

Bench:

Mr. Justice Bhishmadev Chakraborty

And

Mr. Justice Murad-A-Mowla Sohel

First Appeal No. 38 of 2014

Selim Bepari alais Dollar Selim ..... appellant

-Versus-

Mst. Rashida Begum and others ..... respondents

with

Civil Rule No.174(F) of 2014

Selim Bepari alais Dollar Selim ..... petitioner

-Versus-

Mst. Rashida Begum and others

..... opposite parties

With

First Appeal No.51 of 2014

Fazlul Hoque being dead his legal heirs:

(1) Mst. Masuda Khatun and others ..... appellants

-Versus-

Mst. Rashida Begum and and others

..... respondents

And

First Appeal No.68 of 2014

Ayema Khatun being dead her legal heirs:

1(a) Md. Shahid Hossain and others ..... appellants

-Versus-

Mst. Rashida Begum and others ..... respondents

with

Civil Rule No.296(F) of 2014

Ayema Khatun being dead his heirs:

1(a) Md. Shahid Hossain and others..... petitioners

-Versus-

Mst. Rashida Begum and others

..... opposite parties

Mr. Jamiruddin Sircan, Senior Advocate with Mr.

Julfikar Bulbul Chowdhury and Mst. Shahida

Arabi Irin, Advocates ..... for the appellant

(In FA 38/2014 and petitioner in Civil Rule 174(f)/2014)

Mr. Shasti Sarker, Senior Advocate with Mr.

Laxman Biswas and Ms. Lily Rani Saha,

Advocates ..... for the appellants

(In FA 68/2014 and petitioners in Civil Rule 296(f)/2014)

Mr. Md. Sumon Ali with Ms. Joydeepa Deb

Choudhury, Advocates ..... for the appellants

(In FA 51/2014)

Mr. Md. Khalilur Rahman, Senior Advocate  
..... for respondents 1-4  
(In the first appeals and opposite parties in the Rules)  
Judgment on 28.10.2025

Bhishmadev Chakrabortty, J:

Since all the appeals have arisen out of the same judgment and decree passed by the same Court in same title suit and the civil Rules have arisen out of the aforesaid appeals; the parties thereto are same and common question of facts and law are involved in all, these have been heard together and are being disposed of by this judgment.

Defendant 1 has preferred First Appeal 38 of 2014 which is directed against the judgment and decree of the Joint District Judge, Court 2, Dhaka passed on 01.12.2013 in Title Suit 863 of 2013 decreeing the suit for declaration of title with other prayers. After filing of the appeal the appellant filed an application praying for stay of operation of the impugned judgment and decree upon which Civil Rule 174(F) of 2014 was issued and the parties were directed to maintain *status quo* in respect of the possession of suit land for limited period which still subsists.

Defendant 9 has preferred First Appeal 51 of 2014 which is directed against same judgment and decree passed in the same suit as aforestated.

Defendants 2, 3 and 4 have preferred First Appeal 68 of 2014 challenging aforesaid judgment and decree passed in the same suit. During pending of the appeal the appellants filed an application for

staying operation of the impugned judgment and decree upon which Civil Rule 296(F) of 2014 was issued and operation of the impugned judgment and decree was stayed which is still in force.

The plaint case, in brief, is that land measuring .85 acres appertaining of CS *Khatian* 122 of Ati mouza within Keranigonj police station originally belonged to tenants Shommeher to the extent of 6 annas share, Jana Bibi and Mihi Bibi 1 anna share each, Jahur Majhi had 4 annas share while Alijan and Mukta Bibi alias Rakhi Bibi alias Bangi Bibi had 2 annas share each. Zaminder Kishore Chandra Basu and others were the superior landlords of the aforesaid tenants. The aforesaid CS recorded tenants defaulted in payment of rent to the landlords and consequently Saraju Bala Devi and others as landlords filed Rent Suit 336 of 1944 in the 6<sup>th</sup> Court of the then Munsif, Dhaka and obtained a decree. The property was then put into auction in Decree Execution Case 128 of 1946 and the plaintiffs' predecessor father Abdus Samad purchased the suit land in auction on 02.08.1946. The sale certificate was issued on 13.08.1946 and possession was delivered to him on 15.09.1946. The auction purchaser Abdus Samad mutated his name in Bhawal Court of Wards Estate and paid rent. During possession and enjoyment he sold out 13 decimals of land threfrom to Ahammad Ali, father of defendants 3 and 4 through a registered *kabala* dated 20.02.1956 and handed over possession thereof. Abdus Samad remained in possession over remaining 72 decimals but SA *Khatian* was prepared erroneously in the names of

