defect of parties.
- iii. Whether the suit is barred by limitation.
- iv. Whether the plaintiffs have right, title and possession in the suit land.
- v. Whether the plaintiffs are entitled to the reliefs as prayed for.

Upon discussing the evidence of the parties, the trial Court decided issues No. II, III and IV separately and issues No. I and V jointly, and decided all issues against the plaintiffs and finally dismissed the suit.

Now we have to consider whether the trial Court committed any illegality in deciding those issues against the evidences adduced by the parties.

It is claimed by the plaintiffs that as per their shares in C.S Khatian No. 170, Kamaldi got .43 acre, Ekbar Ali got .2508 acre, Amirjan got .1254 acre and Soyda Bibi got .0538 acre land out of total .86 acre land of C.S Plot No. 637 and while Ekbar Ali and Amirjan were owners in possession in their share S.A Khatian No. 502 (Exhibit 4) was prepared and finally published in their name and thereafter, Amirjan died. Ekbar Ali transferred .25 acre and four sons of Amirjan namely, Md. Alauddin and three others transferred .08 acre land i.e total .33 acre suit land to the plaintiffs by registered deed of sale No. 8679 dated 11.6.1998 who got mutation of said land (Exhibit 8) and paid rents thereof (Exhibits 9

series). They also recorded their name in City Jarip Khatian No. 19215 (Exhibit 10) in City Jarip Plot No. 42701 in respect of .3050 acre land and also mutated said .3050 acre land in 2010. It has claimed that said .33 acre land of C.S and S.A Plot No. 637 was wrongly prepared and published in the name of defendant Nos. 1-3 in R.S Plot No. 785 in R.S Khatian No. 676 (Exhibit 6) though they had or have no right, title and interest therein. Their further contention is that Kamaldi transferred .43 acre land of C.S plot No. 637 to Wahed Box by registered sale deed No. 4844 dated 30.11.1915 [Exhibit 2= Exhibit Ga(1)], who thereafter, transferred it to Chand Mia and three others by registered sale deed No. 3401 dated 2.8.1949 (Exhibit 3). By said deed Wahed Box transferred .10 acre excess land to Chand Mia and others and S.A Khatian No. 502 and R.S Khatian (Exhibit 5) were prepared and published in the name of Chand Mia and others.

On the other hand, the contesting defendants claimed that Soyda Bibi amicably got .43 acre land including .33 acre suit land which covered her one ana share out of 21.40 acre land and thereafter, she transferred said land to Wahed Box (the predecessor of defendant Nos. 1-3) by registered deed of sale No. 2.10.2015 [(Exhibit Kha (1))] and Kamaldi transferred .43 acre land to Wahed Box by registered sale deed No. 4844 dated 3.11.1915 [Exhibit Ga(1) = Exhibit 2)] and in the aforesaid way Wahed Box became owner in possession of entire .86 acre land of C.S Plot No. 637 and thereafter, died leaving behind one son, six daughters and one wife including defendant No. 1-3. Five daughters of Wahed Box then transferred total .22 acre land by two registered sale deeds being No. 23137 dated 2.12.1967 [Exhibit Uma(1)] and No. 2990 dated 17.2.1968 [(Exhibit Cha(1))] to defendant No.1 and while defendant Nos. 1-3 was owning and possessing total .33 acre suit

land by way of inheritance and purchase R.S Khatian No. 676 [Exhibit Ja(1)= Exhibit 6] was rightly prepared and finally published in their name and after mutating their name in 1997 (Exhibit Neo) and paying rents thereof [Exhibit Neo (1) series] transferred .2410 acre land to Md. Salauddin (predecessor of defendant No. 8-15) by registered sale deed No. 13798 dated 22.9.1998 [Exhibit Jha(1)] and handed over possession thereof to him who then mutated the same in 1999 [Exhibit Ta) and paid rents thereof [Exhibit Ta(1) series] and thereafter, died leaving behind defendant Nos. 8-15 as his heirs and have been owning and possessing the same.

