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

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 321 of 2014.

With

Civil Rule No. 794(F) of 2014

Md. Shafiqul Islam

...Appellant.

-Versus-

Abdus Sobhan and others

....Respondents.

Mr. Moteen Uddin Anwar with
Mr. Md. Ali Akbar Khan, Advocates
… For the appellant

Mr. S.M Shakhawat Hossain, Advocate
… For the respondents.

Heard on: 11.01.2026, 22.01.2026, 25.01.2026, 11.05.2026, 12.05.2026,13.05.2026,18.05.2026 and 19.05.2026.

Judgment on: 21.05.2026.

Md. Badruzzaman, J:

This appeal is directed against the judgment and decree dated 02.06.2014 (decree signed on 09.06.2014), passed by the learned Joint District Judge, 2nd Court, Narsingdi, dismissing the suit.

Upon an application filed by the appellant, a Rule was issued on 09.09.2014, and at the same time, the parties were directed to maintain status quo in respect of possession of the suit land for a period of three (03) months, which was registered as Civil Rule No. 794(F) of 2014. The said order was subsequently extended until disposal of the Rule.

The facts relevant for the disposal of this appeal are that the appellant, as plaintiff, instituted the aforesaid title suit against the respondents, praying for a decree of declaration of title in respect of the suit land measuring 0.33 acre, contending, inter alia, that the suit land along with other properties originally belonged to Abbus Ali and Saheb Ali, and accordingly C.S. Khatian No. 41 was finally published in their names. Thereafter, S.A. Khatian No. 68 was published in the name of Saheb Ali and the heirs of Abbus Ali, and R.S. Khatian No. 412 was published in the name of Abbus Ali and Saheb Ali. Saheb Ali died leaving behind one son, Mofiz Uddin, and one daughter, Jariba Hossen Nessa. Mofiz Uddin subsequently died leaving behind two wives, namely Rokeya and Chand Meher; two sons, namely Abu Taher and Abdul Kader; and two daughters, namely Minara and Halima. Thereafter, Abu Taher died leaving behind his mother Chand Meher, one son Masum, and his wife Helena Khatun. Masum died unmarried, and his share was inherited by his mother Helena and paternal uncle Abdul Kader. On 23.12.1975, a partition deed being No. 17614 was executed among the heirs of Saheb Ali. According to the said partition deed, Abdul Kader and his mother, being the first party, got 2.18 acres of land, including 0.38 acre from C.S. Plot No. 1307, and they had been possessing the same for at least 30 years. Thereafter, Abdul Kader transferred 0.33 acre of the suit land to his son, the plaintiff, appertaining to C.S. and S.A. Plot No. 1307 by way of oral gift. In support of the said oral gift, he executed a registered declaration of hiba deed No. 4844 dated 11.12.2006 in favour of the plaintiff and handed over possession thereof to him. The said Abdul Kader has been owning and possessing the remaining 0.09 acre of land under R.S. Plot No. 2775.

Defendant Nos. 7 and 8 (respondent Nos. 7 and 8) earlier instituted Title Suit No. 81 of 2007 admitting that Abdul Kader and Rokeya had received 0.38 acre of land from C.S. Plot No. 1307, along with other lands, and that defendant Nos. 7 and 8 had received 1.94 acres of other plots. Subsequently, they withdrew the suit. Thereafter, defendant Nos. 1–5 transferred 0.0515 acre of land of C.S. Plot No. 1307 corresponding to R.S. Plot No. 2775 to respondent No. 6 vide registered sale deed No. 4330 dated 01.08.2010. Subsequently, respondent No. 8 transferred 0.42 acre of land to defendant No. 8 by a declaration of hiba deed No. 2810 dated 18.05.2010. Such transfers created a cloud upon the title of the plaintiff, and as such, the plaintiff was constrained to institute the present suit for declaration of title.