Gadu Miah and others. Hiron Bibi wife of Abdus Samad in 1956 permitted defendant 2 Ajema Khatun to live over 5½ decimals of land. The plaintiffs were illiterate and consequently RS record was prepared erroneously in the name of Kalachand and others behind their back. It was further stated in the plaint that defendant 1 who is known as Dollar Selim in the area is a man of questionable character. There are 7 criminal cases against him pending in different Courts on the allegation of preparing fake and fraudulent visas and stamp papers. Several news items were published in the daily newspapers for it in 2000. Defendant 1 with the help of defendant 23 and others attempted to dispossess the plaintiffs from the suit land on 18.03.2006. Plaintiff 4 then filed a petition case in the concerned Court of Judicial Magistrate, Dhaka against him and others. Defendant 1 again with his arms cadres came to schedule-B property and tried to enter into it forcefully but failed. But finally he and his men succeeded in dispossessing the plaintiffs from 22 decimals of land on 09.06.2006 as described in schedule-‘C’ to the plaint. Defendant 1 also filed a Title Suit 136 of 2006 against plaintiff 3 for evicting him from 6 ½ decimals of land stating that he permitted the latter to reside over it. It is further stated in the plaint that Shommeher, one of the CS recorded tenant claiming herself owner of 36 decimals of land within schedule-A sold it to Ismail Majhi, the paternal grandfather of plaintiffs and Alijan another CS recorded tenant through a registered deed of sale dated 31.09.1930 but it was not acted

upon. Defendant 1 Selim Bapari on the basis of 4 registered *kabalas* from the heirs of successive purchasers of SA and RS recorded tenants and in the year 1991 claimed the suit property but the vendors of those deeds had no title and possession in the suit land. Defendant 1 claimed ownership in total 47 decimals of land through purchase. The plaintiffs' predecessor Abdus Samad got delivery of possession through Court and remained in possession and died in 1957. After his death the plaintiffs remained in possession of the suit land. They have been living therein as their homestead. The defendants purchased the suit land from the titleless persons in whose names the SA and RS *Khatians* were prepared erroneously. The deed of the defendants are fraudulent, created and not binding upon the plaintiffs and hence the suit for declaration of title in respect of B schedule property measuring 72 decimals with prayer that RS record in respect of the suit land prepared in the names of defendants 2, 8-11 and 12 are wrong and without any basis; that the deeds as described in schedule-'D' to the plaint are false, fraudulent, illegal without consideration, are of no legal effect and not binding upon the plaintiffs with further prayer of recovery of *khas* possession of 22 decimals of land described in schedule-C to the plaint and also for permanent injunction against defendant 1 refraining him from entering into the suit land.

Defendants 1 and 24 contested the suit by filing a set of written statement. In the written statement they denied the plaint case on

material points. They admitted that Shommeher and others as stated in the plaint were the CS recorded tenants and quantum of land was 85 decimals as per CS *Khatian* 1082. They further contended that among the aforesaid CS recorded tenants Jana Bibi died leaving behind her only daughter Shommeher. Thus Shommeher got 31 decimals in his 6 annas share and  $5\frac{1}{2}$  decimals as 1 anna share from her mother *i.e.*, in total she became owner of  $36\frac{1}{2}$  decimals. During possession and enjoyment she sold out the aforesaid share measuring 36 decimals to Ismail Majhi and Alijan through a registered *kabala* dated 30.01.1930. Ismail Majhi got 9 decimals from his father CS recorded tenant Zahur Majhi and 18 decimals by way of purchase through deed of 1930. During his possession and enjoyment over the aforesaid 27 decimals he died leaving behind 4 sons Samad Miah, Asad Miah, Asraf Miah and Safi Miah. Asraf Miah and Safi Miah died unmarried and as such Samad Miah and Asad Miah became owners and each of them got  $13\frac{1}{2}$  decimals of suit land. Asad Miah gifted his portion to his daughter Halima Khatun and RS record was prepared correctly in her name in respect of her share. Halima subsequently sold out the same to Abdul Gafur who subsequently sold it to defendant 1 through a registered *kabala* dated 03.04.1991. CS recorded tenant Mukta Bibi during her possession and enjoyment over 11 decimals died leaving behind 1 daughter Samiron Nessa Bibi as heir who subsequently died leaving behind 3 sons Kalachand, Shaodagar and Shajahan and 2 daughters Azema and Jamela as heirs. Rakhi Bibi during her life time gifted her

