

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.1321 of 2004

Idris Kha.

.....Petitioner.

-Versus-

*Abdul Gani Howlader being dead his
legal heirs Hayatunnesa and others.*

.....Opposite parties.

Mr. Rafiqul Islam (Hiru), advocate

.....For the petitioner.

Mr. Sk. Sharifuddin, Advocate.

.....For the Opposite parties.

Heard and Judgment on 03.07.2024.

A.K.M.Asaduzzaman,J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 17.01.2004 passed by the Joint District Judge, 2nd Court, Jhalakathi in Title Appeal No. 03 of 2002 reversing those dated 22.11.2001 passed by the Senior Assistant Judge, Jhalakathi in Title Suit No. 179 of 1993 dismissing the suit should not be set aside.

Opposite Parties as plaintiff filed Title Suit No. 179 of 1993 before the Court of Assistant Judge, Jhalakathi against the petitioner for declaration of title in respect of "Ka" schedule land and for setting aside the judgment and decree passed in Title Suit

No. 38 of 52 and Title Suit No. 106 of 56 as being collusive, null and void.

Plaint case in short, inter alia is that Chutu was owner and possessor of 21.29 decimals of land in C.S. Dag No.208/204/205/208/209/214 in C.S. Khatian No.1 of Khatian No. 1 of Kandergati Mouza No.2216 under district-Bakerganj at present P.S. Jhalakathi, District Jhalakathi. It is also stated that Foyjauddin was owner and possessor of 1.26 decimals of land in C.S. dag No.203/204/205/208/209/214 of Khatian No.2 in the same Mouza. Chutu was owner and possessor of 38 decimals of land in C.S. Dag No.40 in khatian No.24 of said Mouza. Fayjauddin died leaving behind only his sister Kiran Bibi wife of Chutu. Chutu and Keron Bibi died leaving behind their 03 sons Salamuddin, Ekamuddin and Imamuddin and daughter Nayton Bibi as heirs. Salamuddin died leaving behind his brother Ekamuddin and Iamanuddin and one sister Nayton as heirs, thereafter Nayton died leaving behind her two brothers Ekamuddin and Imamuddin as heirs in equal share. Ekamuddin died as owner and possessor 08(eight) annas land of C.S. Khatian No. 1/2/24 and his two sons Tajamuddin and plaintiff No.1 Abdul Gani and 4 daughters plaintiff Nos. 2-4 and Safura Bibi were his heirs. Safura Bibi died leaving behind her two sons plaintiff Nos.7 and three daughters plaintiff Nos.5/6 and Kulsum Bibi as heirs. Kulsum Bibi died

leaving behind only one son plaintiff No.9 as heir that Tajamuddin died leaving behind his brother plaintiff No.1 and three sisters plaintiff Nos.2-4 as heirs, on the same Imamuddin died as owner and possessor of 08(eight) annas land in C.S. Khatian No.1/2/24 and he left behind his three daughters plaintiff nos. 10-12 and his brother's son plaintiff No.1 as heirs. Plaintiffs possessed the total property of C.S. Khatian No.1/2/24 and are living in the suit land.

It is also stated that C.S. Dag No. 203/204/205/208/209/214/40 are presently recorded as Dag No.215/213/212/210/209/234/361 and the land measuring 2.56 decimals in R.S. Khatian No.1/8/29/6 and S.A. Khatian No.59/148/54/101/218 are wrongly recorded in the name of predecessor of the defendant and some portion are recorded in the name of predecessor of the plaintiffs but it was not recorded in real share so the said record is wrong. Abdul Oazed Kha, Mahammad Ali Mazed Ali and Gohar Kha, the predecessor of the defendants filed a Title Suit No.38 of 52 before the 3rd Munsif Adalat, Barisal in the name of Tajemuddin and the said suit was dismissed by Solenama on 12/4/52. It is also stated that actually Tajemuddin did not file any suit and he did not give any solenama, the heirs of Tajemuddin were not aware about the Title Suit No.38 of 52. Abdul Oazed Khan and others, the predecessor of the defendants filed Title Suit No. 106 of 56 before the 5th Munsif Adalat, Barisal against the

Tajemuddin and others and obtained decree on 22/1/57 on fraud practice upon the court. Tajemuddin Howlader died before the said decree. The decree of the Title Suit No.38 of 52 and 106 of 56 are obtained against a dead man is thus null and void. Plaintiff possessed the suit land, on paying rents. Defendants did neither have any title nor possession in the suit land. Plaintiffs thus filed this suit for declaration that the judgments and decrees of the Title Suit No.38/52 and 106/56 are illegal, collusive null and void.