Defendant Nos. 1, 6, 7, and 8 filed a joint written statement contesting the suit, denying the material averments of the plaint and contending, inter alia, that the suit is not maintainable in its present form and manner; it is barred by limitation as well as by the principles of estoppel, waiver, and acquiescence; and is bad for defect of parties. While admitting the genealogy as narrated by the plaintiff up to Mofiz Uddin, they contended that after the death of Saheb Ali, his heirs—Abdul Kader, Rokeya Khatun, Minara Khatun, Chand Meher, Halima Khatun, and daughter Jariba Hossen Nessa—mutually partitioned their inherited properties, including the suit property, through a registered deed of partition No. 17614 dated 24.12.1975. By virtue of the said deed, Abdul Kader and Rokeya Khatun got 2.18 acres of land, including 0.38 acre from C.S. Plot No. 1307; Minara Khatun, Chand Meher, and Halima Khatun got 1.94 acres, including 0.38 acre from C.S. Plot No. 1307; and Jariba Hossen Nessa got 1.4850 acres from other plots. After

the death of Halima Khatun, her husband and sons, namely defendant Nos. 1–5, inherited her share according to Mohammedan law and mutated their names vide Mutation Case No. 1799/09-2010 dated 16.02.2010 and have been in peaceful possession thereof. Thereafter, defendant Nos. 1–5 transferred 0.0515 acre of land from R.S. Plot No. 2775 corresponding to C.S. and S.A. Plot No. 1307 to defendant No. 6 by registered sale deed No. 4330 dated 01.08.2010 and delivered possession thereof. Similarly, defendant No. 8, Chandmeher transferred 0.2350 acre of land, including land of the suit plot No. 1307, to defendant No. 7 by registered hiba deed No. 2810 dated 18.05.2010. Thereafter, defendant No. 7 and her son Badol Mia mutated the said land, including other land, vide Mutation Case No. 1555/09-2010 dated 21.01.2010. C.S. and S.A. Plot No. 1307 has been converted into R.S. Plot No. 2775. The plaintiff, by suppressing facts and taking advantage of clerical discrepancies in earlier records, instituted the present suit. The defendants have been in uninterrupted, peaceful possession of the suit property for more than 12 years to the knowledge of local people. The declaration of hiba deed dated 11.12.2006 is collusive. On the other hand, the registered sale deed No. 4330 dated 01.08.2010 and hiba deed No. 2810 dated 18.05.2010 are valid and lawful, and by virtue of those deeds, the defendants acquired title to the suit land. Since the plaintiff did not seek any relief against those two deeds, the suit is not maintainable and is liable to be dismissed.

During trial, the plaintiff examined five witnesses (P.Ws.) and produced documents marked as Exhibit-1 series to Exhibit-7. On the other hand, defendant Nos. 7 and 8 examined four witnesses and produced documentary evidence marked as Exhibits-1ka series to Jha.

Upon considering the evidence adduced and produced before the trial Court, it dismissed the suit vide judgment and decree dated 02.06.2014, which has been challenged by the plaintiff in this appeal.

During the appellate stage, the plaintiff filed an application for taking additional evidence by producing certified copies of the deed of declaration of hiba No. 2810 dated 18.05.2010 and sale deed No. 4330 dated 01.08.2010, which was allowed by this Court vide order dated 03.05.2026, treating those deeds as Exhibit Nos. X and X-1 respectively.

Mr. Moteen Uddin Anwar, learned Advocate appearing for the appellant, submits that the plaintiff acquired title to 0.33 acre suit land, which has been admitted by defendant Nos. 7 and 8 in an earlier suit filed by them being Title Suit No. 81 of 2007. Moreover, the P.Ws in this case supported the plaintiff's possession over the suit land, but the trial Court, without proper consideration of the evidence on record, illegally held that possession was not proved and dismissed the suit.

Learned Advocate further submits that the genealogy and chain of title of the plaintiff over the suit land were never denied by the defendants, and the trial Court failed to consider that 0.47 acre of land of C.S. Plot Nos. 1307 and 1308 were recorded in the name of the plaintiff's predecessor in R.S. Plot No. 2775. It is further submitted that 0.33 acre out of 0.38 acre of C.S. Plot No. 1307 corresponding to R.S. Plot No. 2775 was transferred by the father of the plaintiff, but the trial Court failed to properly consider both oral and documentary evidence.

Learned Advocate further submits that although the father of the plaintiff did not claim the suit land, the trial Court illegally held that the

suit is bad for defect of parties for non-joinder of the plaintiff's father as a defendant in the suit.