share to her grandson Kalachand, Shaodagar and daughter Jamela through a registered *heba-bil-ewaz* dated 26.06.1948 and handed over possession thereof. Godu Miah took permanent lease of 20 decimals from Abdus Samad through a registered deed dated 18.12.1956. He purchased the same land through a registered *kabala* of same date and accordingly SA record was prepared in his name. He gifted 8 decimals therefrom to his son Shajahan and wife Rashada Khatun through a *heba-bil-ewaz* dated 09.12.1957. Godu Miah died leaving behind 3 sons Kalachand and others and 2 sisters Azema and Jamela. Shaodagar and Shajahan died unmarried and consequently Azema and Jamela each got 5 ½ decimals of land and RS record was prepared in their names. Jamela sold out her share of 5½ decimals to Azema through a *kabala* dated 10.09.1991. Thus Azema got total 11 decimals of land and sold out the same to defendant 1 through a registered *kabala* dated 17.12.1991. CS recorded tenant Alijan who got 11 decimals as heir and 18 decimals through purchase from Shammeher died leaving behind his son Mongal Miah and daughter Begum Bibi. Through mutual partition Begum Bibi got 12 decimals and RS record was correctly prepared in her name. She subsequently sold the same to plaintiff 1 through a registered *kabala* dated 07.05.1991. CS recorded tenant Jahur Majhi during possession and enjoyment of his share measuring 22 decimals died leaving behind his son Ismail and 2 daughters Jamiron and Rahimon. Thus each daughter got 5½ decimals. Jamiron died leaving behind her daughter Ayesha and

Rahimon died leaving behind her daughter Jeraton. Ayesha and Jeraton sold out their share of 11 decimals thorough a *kabala* dated 09.07.1958 and through a permanent lease deed on the same day to Nasiruddin and handed over possession thereof. Accordingly SA *Khatian* was prepared in his name. During possession and enjoyment he sold out it to Pachdona High School on 13.11.1965 and Pachdona High School subsequently sold it to Abdul Jalil through a *kabala* dated 18.01.1972 and handed over its possession. Abdul Jalil subsequently on 05.06.1991 sold out the aforesaid land to defendant 1 and handed over possession thereof. Thus defendant 1 Salim Miah through 4 registered *kabalas* purchased 45.50 decimals from SA and RS recorded tenants and got possession. He permitted plaintiff 3 to reside on 6 decimals of land. Therefrom he further sold out 5 .39 decimals to defendant 24 through registered *kabala* dated 24.07.2007. Defendant 24 mutated his name and erected a building therein and has been enjoying it as a market by letting out the shops. The plaintiffs' father Abdus Samad during his life time sold out more than 65 decimals of land to the SA and RS recorded tenants and after his death his wife and daughters and sons sold out in total 26 decimals to different persons. Thus the predecessor of the plaintiffs and the plaintiffs sold more lands than that of the aforesaid CS *khatian*. The plaintiffs have no right, title and interest in the suit land and the suit, therefore, would be dismissed.



Defendants 2-4 also filed written statement and contested the suit. They stated that they purchased 13 ½ decimals of land through 2 deeds dated 22.08.1956 from the CS recorded owners. Ahammad purchased 6 ½ decimals through a *kabala* dated 08.03.1948 and accordingly SA and RS *khatians* were prepared in his name. SA recorded tenant Gafur died leaving behind his wife Sharful, 2 sons Kalachand and Shajahan and 2 daughters Azema and Jamela. Sharful died leaving behind 2 sons and 2 daughters and RS *Khatian* 591 has been prepared in their names. Kalachand and Shajahan died issueless and consequently Jamela and Ajema became the heirs. Jamela sold out her share of 5 decimals to Ajema Khatun and handed over its possession. Ajema Khatun got 13 ½ decimals as heirs of her father, mother and brother and on 17.12.1991 sold out 10 decimals therefrom to defendant 1. Defendant 2 Ajema Khatun remained in possession over remaining 20 ½ decimals. Abdus Samad through different deeds sold out in total 40 ½ decimals to Gadu Miah, the predecessors of defendants 2-4. She further sold 30 decimals to the predecessor of defendants 8-11 and thus became titleless. The plaintiffs have no title and possession in the suit land and the suit, therefore, would be dismissed.

Defendants 8-10, 11(Ka)-11(Jha) also contested the suit by filing written statement. They admitted the fact of tenancy right of CS recorded tenants as per their shares. They further stated that CS recorded tenant Shommeher who got 31 decimals of land as recorded

tenant and 5 ½ decimals from her mother as heir and sold out total 36 decimals to Ismail Majhi and Alijan through a registered *kabala* dated 31.07.1930 and handed over possession thereof. Jahur Majhi during his possession and enjoyment over 4 annas share died leaving behind his son Ismail Majhi as heir and Ismail Majhi during his possession and enjoyment by way of inheritance and purchase died leaving behind his only son Abdus Samad, the predecessor of the plaintiffs. Abdus Samad got some property of the suit plot through auction purchase and remained in possession and subsequently leased out 26 decimals through a lease deed and *kabala* dated 19.06.1997 to Meherlal Bepari, father of defendants 8-10 and maternal grandfather of defendants 11(Ka)-11(Jha). CS recorded tenant Alijan during her possession and enjoyment of 2 annas share as recorded tenant and purchase from Shommeher died leaving behind his son Mongal Miah and daughter Begum Bibi who sold out the aforesaid share of 26.66 decimals to the mother of defendants 8-10 and grandmother of defendants 11(Ka)-11(Jha) through a *kabala* dated 30.07.1970. Meherlal died leaving behind his wife Fazalatun Nessa, 3 sons Fazlul Hoque, Fazlul Rahman, Fazlur Karim and a daughter Halima Khatun, defendants 8-11 herein and RS *Khatian* 591 has been duly prepared in their names. Defendants 8-11 got aforesaid quantum of suit land as heirs from father and mother. They mutated their names and paid rent to the concerned. These defendants have been owning and possessing the suit land through cultivation. The permanent lease deed dated