It is admitted by the parties that total 21.40 acre land including .33 acre suit land was jointly owned and possessed by Kamaldi and Aynuddin in eight ana share each. After death of Aynuddin his one son Ekbar Ali got four ana thirteen Gonda one Kara one kranti share, daughter Amirjan got three ana six Gonda two Kara two Kranti and wife Soyda Bibi got one ana share from 21.40 acre land which means that Kamali had title to 10.70 acre, Ekbar Ali had 6.2416 acre, Amirjan had 3.1208 acre and Soyda Bibi had 1.3375 acre out of said 21.40 acre land. It is also admitted that said 21.40 acre land was never partitioned by metes and bounds by partition deed or partition suit. It is also admitted that Kamaldi transferred .43 acre land i.e half of land of plot No. 637 to Wahed Box by registered sale deed No. 4844 dated 30.11.1915 [Exhibit 2= Exhibit Ga(1)] who, thereafter, transferred it to Chand Mia and three others by registered sale deed No. 3401 dated 2.8.1949 (Exhibit 3).

The plaintiffs denied the claim of amicable settlement by which, as per defendants, Soyda Bibi amicably got .43 acre land from C.S Plot No. 637. It appears that .43 acre land is covered by her one ana share

out of 21.40 acre land. She transferred the same to Wahed Box (the predecessor of defendant Nos. 1-3) by registered deed of sale No. 3629 2.10.2015 [(Exhibit Kha (1)]. Admittedly, in the schedule of both deeds of 1915 (one is admitted and another is denied by the plaintiffs) no reference of C.S plots or Khatians have been mentioned but in the schedule of both deeds a boundary of the land sold out was mentioned. It is admitted by the parties, also, that at the time of execution and registration of the sale deeds in 1915, the Cadastral Survey (C.S) operation was at the final stage but was not completed finally for which C.S plot and khatian numbers could not be mentioned there as well as the name of Wahed Box could not be recorded in respect of his admitted .43 acre purchased land from Kamaldi in the C.S Khatian and accordingly, entire 21.40 acre including .86 acre land of C.S Plot No. 637 was prepared and published in C.S Khatian No. 170 in the name of Kamaldi and the heirs of Aynuddin namely Ekbar Ali, Amirjan and Soyda Bibi as per their respective earlier shares, as stated above.

The main issue before us whether Ekbar Ali and Amirjan lost their title to .43 acre land of C.S Plot No. 637 of C.S Khatian No. 170 after transfer by Soyda Bibi to Wahed Box by sale deed No. 3629 dated 2.10.1915 (Exhibit Kha (1)) and whether impugned R.S Khatian No. 676 [Exhibit 6= Exhibit Ja(1)] was wrongly prepared and finally published in the name of defendant Nos. 1-3 and whether the plaintiffs could able to prove their title to and possession in the suit land.

As per the plaintiffs' claim sale deed No. 3629 dated 02.10.1915 [Exhibt-Kha(1)] in respect of .43 acre land has not been acted upon and by that deed Wahed Box, the predecessor of the defendants, could not acquire any right, title or interest in the land of C.S and S.A Plot No. 637 and that Ekbar Ali and Amirjan were owning and possessing their

respective shares in the land of C.S plot No. 637 and that S.A Khatian No. 502 was prepared and finally published in their name. On perusal of S.A Khatian No. 502 (Exhibit 4) it appears that total 17.97 acre land of 10 plots including the suit plot was recorded jointly in the names of as many as 20 persons including Ekbar Ali, Amirjan, Jalil Box, Md. Chand Mia and others without mentioning any share or possession of the parties. Admittedly, Ekbar Ali and Amirjan had joint shares in 17.97 acre ejmali land contained in S.A Khatian No. 502. Accordingly, it cannot be said that their names were recorded in the S.A Khatian in respect of .43 acre land of C.S and S.A Plot No. 637 only. Moreover, it is settled principle of law that S.A record has got no presumptive value and record of rights does not create or extinguish title to land [Ref: 28 DLR (AD) 61]. Moreover, as per defendants' claim said .43 acre including .33 acre was wrongly recorded in the name of Jalil Box, the brother of Wahed Box and after his death his heirs relinquished their claim by supporting the title of defendant No. 1 to the suit land by executing a registered nadabi deed being No. 13159 dated 4.9.1998 [Exhibit Chha(1)]. The plaintiffs did not challenge said deed also.