Learned Advocate further submits that under Sections 17–23 of the Evidence Act, 1872, admissions are substantive evidence and bind the parties, and under Section 115 of the Evidence Act, a party who, by declaration, act, or omission, induces another to believe a fact and act upon it cannot subsequently deny the same.

Learned Advocate further submits that the defendants, in the earlier suit, categorically admitted that they had or have no right, title, interest, or possession in 0.38 acre of land of C.S. and S.A. Plot No. 1307; rather, they claimed land in Plot No. 2418. As a result, the said admission remains on record and continues to operate against them.

Learned Advocate further submits that defendant No. 7, as D.W.1, admitted in her cross-examination that she withdrew the earlier suit, which further strengthens the evidentiary value of her earlier admission. By reason of the doctrine of estoppel, a party cannot approbate and reprobate, nor take contradictory stands in judicial proceedings to the prejudice of the other party.

In support of his contention, learned Advocate has referred to the cases of:

- *Abdul Kader Khan and others vs. Basek Khan and others*, 40 DLR (AD) 114
- *Khondkar Mohiuddin vs. Syed Moin Ahmed*, 28 DLR (AD) 85
- *Wagachara Tea Estate Limited vs. Muhammad Abu Taher and others*, 69 DLR (AD) 381

- *Mst. Delowara Begum vs. Kazi Md. Join Uddin alias Kazi Nudur Islam*, 5 BLD (AD) 4

Mr. S. M. Shakhawat Hossain, learned Advocate appearing for respondent Nos. 7 and 8, submits that the plaintiff filed the suit for a mere declaration of title without seeking consequential relief by challenging the registered hiba deed No. 2810 dated 18.05.2010 and sale deed No. 4330 dated 01.08.2010, and as such, the suit is not maintainable under Section 42 of the Specific Relief Act without seeking cancellation of those deeds. In this connection, learned Advocate has referred to the case of *Nurul Absar Shaheen vs. Lutfun Nessa and others*, 8 ADC 189.

Learned Advocate further submits that the defendants proved that defendant No. 8 lawfully transferred the land to defendant No. 7 by registered hiba deed dated 18.05.2010 followed by delivery of possession, and after mutation, defendant No. 7 has been possessing the same. Similarly, defendant No. 6 lawfully purchased land from defendant Nos. 1–5 by registered sale deed No. 4330 dated 01.08.2010. These registered documents carry a presumption of genuineness unless rebutted by strong evidence, which the plaintiff failed to do. Learned Advocate further submits that the plaintiff failed to prove his title and exclusive possession over the suit land in view of Sections 101–103 of the Evidence Act.

He further submits that the documents produced by the defendants corroborate each other and prove continuous possession of the disputed land by the defendants for a long period.

With regard to the admission made by the defendants in the plaint of Title Suit No. 81 of 2007, learned Advocate submits that such admission is misconceived and devoid of legal force. Though under Sections 17–23 of the Evidence Act an admission is a relevant piece of evidence, it is not conclusive proof and may always be explained, clarified, or rebutted by surrounding circumstances. In support of this contention, he has referred to *Abdul Kader Khan and others vs. Basek Khan and others*, 40 DLR (AD) 114.

Learned Advocate finally submits that the principle of estoppel under Section 115 of the Evidence Act has no application in the instant case, as estoppel cannot operate against lawful title or statute. The plaintiff-appellant has utterly failed to prove that he altered his position or acted to his detriment relying upon any clear and unequivocal representation made by the defendants. In the absence of such proof, the plea of estoppel is wholly misconceived and untenable in law.

In reply, Mr. Moteen Uddin Anwar, learned Advocate for the appellant, submits that the plaintiff was not a party to sale deed No. 2810 dated 18.05.2010 and hiba deed No. 4330 dated 01.08.2010, and as such, he is not required to challenge those deeds while filing a suit for declaration of title over the suit land. Therefore, the suit is maintainable under Section 42 of the Specific Relief Act without seeking any consequential relief. In support of his contention, learned Advocate has referred to *Dudu Mia and others vs. Ekram Mia Chowdhury and others*, 54 DLR (AD) 7.

Learned Advocate further submits that although the defendants mutated their names on the basis of illegal deeds, the plaintiff

challenged the said mutation by filing Miscellaneous Case No. 38/2010–2011 (Exhibit-4), the further proceeding of which was stayed by the Assistant Commissioner (Land) due to pendency of the present suit.