18.10.1957 and title deed dated 30.07.1970 have been acted upon because the record of rights have been prepared in their names on the basis of those documents. Since the plaintiffs' father Abdus Samad sold out the land of suit plots to Meherlal Bapari and as such the plaintiffs have no right, title and interest in the suit land. The suit, therefore, would be liable would be dismissed.

On pleadings the trial Court framed the following issues-

1. Whether the suit is maintainable in the present form and manner?
2. Whether the suit is barred by limitation?
3. Whether the suit is bad for defect of parties?
4. Whether defendant 1 dispossessed the plaintiffs from the suit land?
5. Whether the plaintiffs are in possession of remaining part of the property?
6. Whether the plaintiffs are entitled to get a decree in the suit land?

In the trial the plaintiffs examined 3 witnesses and produced their documents exhibits-1-14(Jha). Defendants 1 and 24 examined 3 witnesses DWs 1-3 and produced their documents exhibits-Ka-Ta. Defendants 2-4 examined 2 witnesses DWs 4 and 5 and produced their documents exhibits-Ka/Ka to exhibits-Ja/Ja(4) while defendants 8-11(Jha) examined 3 witnesses DWs 6, 7 and 8 and produced their

documents exhibit-Ka/1-Jha/1(2). However, the Joint District Judge decreed the suit deciding all the material issues in favour of the plaintiffs. Being aggrieved by 3 sets of defendants preferred 3 appeals as aforestated.

Mr. Jamiruddin Sircar, learned Senior Advocate for the appellant in First Appeal 38 of 2014 taking us through the materials on record submits that basis of the claim of the plaintiffs is that their predecessor father Abdus Samad purchased the suit land through auction in Rent Suit No.336 of 1944 while the CS recorded tenant defaulted in payment of rent. The plaintiffs claimed that Abdus Samad got the land and its possession through Court in execution case through *bainama* and writ of delivery of possession. He submits that in fact the rent suit and rent execution case thorough which the plaintiffs claimed title in the suit land do not exist. He refers to an application filed by this appellant under Order 41 Rule 27 of the Code dated 09.02.2020 for taking additional evidence the certified copy of Rent Suit 336 of 1944 which this Court kept with the record to be considered at the time of disposal of the appeal and submits that the aforesaid certified copy of the rent suit annexure-X proves that the landlords and tenants of the aforesaid rent suit as claimed by the plaintiffs are different. The *boinama* and writ of delivery of possession produced by the plaintiffs in the Court marked as exhibits bear names of different persons. He submits that this is a certified copy which has evidentiary value and this Court can consider it for

proper adjudication of the suit to detect the forgery committed by the plaintiffs. He then refers to the application of the appellant dated 05.12.2024 through which he prayed for calling the volume of Rent Suit 336 of 1964 and Rent Execution Case 128 of 1946 to remove the controversy about the suit and execution case which was also kept with the record by this Court to be considered at the time of hearing of the appeal. This Court can at this stage call for the volume of the aforesaid rent suit to ascertain the genuineness of the documents submitted by the plaintiffs. Mr. Sircar finally submits the plaintiffs through evidence failed to prove their title and possession in the suit land but the trial Court decreed the suit only considering the weakness of defendants' case. Since the plaintiffs failed to prove their right, title and possession in the suit land, therefore, the judgment and decree passed by the trial Court would be set aside and the appeal be allowed.

Mr. Shasti Sarker, learned Senior Advocate for the appellants in First Appeal 68 of 2014 adopts the submissions of Mr. Sircar. He then refers to the case of Md. Naimuddin Sarder alias Naimuddin Sarder vs. Md. Abdul Kalam Biswas alias Md. Abul Kalam Basiruddin alias Abul Kalam Azad and another, 39 DLR (AD) 237 and submits that to get a decree in a suit the plaintiffs are to prove their case, the weakness of the defence case cannot be a ground for passing decree in favour of the plaintiffs. In the present case, the trial Court discussed only the evidence of defendants' witnesses and decreed the suit finding its weakness. The registered documents of these defendants

are more than 30 years old which have presumptive value unless rebutted. In this case, the plaintiffs failed to rebut such presumption through which defendants' predecessor accrued title in the suit land by way of purchase. The plaintiffs failed to prove that they were in possession of the suit land measuring 72 decimals and defendant 1 dispossessed them from 22 decimals. The dispossessed land is not specified in the schedule to the plaint as required under Order 7 Rule 3 of the Code. In this context he refers to the case of Ershad Ali Howlader and others vs. Santi Rani Dhupi and others, 12 BLC (AD) 36. The plaintiffs are not entitled to a decree for declaration that the *kabalas* of the defendants are fraudulent without establishing their title in the suit land first which they failed. The trial Court misdirected and misconstrued in its approach of the matter and decreed the suit which cannot be sustained in law. The appeal, therefore, would be allowed.