The contesting defendants' contention is that on an amicable settlement among the heirs of Ayenuddin, Soyda Bibi got .43 acre land of suit Plot No. 637 along with other land and she transferred .43 acre land to Wahed Box by sale deed dated 02.10.1915 [Exhibit-Kha (1)] and on the other hand, another C.S recorded tenant Kamaldi transferred .43 acre land of suit Plot No. 637 by registered sale deed dated 30.11.1915 (Exhibit-2) in favour Wahed Box. The transfer of .43 acre land by Kamaldi is admitted by the plaintiffs. It is also admitted that Wahed Box transferred said .43 acre land in favour of Chand Miah, Omar Ali, Shamsuddin and Badaruddin by registered sale deed No. 3401 dated

2.8.1949 (Exhibit 3) and R.S Khatian No. 2680 (Exhibit 5) was prepared and finally published in their name. It appears from sale deed No. 3401 dated 2.8.1949 (Exhibit 3) and R.S Khatian No. 2680 (Exhibit 5) that by that deed Wahed Box transferred .53 acre land to Chand Mia and three others but R.S Khatian No. 2680 was prepared and finally published in their name in respect of .42 acre land only. As per admission of the plaintiffs, the transfer of .43 acre land by Wahed Box to Chand Mia and others was valid and they got title to .43 acre land. Accordingly, Wahed Box lost title to .43 acre land of Plot No. 637 by transfer to Chand Mia and others.

The defendants further claimed that after transfer of .53 acre land to Chand Mia and others in 1949, Wahed Box remained in ownership and possession of rest .33 acre land and thereafter, he died leaving behind one son namely Abdul Mannan, one wife Fuljan (defendant No. 2) and six daughters namely Motijan, Kadbanu, Sobjan, Melaka, Khodeja and Aleka (defendant No. 3) and they got their respective shares therein. Motijan, Kadbanu and Sobjan transferred their share measuring .15 acre land from S.A Plot No. 637 by registered sale deed No. 23137 dated 02.12.1967 (Exhibit Uma-1), Maleka and Khodeja transferred .07 acre land of C.S Plot No. 637 to defendant No. 1 by registered sale deed No. 2990 deed 17.02.1968 (Exhibit Cha-1) and while defendant No.1 was owner in possession by way of inheritance and purchase and defendant Nos. 2-3 by way of inheritance in total .33 acre land R.S Khatian No. 676 (Exhibit 6) was rightly prepared in their name in R.S Plot No. 785.

It appears that Soyda Bibi had one ana share out of total 21.40 acre land of C.S Khatian No. 170 and said 21.40 acre land has not been partitioned by metes and bounds among the co-sharers. Accordingly,

transfer of .43 acre land of suit Plot No. 637 by Soyda Bibi to Wahed Box by sale deed dated 02.10.1915 [Exhibit-Kha (1)] being covered by her share was legal and valid. From the schedule of the said deed dated 2.10.1915 it appears that two pakhi equivalent to more or less .56 acre land was transferred without mentioning any plot number but in the schedule of the deed the suit land was specified by mentioning boundaries therein stating that on the North of the land sold out was Barku. On perusal of C.S Khatian No. 170 (Exhibit-1) it appears that .86 acre land including the suit land was recorded in C.S Plot No. 637 mentioning its Northern side as Barku Madbor which clearly tally to the land transferred by sale deed dated 02.10.1915.

The plaintiffs could not prove by adducing any oral or documentary evidence that Soyda Bibi transferred in excess of her total share in 21.40 acre land. Moreover, said Ekbar Ali and Amirjan neither challenged the validity of those three sale deeds dated 02.10.1915 [Exhibit-Kha (1)], 02.12.1967 (Exhibit Uma-1) and 17.2.1968 (Exhibit Cha-1) nor challenged the validity of said R.S Khatian (Exhibit 6) before any Court of law. The plaintiffs did not also challenge said deeds of 1915, 1967 and 1968 by seeking any remedy before this Court in this suit. Accordingly, we are of the view that sale deeds dated 02.10.1915 [Exhibit-Kha (1)], 02.12.1967 (Exhibit Uma-1) and 17.2.1968 (Exhibit Cha-1) have been acted upon and by those deeds Wahed Box and then defendant Nos. 1-3 acquired title to .33 acre land and on the strength of those deeds impugned R.S Khatian No. 676 (Exhibit 6) has been rightly prepared and finally published in the name of defendant Nos. 1-3.