He further submits that record of rights alone does not confer title; however, it carries presumptive value in favour of the person in whose name it is prepared, which may be rebutted by cogent evidence. Since the mutation of the defendants has been challenged in the miscellaneous case, it cannot be said that the mutation has attained finality. In support of his contention, learned Advocate has referred to *Kamal Mia and others vs. Lakkatura Tea Company Limited and others*, 11 SCOB [2019] HCD 109.

We have heard the learned Advocates, perused the pleadings of the parties, the evidence adduced by them, the impugned judgment and decree, and other materials available on record.

Upon the pleadings of the parties, the trial Court framed the following issues:

1. Whether the suit is maintainable in its present form and manner.
2. Whether the suit is barred by limitation.
3. Whether the suit is bad for defect of parties.
4. Whether the suit is barred by the principles of estoppel, waiver, and acquiescence.
5. Whether the plaintiff has right, title, and possession in respect of the suit land.
6. Whether defendant Nos. 1–5 and 8 transferred the plaintiff's land to defendant Nos. 6 and 7, respectively, by

virtue of Sale Deed No. 4430 dated 01.08.2010 and Deed of Hiba No. 2810 dated 18.05.2010.

7. Whether the plaintiff is entitled to the reliefs prayed for.

The trial Court decided issue No. 2 in favour of the plaintiff, holding that the suit is not barred by limitation. While deciding issue No. 3, the trial Court held that the suit is bad for defect of parties, as the father of the plaintiff was not impleaded as a defendant in the suit. The trial Court, upon joint consideration, decided issue Nos. 1, 4, 5, 6, and 7 against the plaintiff and in favour of the defendants and ultimately dismissed the suit.

On perusal of the evidence and materials on record produced by both parties, it appears that admittedly the land under C.S. Khatian No. 41 originally belonged to Isu Hazi, and after his death, his two sons, Abbus Ali and Saheb Ali, became the owners of the said land as his heirs. Accordingly, C.S. Khatian No. 41 was prepared and finally published in their names. S.A. Khatian No. 68 was prepared and finally published in the name of Saheb Ali and the heirs of Abbus Ali, and R.S. Khatian No. 412 was prepared and finally published in the names of the heirs of Abbus Ali and Saheb Ali. The said khatians were produced and marked as Exhibit Nos. 1, 1Ka, and 1Kha. Both the plaintiff and the defendants admitted the genealogy of their respective title up to Abbus Ali and Saheb Ali, as well as the sons of Saheb Ali and their heirs. It is also admitted that Abdul Kader, Rokeya Khatun, Minara Khatun, Chand Meher, Halima Khatun, and Jariba Hossen Nessa jointly possessed a total of 5.6050 acres of land in ejmali, and by deed of partition No. 17614 dated 24.12.1975 (Exhibit-3), Abdul Kader and Rokeya, being the first party, got 2.18 acres of land, including 0.38 acre of land from C.S.

and S.A. Plot No. 1307; Minara Khatun, Chand Meher, and Halima Khatun, as second parties, got 1.94 acres, including 0.38 acre of land from C.S. and S.A. Plot No. 1307; and Jariba Hossen Nessa, as the third party, obtained 1.4850 acres of land from other plots. It is further admitted that Halima Khatun died leaving behind defendant Nos. 1–5 as her heirs, including her sons and widow mother. The partition deed is admitted by both parties.

The plaintiff contended that Abbus Ali and Saheb Ali each got 0.38 acre of land from C.S. and S.A. Plot No. 1307 in equal shares, which was admitted by defendant No. 7, D.W.1, in her testimony. Thus, it is the proved that Saheb Ali got 0.38 acre and Abbus Ali also got 0.38 acre land in C.S. and S.A. Plot No. 1307.

It is further contended by the plaintiff that defendant Nos. 7 and 8, as plaintiffs in Title Suit No. 81 of 2007, admitted ownership of 2.18 acres of land, including 0.38 acre of C.S. and S.A. Plot No. 1307, in favour of Abdul Kader and his mother Rokeya. The plaintiff produced the plaint of Title Suit No. 81 of 2007, from which it appears that defendant Nos. 7 and 8, as plaintiffs therein, disclaimed ownership over 0.38 acre of land of Plot No. 1307, contending that the said land was wrongly inserted as Plot No. 1307 instead of C.S. and S.A. Plot No. 2418 in the partition deed. They further sought a declaration that 0.38 acre of land was wrongly inserted as Plot No. 1307 in place of Plot No. 2418 in partition deed No. 17614 dated 23.12.1975.