Mr. Sumon Ali, learned Advocate for the appellants in First Appeal 51 of 2014 adopts the submissions of Mr. Sircar and Mr. Sarker, learned Senior Advocates in other appeals and further submits that the plaintiffs claimed the suit land through sale certificate and writ of delivery of possession of a rent suit but as per CS *khatian* and the rent suit the superior landlords are found different. If the property was situated within the Bhawal Court of Words Estate as has been claimed by the plaintiffs, its name would have been shown in the CS *khatians* which is absent here. He refers to exhibits-10 and 10(Uma)

the mutation *khatians* in the names of plaintiff and submits that it is found to have been done in respect of 44.5 decimals of land which could have been in respect of 72 decimals as per plaintiffs' claim. He then refers to the registered deeds of the defendants dated 19.10.1957 exhibits-Ga/1-Gha/1 and dated 30.07.1970 exhibit-Uma/1 and submits that those documents are more than 30 years old which have presumptive value under section 60 of the Registration Act and under section 90 of the Evidence Act. Such presumption is to be rebutted by the plaintiffs which they failed. The deeds have been produced from the custody of the defendants. In this respect he refers to the case of Adamjee Jute Mills Ltd and another vs. Chairman, Labour Court and another, 5 BLC (AD) 77 and Abani Mohan Sana vs. Assistant Custodian (SDO) Vested Property, Chandpur and others, 39 DLR (AD 223 relied on the *ratio* laid therein. He then refers to the case of Akbar Ali and others vs. Zahiruddin Kari and others, 30 DLR (SC) 81 and submits that the presumption of preparation of record of rights under sections 144A of the SAT Act and 103B of the Bengal Tenancy Act is correct. The plaintiffs had to prove that record prepared in the names of defendants is incorrect which they failed. He finally refers to the case of Erfan Ali vs. Joynal Abedin Mia (late) represented by his legal heirs Golenur and others, 35 DLR (AD) 216 and submits that the SA and RS recorded tenants including this appellants paid rent to the Government for the suit land and it is now well settled that rent receipts are evidence of possession and may be used as collateral

evidence of title. The rent receipts filed by these appellants are exhibits-Jha-Jha/1/2 and DCR exhibits-Ja/1 and Ja/1/1 prove that they paid rent in respect of their share. Mr. Ali then refers to the deed exhibit-Thha dated 31.07.1930 through which Shommeher a CS recorded tenant transferred 36 decimals of land to Ismail Majhi and Alijan and submits that the plaintiffs in their plaint simply stated that it was not acted upon but SA and RS records have been prepared in the name of gradual purchasers from that deed which proves that the deed has been acted upon. He further submits that the plaintiffs claimed that defendant 2 was a permissive possessor of the plaintiffs' predecessor in respect of 6½ decimals of land but no prayer of recovery of possession against him of that part was made. The plaintiffs further failed to prove their possession in the B-schedule land and dispossession from C-schedule 22 decimals. The trial Court ignoring all these facts decreed the suit which is required to be interfered with by this Court in appeal. Therefore, the judgment and decree under challenge would be set aside.

Mr. Md. Khalilur Rahman, learned Senior Advocate for respondents 1-4 in all the appeals on the other hand opposes the appeals and supports the judgment passed by the trial Court. He then submits that the plaintiffs had no knowledge about the transfer of CS recorded Zaminders Kishore Chandra Basu and others to Saraju Bala Devi and others but it is found from the gazette of 1952 that concerned CS *Khatian* 1082 was cited in page 482 of the said gazette



as property of the Bhawal Court of Wards Estate and the aforesaid gazette may be considered as evidence under section 56 of the Evidence Act. In some way or other, the right of the Zaminders cited in CS *Khatian* exhibit-2 was transferred to Saraju Bala Devi and others. Moreover, exhibit-3 the *boinama* and exhibit-4 the writ of delivery of possession, the rent receivers are found Saraju Bala Devi and others. Since those documents are judicial documents, those bear presumptive value under sections 35, 56, 84 and 114 of the Evidence Act. Therefore, it can be safely held that Saraju Bala Devi and others were Zaminders and the then raiyots Shommeher and others were defaulted in payment of rent and the suit land was rightly put into auction in the rent suit and the plaintiffs' predecessor Abdus Samad got delivery of possession in the suit land through Court. Through deeds in the year of 1956 he transferred 13 decimals of land to the predecessors of defendants 2-4 and remained in possession in remaining 72 decimals. Although SA and RS records were not prepared in the plaintiffs' name but it no way extinguished their title in the suit land. The records so prepared in the names of the defendants are erroneous. The rent receipt exhibit-5 also shows that the plaintiffs' predecessor paid rent to the Bhawal Court of Wards Estate which is a Government organization and has its presumptive value under section 35 of the Evidence Act. The defendants failed to produce any documents that CS recorded tenants paid rent to the superior landlords. He further adds that a licensee cannot claim title