Learned Advocate for the appellants submitted that one Jamila Khatun filed Title Suit No. 293 of 1972 against the present defendant No. 1 and others which was ended in Title Appeal No. 501 of 1992 in

which the appellate Court held that sale deed dated 02.10.1915 [Exhibit-Kha (1)] was not acted upon and since the said suit was among the inter parties, the result of the suit is binding upon the present defendants and as such, Wahed Box could not acquire any right, title or interest in the suit property. The defendants produced certified copy of plaint of Title Suit No. 293 of 1972 (Exhibit-Tha-1) and judgment passed therein dated 23.09.1992 (Exhibit-Thaa, 1ka) and the plaintiffs produced certified copy of judgment passed in Title Appeal No. 501 of 1992 (Exhibit-7). From the plaint of Title Suit No. 293 of 1972 it appears that said suit was filed by one Jamila Khatun claiming title to .4550 acre land of C.S Plot No. 831 of C.S Khatian No. 170 praying for a decree declaring that she was the owner of said land and entitled to compensation money in respect of said land which was earlier acquired by the Government. On perusal of judgments of the trial Court dated 23.9.1992 passed in Title Suit No. 293 of 1972 and the appellate Court dated 27.7.1999 passed in Title Appeal No. 501 of 1992, it appears that the trial Court and appellate Court decided the issue whether Jamila Khatun acquired any right, title or interest in .4550 acre land of C.S plot No. 831. The trial Court dismissed the suit on contest. In deciding title to .4550 acre land, the appellate Court observed that defendant No. 1 Abdul Mannan could not acquire title to said land of C.S Plot No. 831 on a presumption that the deed of sale dated 02.10.1915 [Exhibit (Kha(1) in this suit] was not acted upon. Since the suit land of present suit was not the subject matter of the earlier suit and the right, title, possession and interest in respect of the suit land of present suit land was not an issue therein, the finding of the appellate Court that the deed of sale dated 02.10.1915 was not acted upon has no bearing in the present suit.

In Nurul Islam Chowdhury vs. Morshed Alam and others, 64 DLR (AD) 3 the Hon'ble Appellate Division held that, "*under the Evidence Act a judgment which is not inter parties is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit*". We are bound by the decision of our Apex court but since the subject matter of the earlier suit and the present one are distinct and different, the judgment passed in earlier suit even if it is taken that was inter parties is not admissible in evidence in this suit.

Moreover, it appears that the predecessor of the plaintiffs, Ekbar Ali and Amirjan never claimed the suit land before execution and registration of the sale deed dated 11.06.1998 (Exhibit-16). It also appears that .22 acre land was transferred by five daughters of Wahed Box as his heirs in favour of defendant No. 1 by two registered sale deeds of 1967 and 1968 [Exhibit-Uma(1) and Cha(1)] and thereafter, on the basis of the sale deeds of 1915, 1967 and 1968 and by way of inheritance the impugned R.S Khatian was prepared and finally published in the name of defendant Nos. 1-3 between 1970 and 1980 without any objection from the predecessors of the plaintiffs. Since the predecessors of the present plaintiffs neither challenged the aforesaid deeds of 1915, 1967 and 1968, as stated above, before any Court of law nor raised any objection against the R.S Khatian before any proper authority it should be presumed that they had waived their right to the suit land and accordingly lost their title to the suit land and as such, through them the plaintiffs have got no right to challenge the R.S Khatian (Exhibit 6) prepared and finally published in the name of defendant Nos. 1-3.

In regards mutation of the parties, the plaintiffs in paragraph 7 of the plaint stated that they applied for cancellation of mutations of defendant No. 1 obtained vide Case Nos. 4361 of 1977, 7278 of 1997-98, 23455 of 1998-99 and 745 of 1997-98 by filing an application before the Assistant Commissioner (Land), Mirpur Circle, Dhaka on 26.07.2007. From these statements which it is cleared that defendant No. 1 got his name mutated in 1977 in respect of the suit land and thereafter, in 1998-99. The predecessor of the present defendants mutated his name also, in respect of his purchased land vide Mutation Case No. 23455 of 1998-99 dated 23.8.1999 and paid rents (Exhibits Ta Series) which is prior to the mutation of the plaintiffs who claimed their mutation vide Mutation Case No. 13471 of 2001 dated 2.9.2001 (Exhibit-8). The plaintiffs, appear to be mutated their names in respect of the suit land without cancelling earlier mutation of the defendants or without serving any notice upon them which smacks of fraudulent activities on the part of the plaintiffs and accordingly they got their names mutated fraudulently and by such mutation and payment of rent they acquired no title or interest in the suit land.