As P.W.1, the plaintiff in his examination-in-chief stated that Chand Meher and Minara Khatun filed Title Suit No. 81 of 2007, wherein they admitted that Abdul Kader possessed 2.18 acres of land

including .38 acre land of C.S Plot No. 1307 and that Sale Deed No. 4330 dated 01.08.2010 and Hiba Deed No. 2810 dated 18.05.2010 were collusive and inoperative.

Defendant No. 7, as D.W.1, in her examination-in-chief deposed that they withdrew the suit as it was no longer necessary. In cross-examination, she denied the suggestion that Abdul Kader possessed land of Plot No. 1307 and that such fact was admitted in Title Suit No. 81 of 2007. She further stated that she possesses land of C.S. Plot No. 2418, while Abdul Kader possesses land of Plot No. 2775, and that both parties possess land of Plot No. 2418 in equal shares by cultivating banana crops. She further stated that she herself planted banana trees.

In the plaint of Title Suit No. 81 of 2007, defendant Nos. 7 and 8 as plaintiff categorically stated that during partition they obtained saham of 0.37 acre of land of Plot No. 2418 as per the partition deed, and that they have been possessing the same openly within the knowledge of the local people by cultivating seasonal crops. They further stated that they came to know from the Tahsil Office that due to mistake, 0.37 acre of land of Plot No. 2418 was wrongly inserted as Plot No. 1307, and that defendant Nos. 1 and 2 (Abdul Kader and Rokeya) have been possessing 0.37 acre of land of Plot No. 1307, though it should have been recorded against Plot No. 2418 in the partition deed. They claimed possession over 0.38 acre of land of Plot No. 2418 for more than twelve years.

It is contended by the learned Advocate for the plaintiff-appellant that although Title Suit No. 81 of 2007 was withdrawn by the plaintiffs therein without seeking liberty to file afresh, a plain reading of the

plaint shows that defendant Nos. 7 and 8, as plaintiffs therein, did not claim 0.37 acre of land of C.S. and S.A. Plot No. 1307, rather claimed land of C.S. and S.A. Plot No. 2418. As such, it is admitted that defendant Nos. 7 and 8 acquired no title in respect of 0.38 acre of land of C.S. and S.A. Plot No. 1307, and therefore they had no transferable interest in the said land. Consequently, by Sale Deed No. 4430 dated 01.08.2010 and Hiba Deed No. 2810 dated 18.05.2010, no valid title could pass to the transferees/donees under those deeds.

The question now arises whether admissions made in the plaint of Title Suit No. 81 of 2007 can be treated as substantive evidence and used against defendant Nos. 7 and 8 in the present suit.

Admission plays a very important role in judicial proceedings. If one party proves that the other party has admitted his case, the burden of proof becomes easier. Under Section 17 of the Evidence Act, 1872, admission means a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact. Sections 18–20 enumerate various categories of persons whose admissions are relevant. Under Section 18 of the Evidence Act, statements made by a party to the proceeding, or by an agent of such party whom the Court considers, under the circumstances of the case, to be expressly or impliedly authorized to make such statements, are admissions. While Section 17 defines admissions, Sections 18–20 specify the persons whose admissions are relevant. Section 21 provides an exception to the general rule that admissions must be proved against the maker and not in his favour. It is therefore clear that an admission of a party, once duly proved, may be acted upon unless the party against whom it is proved shows that it was mistaken or untrue.

Admissions are strong pieces of evidence against the party making them unless satisfactorily explained. An admission by a party in a plaint may be used against him in another proceeding; however, such admission is not conclusive and the party may still show that it is incorrect. This view finds support in *Basant Singh vs. Janki Singh*, AIR 1967 (SC) 341.

It is true that evidentiary admissions are not conclusive proof of the facts admitted, and they may be explained or shown to be wrong; however, they do raise an estoppel and shift the burden of proof to the person making them or his representative-in-interest, unless they are satisfactorily explained or shown to be incorrect [*Avadh Kishore Dass vs. Ram Gopal*, AIR 1979 (SC) 861].