against the person through whom he/she entered into the property and the possession whatever length may be can never be adverse to the licensor. The trial Court correctly assessed the evidence of the witnesses of the parties and found that the defendants totally failed to prove their case regarding acquisition of title by their predecessor by producing documents of title. Mr. Rahman refers to the case reported 7 BLD (AD) 103 and submits that in the aforesaid case our Appellate Division held that the burden of proof lies upon both the parties in a case where both the parties adduce evidence oral and documentary. The evidence of the parties proves that the plaintiffs have title over 72 decimals of B-schedule land and they have been dispossessed by defendant 1 from 22 decimals described in schedule-C to the plaint and as such the trial Court decreed the suit for declaration of title recovery of possession and that the deeds are not binding upon the plaintiffs which may not be interfered with by this Court in the appeals. The appeals, therefore, would be dismissed.

We have considered the submissions of all the sides, gone through the materials on record, scrutinised the judgment and decree under challenge and *ratio* of the cases cited by the parties. It is admitted by the parties that the suit land measuring 85 decimals appertaining to CS *Khatian* 1082 originally belonged to CS recorded tenant Shommeher to the extent of 6 annas, Jana Bibi and Mahi Bibi 1 anna each, Jahur Maji 4 annas while Alijan and Mukta 2 annas each. The plaintiffs claimed that they are the sons of Abdus Samad son of

Ismail Majhi. The plaintiffs further claimed that the CS recorded tenants Shommeher and others defaulted in payment of rent to the superior landlords and consequently the landlords Saraju Bala and others filed Rent Suit 336 of 1944 in the Court the then 6<sup>th</sup> Munsif, Dhaka and obtained a decree against the tenants. In Rent Execution Case 128 of 1946 Abdus Samad purchased the land, he got sales certificate exhibit-3 and writ of delivery of possession exhibit-4 in respect of 85 decimals of land described in schedule 'A' to the plaint. On the other hand most of the defendants disowned the fact of rent suit and auction purchase but stated that the CS recorded tenants transferred the suit land to different persons in whose name SA *Khatians* have been prepared. RS records have been prepared in the name of gradual purchasers and the defendants purchased suit lands from SA and RS recorded tenants. They have been enjoying the same by mutating their names and paying rents to the government. The deeds in the name of defendants and their predecessor are valid and all the old purchase deeds have been acted upon.

The plaintiffs filed this suit mainly on the following prayers:

- a) Pass a decree declaring the 16 annas right, title and interest of the plaintiffs in the 'B' schedule property being part of 'A' schedule property.
- b) Pass a decree declaring that the RS record in respect of the suit property originally prepared in the names of

defendants 2, 8-10 and the subsequent mutation records are wrong and without any basis.

- c) Pass a decree declaring that 'D' schedule deeds are absolutely false, fraudulent, illegal, without consideration and are of no legal effect and never acted upon and not binding upon the plaintiffs.
- d) Pass a decree of khas possession in respect of 'C' schedule land by evicting defendant 1 therefrom and to deliver possession thereof to the plaintiffs through the process of the Court.
- e) Pass a decree for permanent injunction against defendant 1 from continuing the illegal construction started by him and from making any further construction in the 'C' Schedule land or in any portion of the 'B' Schedule land and from changing the nature and character thereof and from transferring any portion thereof to any person.

In a suit with such prayers, the plaintiffs have to prove their title in respect of 72 decimals of land described in schedule-B to the plaint. They have to prove further that they were in possession of the suit land measuring 72 decimals and were forcibly dispossessed by defendant 1 from C-schedule land measuring 22 decimals. They also have to prove that the deeds in schedule-'D' are false, fraudulent,

illegal, without consideration and have no legal effect and never acted upon and binding upon the plaintiffs.