Since the suit land was transferred by Soyda Bibi in 1915 to Wahed Box and after his death his heirs including defendant Nos. 1-3 inherited their share from Wahed Box and his five daughters transferred .22 acre land out of the suit land to defendant No. 1 in 1967 and 1968 and said deeds were acted upon by recording the name of defendant Nos. 1-3 in the impugned R.S Khatian, Ekbar Ali and Amirjan lost their title to the suit land and accordingly, by sale deed executed by Ekbar Ali and heirs of Amirjan dated 11.06.1998 (Exhibit-16) did not create any right, title or interest in favour of the plaintiffs in the suit land.

To prove their possession the plaintiffs adduced oral and documentary evidence. The plaintiffs claimed that the City Jarip Khatian was prepared in their names and as such, it is to be presumed that they have possession in the suit land. The plaintiffs produced the City Jarip Khatian (DP) which was marked as Exhibit-10 from which it appears that total 11.4856 acre land was recorded in one plot i.e in City Jarip Plot No. 42701 out of which only .3050 acre land was shown to have been recorded in the name of the plaintiffs. It appears from Exhibit-11, the order passed in Objection Case No. 3524 dated 19.10.2000, that the Revenue Officer while disposing of the objection case stated, “তাছাড়া নালিশি দাগে ১১.৪৬ একর জমি বিধায় এবং উক্ত দাগে পানি থাকায় সঠিকভাবে সীমানা নির্ধারণ করা সম্ভবপর নয়।” The Appeal Officer while dismissing the appeal of the predecessor of the defendants (Exhibit-12) stated, “বিবাদী পক্ষের বক্তব্যে আরও দেখা যায় ৪২৭০১ দাগে মোট জমির পরিমাণ ১১.৪৮৫৬ একর এবং উক্ত হাল দাগ হইতে আপীল কারীগণ শুধুমাত্র ৪,২, ৩ নং সিটি খতিয়ান হইতে আপীল মামলা দায়ের করেছেন, যাহা জরিপ বিধির সম্পূর্ণই পরিপন্থী।” From the order passed in the objection and appeal cases it appears that at the time of operation of the City Survey the suit land along with other land was under water and the Revenue Officers could not demarcate the suit land. Accordingly, our considered view is that the City Jarip Khatian was recorded in the name of the plaintiffs as per assumption and presumptions not upon considering the possession of plaintiffs. Accordingly, the City Jarip Khatian, without any valid transfer document and possession, could not create any title or right in favour of the plaintiffs to the suit property because of the settled principle that record-of-rights does not create or extinguish any right to property without any foundation or basis of title.

In examination-in-chief P.W.1 stated “নালিশি জমির উত্তরে সালাউদ্দিন” but in his cross-examination he stated নালিশি জমির উত্তর পূর্বাংশে রাস্তা। রাস্তার

উত্তর পাশে কিছু জমি সালাউদ্দিন (the predecessor of defendant Nos. 8-15) দখল করে। নালিশি জমির পরিমাণ ৩৩ শতক। নালিশি জমি জলাশয় শ্রেণীর ভূমি। নালিশি জমির শ্রেণী চালা জমি। নালিশি জমিতে আমার ঘর আছে। বর্তমানে নালিশি জমিতে কম/বেশী পানি থাকে। P.W.2 Shahidullah Akhand deposed, “বাদীপক্ষ চারদিকে পিলার দিয়ে নালিশি জমি দখল করে। In cross-examination he stated “বাদী পক্ষে আর সি সি পিলার দিয়ে ও সাইনবোর্ড দিয়ে নালিশি জমি দখল করেন।” P.W.3 in his examination-in-chief stated, “বাদী চার ধারে পিলার পুতে নালিশি জমি দখল করেন।” and in cross-examination he stated, “নালিশি জমিতে বর্তমানে পানি আছে।” P.W.5 in his examination-in-chief stated, “নালিশি ৩৩ শতক জমির চারদিকে আর সি সি পিলার আছে, চাপড়া ঘর আছে। সোবহান সাহেবের। সোবহান সাহেব উক্ত ঘরে থাকেন।” From the above statements of the P.Ws it appears that they made contradictory statements in regards identity of the suit land as well as mode of possession of the plaintiffs in the suit land. It appears from the impugned judgment that the trial Court upon proper consideration of the evidence on record came to the conclusion that the plaintiffs could not prove their possession in the suit land. Accordingly, we find no reason to interfere with such finding of the trial Court.