The Supreme Court of India in *Bharat Singh vs. Mst. Bhagirathi*, AIR 1966 (SC) 405 held that "admissions are substantive evidence by themselves, though not conclusive proof of the matters admitted. Admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness-box or not, and whether he was confronted with these statements in case he made a statement contrary to these admissions". The Court further said that admissions are usually telling against the maker unless reasonably explained, and no acceptable ground to extricate the appellants from the effect of their own earlier statements has been made out. The Court thus held that an admission in an earlier suit is relevant evidence against the plaintiff.

In *Khondoker Mohiuddin vs. Syed Moinuddin Ahmed*, 28 DLR (AD) 85, our Appellate Division held as follows:

> "In the plaint of Title Suit No. 53 of 1953 of the Court of the 1st Sub-ordinate Judge, Dacca, which is dated 06.08.1953 and was marked Exhibit-7 in this suit, the defendant admitted the title of Priya Nath Pal stating that he was in possession of the disputed premises in performance of the contract with Priya Nath Pal. The learned Judges of the High Court have observed that since the said agreement was ultimately found to be a manufactured and spurious deed, the statements made in the said plaint were of no avail to the present plaintiff. The learned Judges of the Court do not appear to be correct in making the said observation. The said plaint having been admitted by the defendant to be his own, the statements made therein may very well be taken to be proper evidence of assertion of hostile claim or otherwise for the proof or disproof of adverse possession. If it was a case of adverse possession, the Court was to find whether the assertions of hostile title were adequate in extent, continuity, and publicity. The defendant having failed to assert clearly and positively any hostile claim in the plaint of the said suit and having, on the other hand, admitted the title of the rightful owner, the said admission in the plaint can obviously be used as evidence against the claim of adverse possession of the defendant, at least up to the time when the said admission was made."

Similar views have been expressed in *Abdul Kader Khan vs. Basek Khan, 40 DLR (AD) 114*, stating that "even under English Law a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In *Marianski v. Cairns* (1852) 1 Macq 212, it was held by the House of Lords that an admission signed by a party was evidence against him in other suit, not only with regard to a different subject matter but also against a different opponent".

Similar views have been expressed by our Appellate Division in various cases, including *Wagachara Tea Estate Ltd. vs. Muhammad Abu Taher & Others*, 69 DLR (AD) 381, to the effect that an admission made by a party in a plaint is admissible as evidence against him in other actions; however, such an admission cannot be regarded as conclusive proof, and the party is entitled to show that it is untrue.

The foregoing views of the various Apex Courts clearly indicate that an admission made by a party in a pleading may be treated as evidence against that party in another suit, not only in relation to a different subject matter but also against a different opponent. However, such an admission cannot be regarded as conclusive proof, and it remains open to the party concerned to establish that it is untrue. An admission, therefore, constitutes substantive evidence, subject to rebuttal by its maker. Where the maker fails to rebut its presumptive value, the opposing party is entitled to rely upon and derive benefit from it, irrespective of whether the admission appears in a plaint or a written statement. However, if it is established that the plaint or written statement containing the admission is a forged document, the admission contained therein cannot be used against the party concerned.

In the instant case, defendant Nos. 7 and 8 in their earlier suit, Title Suit No. 81 of 2007, made certain admissions in the plaint, as already stated above. The plaintiff produced a certified copy of the plaint before the trial Court, which was marked as Exhibit-6. The defendants did not deny the fact of institution of the suit or the statements made in the plaint, nor did they claim that it was written under undue influence or is incorrect; rather, they stated that they

withdrew the suit as it was not necessary to proceed further. Thus, the plaint produced by the plaintiff and marked as exhibit is an admissible document, and the contents therein are to be treated as relevant evidence and can be used against the defendants.