It is found that in paragraph 6 of the written statement defendant 1 denied the statements made in paragraph 2 of the plaint, *i.e.*, the fact of auction purchase and getting delivery of possession of the suit land. This defendant stated there that those are totally false, baseless, concocted and created. It is fact that the records of the aforesaid rent suit as well as the rent execution case were not brought to the Court by calling for the records or suit register. But it is found in exhibit-2 of the plaintiffs, exhibit-Kha of defendant 1, exhibit-Kha/Kha produced by defendants 2-4 and exhibit-Kha/1 produced by defendants 8-11(Jha), the CS *Khatian* 1082 that the names of the superior landlords are not same but tenants are same. In exhibits-2 and Kha, the certified copy of CS *Khatian* 1082 Kishore Chandra Basu and others are found as superior landlords. But in exhibits-3 and 4 the *boinama* and writ of delivery of possession, it is found that superior landlords are Saraju Bala Devi and others. None of the CS *Khatians* submitted by the parties show that Saraju Bala Devi and others were the landlords of that *khatian*. Therefore, the claim of the plaintiffs that Saraju Bala Devi and others were the superior landlords of CS *Khatian* 1082 who filed the rent suit for arrear of rents is unfounded and not supported by documents. The learned Advocate for the plaintiff-respondents argued that in some way or other the right of CS recorded Zaminders was transferred to Saraju Bala Devi and others

bears no substance because no such case has been made out in the plaint that the right of Kishore Chandra Basu and others, the then Zaminders was somehow or this or that way (as argued by the learned Advocate for the respondents) was transferred to Saraju Bala Devi and others or that they instituted the rent suit for eviction of the CS recorded tenants for nonpayment of rent.

The learned Senior Advocate Mr. Sircar for the appellant in First Appeal 38 of 2014 has filed an application for taking additional evidence and subsequently an application for calling for the volume of the suit register of rent suit to ascertain whether any rent suit was at all filed by Saraju Bala and others against the CS recorded tenants. In support of the claim he has submitted the certified copy of relevant part of the suit register exhibit-X with the application to prove that names of the plaintiffs and defendants of the aforesaid rent suit is different. We kept both the applications on the record to be considered at time of disposal of the appeal, if required. We have meticulously considered exhibits-3 and 4 filed by the plaintiffs in support of the auction sale of rent suit. On scrutinising the seal of the Court 6<sup>th</sup> Munsif put on the sale certificate and the seal put on the writ of delivery of possession, we find in the naked eye that the seal put on exhibit-3 is larger than that of the seal put on exhibit-4, the star marks of the seals are also dissimilar (cross wise in one and in the other one is straight) although the documents were signed on 01.09.1946 and 24.10.1946. In view of the aforesaid position of exhibit-2, the CS

*Khatian* where the name of the superior landlords are not similar with the landlords as mentioned in the certified copy of rent execution case related document exhibits-3 and 4, we find it difficult to put reliance on *boinama* and *dakhalnama* provided by the plaintiffs. Therefore, we find no necessity of taking additional evidence and calling for the civil register as prayed by respondent 1 to ascertain the authenticity of exhibits 3 and 4.

Apart from the above fact, the plaintiffs claimed in the plaint that the deed of sale by Shommeher, a CS recorded tenant who was owner of 6 annas share as recorded owner and 1 anna share from his deceased mother Jana Bibi and became owner of total 36 ½ decimals of land sold it to Ismail Majhi and Alijan through a registered *kabala* dated 31.07.1930 but it was mere a paper transaction and not acted upon. It is a deed of 1930 near bout 95 years old. The certified copy of the deed produced by the plaintiff was proved by calling for the volume by DW 3 exhibit-Thha and subsequent SA records have been prepared in the names of the subsequent purchasers and chronological purchasers of the aforesaid deeds and RS record has also been prepared and rent has been paid by the purchasers, therefore, it cannot be said that the deed has not been acted upon. Moreover, if CS recorded tenant Shommeher sold out 36 decimals of land thorough the aforesaid deed exhibit-Thha, it remains 49 decimals of land to other CS recorded tenants. Therefore, the question of putting the whole property of 85 decimals into auction in rent suit in the year 1944 does

not arise at all. In that view of the matter the auction sale of the suit land measuring 85 decimals and purchase of it by the predecessor of the plaintiffs cannot be believed.

It is further found that in the plaint the plaintiffs claimed that defendant 1 dispossessed them finally on 09.06.2006 from 22 decimals of land described in schedule-C to the plaint. In order to get the decree of recovery of possession in respect of 22 decimals described in schedule-C to the plaint the plaintiffs have to prove that they were in possession in total 72 decimals in schedule-B to the plaint and that on the alleged day defendant 1 dispossessed them from the aforesaid 22 decimals. Although the plaintiffs in the plaint stated the date of dispossession but in evidence PW1 did not state any date of dispossession. PWs 2 and 3, the other 2 witnesses in their examination-in-chief did not state that defendant 1 dispossessed the plaintiffs from C-schedule land, rather they stated there that the plaintiffs are in possession of the suit land which means that they are still in possession of total 72 decimals. In a suit for recovery of possession, the question of plaintiffs' previous possession and the alleged date of dispossession by the defendants is vital which the plaintiffs in this case failed to prove in evidence. In evidence it is found that defendant 24 is in possession over more than 5 decimals of land but no relief has been sought against him. On scanning the evidence of witnesses it is found that the plaintiffs are in possession in a part of the suit land. DW4 Md. Razaul Karim, witness of defendants