From the averments of the plaint, the depositions of the P.Ws and exhibited documents it reveals that though the plaintiffs in the plaint stated that the cause of action of the suit arose on 19.04.2007 when the plaintiffs failed to correct R.S record from the Office of defendant No. 17 and after obtaining the certified copy of R.S Khatian they learnt about the wrong R.S Khatian but in paragraph 7 of the plaint they stated that the predecessor of defendants claimed their title to the suit land by way of purchase from Abdul Mannan and resisted to record the suit land in City Jarip Khatian in the name of the plaintiffs and filed objection case No. 1049 under Rule 30 in 2000 and appeal under Rule 31 of the State Acquisition and Tenancy Rules being Appeal No. 29747.

Accordingly, the cause of action arose when the defendants' predecessors by claiming their title to the suit land resisted the plaintiffs from recording the suit land in their favour. The plaintiffs instituted the suit on 15.05.2007.

Now we shall consider whether taken the facts and evidence adduced by the parties the suit is barred by limitation.

Cause of action presupposes the existence of a right in the plaintiff which right has either been infringed or is threatened to be infringed. Cause of action cannot be considered in a isolated way and the whole averments made in the plaint are to be seen and taken together to see whether any cause of action has been disclosed or not. Cause of action of a suit arises when right of a plaintiff is denied or invaded by the other side and the suit for declaration of title on a property will be well within time if it is laid within the period of six years as prescribed under Article 120 of the Limitation Act. Against the wrong record of rights the person whose interest is affected is required to file the 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 on the basis of wrong record. Similar views have been expressed by our Apex Court in Hasenuddin vs. Government of Bangladesh and others 6 BLC 54, Government of Bangladesh vs. AKM Abdul Hye and ors. 56 DLR (AD) 53, Government of Bangladesh vs. Har Chandra and others 10 MLR (AD) 313 and Government of Bangladesh vs. Mahiruddin Sarker and others 6 MLR (AD) 49.

To prove cause of action P.W.1 deposed in supporting statement of the plaint case. In his cross-examination he testified that “নালিশি জমির সিটি জরীপের কাজ ১৯৯৮ সালে আরম্ভ হয়। মহানগর জরীপের সময় বিবাদীরা মালিকানা দাবী করে বাঁধা সৃষ্টি করেছিল। আমি ২০০৭ সালে মামলা করি।” But in the plaint the plaintiffs

described the cause of action as on 19.04.2007, when they failed to correct the R.S record-of-right from the office of defendant No. 17, Assistant Commissioner (Land). It is settled principle of law that a Revenue Officer cannot correct or declare any record-of-rights wrong/right and it is the domain of the Civil Court to do so. Thus the cause of action as described in paragraph 8 of the plaint is nothing but a device to save the limitation of filing of the suit. Moreover, on perusal of Exhibits-11, 12 and 13 adduced by the plaintiffs it appears that Exhibit-11 is an order sheet passed on an application filed under Rule 30 of the SAT Rules in which defendants Nos. 4, 5 and 6 of this suit by claiming their title to and possession in the suit land and by denying title of the plaintiffs in respect of their purchased land filed the objection case on 23.09.2000. From Exhibit-12 it appears that the predecessor of the present defendant Nos. 8-15, Salaudin by claiming title to the suit land filed appeal under Rule 31 of the SAT Rules being Appeal No. 29747 of 2000 which was dismissed and thereafter, he filed an application under Rule 42 of the SAT Rules for re-hearing of the appeal which was also dismissed and thereafter, the said appeal was also heard by another Appeal Officer who vide order dated 09.07.2007 dismissed the appeal. It appears that the appeal was dismissed on a technical ground that all City Jarip Draft Khatians in respect of total 11.4856 acre land of City Jarip Plot No. 42701 were not challenged by the predecessor of the present respondents.