Defendant No. 10 contested the suit by filing a written statement, denying the plaint case, stating, inter-alia that Karim uddin, Ochimuddin, Chaferuddin and Fayzuddin owner and possessor of 1.91 decimal of land of C.S. Dag no.203/204/205/208/209/214 and C.S. Dag no.232 C.S. Khatian No.5 under Khabat N0.1 of Kandargati, Mouza No.2216 under Jhalakathi Station and 38 decimals land of Dag No.40 of Khatian No.24, Chutu owner and possessor of 08 annas property in C.S. dag No.203/204/208/209/214 of C.S. Khatian No.1, which is noted at the 14 column of the Khatian. Similarly Safaruddin, Jahanuddin Fayzuddin and Nader Karikar owner and possessor of 1.91decimal land of C.S. dag No.203/204/205/208/209/214 and Dag No.231 of C.S. Khatian No.7 under Khabat No.1, it was rightly recorded against their name. Fayzuddin owned and possessed 1.28 decimal land of C.S. Dag No.203/204/ 205/208/209/214 in respect to 8

annas, it was noted at 14 column of the Khatian that chutu owner and possessor of 38 decimals land of C.S. Dag No.40 of C.S. Khatian No.24 under Khabat No.13/14/24 of the said Mouza and his name has been recorded in the C.S. Khatian. Dhaka Nabab Estate filed a suit for recovery of arrear rent and they obtained decree. The said decree was executed by Decree execution suit. Suit property was auctioned and said auction was purchased by the Dhaka Nabab Courts of Words Estate, Nabab Courts of Words Estate filed a suit before the 1st Sub Judge, Barisal for khas possession being Title Suit No.47/47 thereafter the Nabab Estate obtained khas possession of the suit property except the property of C.S. dag No.209. After filing a decree Execution Suit No.70/48, Ekumuddin Howlader and Tajamuddin Howlader, sons of Chuta Howlader and defendant predecessor Newaj khan took a decision that they will take further settlement in their name 4 annas and 12 annas respectively. They filed a petition being No.17/1355 which is allowed and ordered to deposit the consideration money of taka 744/-, it was also stated that Tajamuddin could not Pay the consideration money then Tajamuddin and Newaj Kha entered into agreement that Newaz Kha will pay the total consideration money and when Tajamuddin would refund his consideration money then Newaz Kha will give possession to Tajamuddin his 4 annas share. Tajamuddin made registration a false kabuliat in his

name. Nabab Estate came to know about that false kabuliat then rejected the order of the Settlement Case No.17 of 1355. Thereafter the Nabab Estate gave Kabuliat and registration in favour of the Newaz Kha on the basis of consideration money on 8th Bhadra 1356 B.S. since then Newaz Kha possessing the said property. Tajamuddin filed Title Suit No.38 of 52 before the 3rd Munsif Adalat, Barisal by their false and canceled kabuliat. Newaz Kha contested the said suit by filing a written statement as a defendant no.1 and Khaza Habibullah Bahadur on behalf of the Nabab Estate contested the suit by filing a written statement as defendant No.2-50. It was also stated that is the total property of the dag No.201 and 8 annas property of Dag No.213/216/212/215/234 and 4 annas of Dag No.361/235/199 in the disputed property has been wrongly recorded in the name of Tajamuddin and others and the name of Malik, the predecessor of the defendant. Abdul Wahed Kha as Plaintiff filed a title suit before the 5th Munsif Adalat, Barisal being Title Suit No.106/56, which was decreed exparte on 12.1.57. Ekamuddin Howlader, father of the plaintiff no. 1 filed a suit for setting aside the said exparte judgment under Order 9 Rule 13 as Misc. Case No. 19 of 1957. The said miscellaneous case was dismissed on 10/8/57 by way of Solenama. The instant suit is false and will be dismissed with cost and compensation.