2-4 in cross-examination by plaintiffs stated, “আঃ সামাদ বিক্রি বাদে মৃত্যুকালে ৯ শতাংশ জমি রেখে যান। সেখানে বাদীরা এখনও দখলে।” In cross-examination by the plaintiffs DW6 Fazul Hoque, witness of defendants 8-12 stated, “নালিশী ৮৫ শতক সম্পত্তির মধ্যে বাদী আছে ০৬ শতাংশ জমিতে। আমরা আছি ৩০ শতাংশ সম্পত্তিতে।” The aforequoted evidence of witnesses of the defendants and the evidence of plaintiffs witnesses proves that they are not in possession over 50 decimals of land on which they claimed to have possession. In the aforesaid premises, we find that the plaintiffs may have in possession in some land of the suit schedule as heirs of Abdus Samad. But they hopelessly failed to prove that they were/are in possession over 50 decimals of land which they claimed. Exhibit-10, the mutation *khatian* in the name of the plaintiffs if taken as true is found in respect of 44.50 decimals of land which also do not support that they are in possession of 50 decimals of land.

In the suit the plaintiffs also challenged 19 registered *kabalas* described in the schedule to the plaint and prayed for declaration that the deeds are false, fraudulent, illegal without consideration, are of no legal effect, never acted upon and not binding upon the plaintiffs. It is found that the plaintiffs submitted the certified copies of those *kabalas* and marked as exhibits but they did not call for the volumes to prove the execution and registration of those. But the trial Court decreed the suit as a whole declaring the aforesaid 19 deeds not binding upon the plaintiffs which it cannot. Moreover, on perusal of the plaint, we find

no statement either positive or negative about deeds 6525 and 6526 both dated 19.10.1957 but the plaintiffs prayed for declaration against those showing at serial 9 to schedule-D. By those the predecessors of defendants 8-11 Meherlal Bapari claimed right, title and interest in the suit land, but those were also declared not binding upon the plaintiffs which cannot be sustained in law. The plaintiffs admitted in the plaint of transferring 13 ½ decimals suit land by their father Abdus Samad to Ahmed Ali which have been also challenged at serial 15 of schedule-D.

The trial Court in decreeing the suit relied on the evidence of witnesses of the defendants. It is well settled principle by our apex Court in numerous cases that in a suit where defendant files written statement and the parties examine witnesses in support of their respective case, the parties have to prove their respective cases. But that does not exempt the plaintiffs from proving their case by producing oral and documentary evidence in support of their claim. Here although it is found that the plaintiffs are in possession in a part of the suit land (6-9 decimals) as heirs of Abdus Samad who was the grandson of CS recorded tenant Jahur Majhi but the plaintiffs filed to prove their title in respect of 72 decimals of land described in schedule-B to the plaint. If all the documents produced by the defendants is considered together it is found that Abdus Samad, predecessor of the plaintiffs and his predecessor sold out more than 85 decimals of land in CS plot 122 of CS *Khatian* 1082 but it cannot be a

ground to get the suit decreed on the finding of defendants' case defective. The plaintiffs have to prove their case under the provisions of section 102 of the Evidence Act. It is further found that as per the case of the plaintiffs and defendants SA and RS records have been prepared in the names of subsequent purchasers from the CS recorded tenants and they have paid and paying rent to the Government. Rent receipts of the defendants are exhibits-Ja/Jha, Yea, Uma/Uma, Cha/Cha, Cha/Cha, Ja/Ja, Ja-1, Ja/1/1, Jha/1. It is well settled by Our Apex Court in numerous cases and case as referred to by the learned Advocate for the appellants in First Appeal 51 of 2014 that rent receipts are evidence of possession and may be used as collateral evidence of title [Reliance placed on Erfan Ali vs. Joynal Abdin Miah and others, 35 DLR (AD) 216] which goes in favour of the defendants because possession follows title.

Since the plaintiffs failed to prove their case of auction purchase in rent execution case, title over 72 decimals of land of schedule-B, dispossession from C-schedule specifying any date and that the alleged 19 deeds in schedule-D to the plaint are fraudulent and not binding upon the plaintiffs, the trial Court ought to have dismissed the suit and by not doing so erred in law.

In view of the discussion made hereinabove, we find that the trial Court misdirected and misconstrued in its approach of the matter

and gone wrong in fact and law in decreeing the suit with the prayer made therein which is required to be interfered with by us.

Therefore, we find merit in all the appeals and accordingly those are allowed. The judgment and decree passed by the trial Court is hereby set aside and the suit is dismissed. No order as to costs. The Rules issued in Civil Rules 174 (F) of 2014 and 296(F) of 2014 are accordingly disposed of and the interim orders passed therein are hereby recalled and vacated.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J.

I agree.