As per admission of the plaintiffs the cause of action of the suit arose when the predecessor of the defendants denied and invaded the title of the plaintiffs in 1998. P.W. 1, one of the plaintiffs, in cross-examination admitted that the predecessor of the defendants denied and invaded the title of the plaintiffs in 1998 during operation of City

Jarip. It further appears that defendant Nos. 4-6 and predecessor of defendant Nos. 8-15 filed objection and appeal cases by claiming their right, title and possession in the suit land by resisting the right, title and possession of the plaintiffs in the suit land and accordingly, from admitted documents filed by the plaintiffs the cause of action of the suit arose at the time when the predecessor of the present defendants and other defendants by denying the title and possession of the plaintiffs raised objection against preparation of record in 1998 in their favour. Accordingly, we are of the view that the suit having filed on 15.05.2007, long after six years of cause of action, is clearly barred by limitation in view of the provision of Article 120 of the Limitation Act and was liable to be dismissed under section 3 of the Limitation Act. The cause of action as is disclosed in the plaint appears to be false and stated for the purpose of saving limitation. It appears from the impugned judgment that the trial Court upon consulting and considering the evidence and materials on record rightly held that the suit is barred by limitation.

The trial Court found that the suit is bad for defect of parties as the heirs of admitted R.S recorded tenants namely defendant Nos. 2 and 3 have not been made as parties to the suit. We have perused the L.C.R from which it reveals that the Process Server of the Court submitted his report in respect of service of summons upon defendant Nos. 2 and 3 clearly stating that defendant Nos. 2 and 3 died before institution of the suit. The contesting defendants raised the question of defect of parties in their written statements and specifically stated and adduced evidence to the effect that defendant Nos. 2 and 3 who are R.S recorded tenants died before institution of the suit and the heirs of defendant Nos. 2 and 3 have not been made parties to the suit. The

plaintiffs, after knowing that fact, did not implead the heirs of defendant Nos. 2 and 3 though they have sought for relief against them i.e declaring that the impugned R.S Khatian was wrongly prepared and published in their names. Accordingly, we are of the view that the trial Court committed no illegality in holding that the suit is bad for defect of parties.

As to maintainability of the suit, the learned Advocate for the respondents submitted that the suit is not maintainable and the learned Advocate for the appellants submitted that the suit is maintainable. From the materials on record it appears that the plaintiffs filed the suit for declaration of title to .33 acre land with another declaration that R.S Khatian was wrongly prepared in the name of defendant Nos. 1-3 in respect of .33 acre which is a part of total 11.4856 acre land of recent Jarip Plot No. 42701 and at the time of field survey, the Revenue authority could not specify the suit land because the suit land along with other land was under the water. The plaintiffs gave a boundary of the suit land mentioning the names of some persons without giving any sketch map with the plaint. Such boundary is not sufficient to specify the suit land.

Under provision of Order VII Rule 3 of the Code of Civil Procedure the plaintiff shall give clear description of the suit land in the plaint sufficient to identify the same and no Court can pass decree of declaration of title to for unspecified land (Ref: 42 DLR 437). Accordingly, this suit is not maintainable in view of the provision under Order VII rule 3 of the Code of Civil Procedure. Moreover, the suit land being one for declaration of title to an unspecified share of undivided plots and there being no evidence that the plaintiffs or their predecessors thereof were in exclusive possession at any time the

present suit is not maintainable under section 42 of the Specific Relief Act 1877. This view finds support in Tyeb Ali vs. Abdul Khaleque and others 43 DLR (AD) 87.

It appears that the trial Court did not decide the issue of maintainability of the suit by sifting the evidence elaborately but after deciding other issues against the plaintiffs on merit held that the suit was not maintainable. Since we have already concluded that the suit is not maintainable, we find no reason to interfere with the finding of the trial Court in regards maintainability of the suit.

In view of the discussion made above and considering the evidence and materials on record we are of the view that plaintiffs failed to prove their case to get the decree, as prayed for, and accordingly, the trial Court committed no illegality in dismissing the suit and as such, interference is not called for by this Court.

In view of the above we find no merit in this appeal.

In the result, the appeal is dismissed however, without any order as to costs. The judgment and decree passed by the Court below is maintained.

The order of injunction granted earlier is vacated.

Consequently, the Rule issued in Civil Rule No. 682 (F) of 2013 is discharged.

Send down the L.C.R along with a copy of this judgment to the Courts below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)