Though Title Suit No. 81 of 2007 was withdrawn by the present defendants, it does not affect the admissibility of the admissions, as they did not withdraw or disown the plaint, nor did they assert that the statements made therein were false, coerced, or incorrect. In that view of the matter, we are of the opinion that since the defendants in their earlier plaint (exhibit 6) categorically admitted that 0.37 acre of land of C.S. Plot No. 1307 along with other lands was owned and possessed by Abdul Kader and Rokeya as per the partition deed of 1975, and that their predecessors did not get any land from Plot No. 1307 and it was wrongly inserted in place of Plot No. 2418 therein and that they have been owning and possessing .37 acre land of Plot No. 2418, they are bound by their admissions in this suit. Accordingly, we hold that Abdul Kader and Rokeya got 0.37 acre of land, including 0.33 acre suit land and after the death of Rokeya, Abdul Kader inherited her share and thereafter lawfully transferred 0.33 acre suit land in favour of the plaintiff by declaration of heba deed No. 4844 dated 11.12.2006. By virtue of that deed, the plaintiff acquired title to the suit land. Moreover, the defendants did not challenge the execution of the said deed by Abdul Kader; their contention is only that no title passed thereunder. Since the execution of the declaration of heba deed dated 11.12.2006 has not been challenged by its maker or by the defendants, it is to be presumed that by that deed (Exhibit-5) the plaintiff acquired valid title to the suit land.

Regarding possession of the suit property, the P.Ws. categorically supported the plaintiff's case. Moreover, the defendants in the plaint of the earlier suit (Exhibit-6) specifically admitted the partition deed dated 24.12.1975 (Exhibit-Gha/1), showing that Abdul Kader and Rokeya got 2.18 acres, including 0.38 acre of Plot No. 1307 (corresponding to R.S. Plot No. 2775). D.W.1 also deposed that she cultivated banana plants in Plot No. 2418. Upon consideration of the oral and documentary evidence, it appears that the plaintiff has successfully proved his possession in the suit land.

The trial Court held that the suit is bad for defect of parties as the father of the plaintiff, Abdul Kader, was not made a party. This finding is erroneous, because in a suit for simple declaration of title, only necessary parties are those who deny the plaintiff's title. In the present case, the father of the plaintiff did not deny the plaintiff's title; therefore, he was not a necessary party, and the suit is not bad for defect of parties.

Regarding maintainability, the trial Court held that the suit is not maintainable as the plaintiff did not seek cancellation of the deeds executed by the defendants. Admittedly, the plaintiff is not a party to those deeds.

In *Dudu Mia and others vs. Ekram Miah Choudhury and others*, 54 DLR (AD) 7, it has been held that "an instrument alleged to be collusive must be adjudged as such, and in the case of an instrument to which the plaintiff is a party, if he seeks a declaration of title in respect of the property covered by such instrument, the plaintiff is, in law, required to avoid the instrument by seeking appropriate relief, i.e., a declaration

that the instrument is void, or a declaration coupled with cancellation thereof".

The decision cited above clearly establishes that where a plaintiff is not a party to a decree or instrument relating to a property, a suit for a simple declaration of title to that property, without seeking any relief against such decree or instrument, is maintainable. In other words, where a plaintiff seeks only a declaration of title and is not a party to the deed or decree concerning the property in question, he is not required to seek cancellation of the deed or decree. Consequently, a suit for a simple declaration of title is maintainable without any such consequential relief.

The learned Advocate for the respondents submits that since the defendants mutated the suit land in their names, their possession stands proved. However, we have already found that, on the basis of admissions and evidence, the plaintiff's possession is proved. Mere mutation in revenue records does not establish possession.

Although record-of-rights carries a presumptive value, such presumption is rebuttable by cogent evidence. Mutation in the Tahsil Office does not constitute a record-of-rights; it is only a reflection of administrative entry and does not, by itself, prove possession in favour of the person mutated, if other evidence does not support such possession.

On perusal of the impugned judgment, it appears that the trial Court failed to properly consider the factual and legal aspects of the case and, due to misreading and non-consideration of material evidence and misconception of law, wrongly decided the issue of title

and possession and illegally dismissed the suit. The trial Court ought to have decreed the suit in favour of the plaintiff.

In view of the above, we find merit in the appeal.

In the result, the appeal is allowed, however, without any order as to costs. The suit is decreed on contest against the contesting defendants and ex-parte against the rest. Title to the suit land is declared in favour of the plaintiff.

The order of status quo earlier granted is hereby vacated.

Consequently, Civil Rule No. 794(F) of 2014 is discharged.

Send down the LCR along with a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)