Defendant No.10 further submitted Additional written statement saying that Abdul Oahed Kha, Ali Azim Kha and Majed Kha, sons of Newaz Kha sold their property in favour of the Abdul Gafur Kha, father of the defendant by registered kabala deed No. 1854 dated 24. 3. 79 corresponding to 10th Chaitra of 1985(B.S.) to received of Taka 5,000/-. Thereafter he transferred 15 decimal of disputed land of S.A. Khatian no.148 to one Mr.Mostafa Kamal by Kabala dated 25.8.83. Property possessed by Mr.Mostafa kamal with the knowledge of the plaintiffs and local people. It is also stated that Kasem Ali Kha, father of plaintiffs filed a complain petition being No. 669/69 before the Deputy Martial Law Administration Barisal in 1969 on behalf of the Abdul Gani Howlader, plaintiff No.1 and Imamuddin Howlader, father of plaintiff No.10-12. The said petition was sent to the then Chairman of Benaykanthi for disposal who submitted a compromise deed without knowledge of Abdul Gafur, father of the defendants that Abdul Gafur submitted an objection against that compromise and before the Sub Assistant Martial Law Administrator, Barisal, which after investigation and on the basis of written report of the Shalish on the plaintiffs complaint it was rejected on 18.6.69. Plaintiff No.1 Abdul Gani and Abdul Gafur, father of the defendant signed the said Shalish nama, along with Kasem Ali, father of the plaintiff Nos.7/8. Plaintiffs filed this suit

falsely and refused the above facts, which is liable to be dismissed.

By filing additional written statement further it is submitted that Abdul Wahed Kha, Ali Azim Kha and Majed Kha, sons of Newaz kha sold their property in favour of the Abdul Gafur Kha, father of the defendant by registered kabala deed no. 1854 dated 24.03.1979, corresponding to 10th Chaitra 1385 B.S. to receive of Tk. 5,000/-. Thereafter he transferred 15 decimals of disputed land of S.A. khatian No. 148 to the one Mr. Mostafa Kamal by kabala dated 25.08.1983 and that property possessed by Mr. Mostafa Kamal with in the knowledge of the plaintiffs and local people that it is also stated that Kasem Ali Kha, father of plaintiff nos. 7 and 8 filed a Complaint Petition being No. 669/69 before the Deputy Martial Law Administration, Barisal in 1969 on behalf of the Abdul Gani Howlader Plaintiff no. 1 and Imamuddin Howlader, father of plaintiff nos. 10-12 and said petition sent to the then Chairman of Benaykanthi for disposal that the Chairman submitted a compromise deed without knowledge of Abdul Gafur, father of the defendants that Abdul Gafur submitted an objection against that compromise before the Sub Assistant Martial Law Administrator, Barisal. After investigation and on the basis of written report of the Shalish, plaintiffs complaint have been rejected on 18.06.1969. Plaintiff No. 1 Abdul Gani and Abdul

Gafur, father of the defendant were signed in the said shalishnama, Kasem Ali, father of the plaintiff nos. 7/8 was put in the Shalishnama. Plaintiffs filed this suit falsely and refused the above facts, which is liable to be dismissed.

Trial Court framed the following issues-

- a. Whether the suit is maintainable in its present form ?
- b. Whether there is any cause of action to institute the suit?
- c. Whether the suit is bad for any defect of parties?
- d. Whether the suit is barred by limitation?
- e. Whether the suit is properly valued and stamped ?
- f. Whether the suit is barred by res-judicata or not?
- g. Whether the judgment and decree passed in Title Suit No. 38 of 52 and Title Suit No. 106 of 56 are illegal ?
- h. Whether the suit property was sold in auction or not ?
- i. Whether the plaintiffs have got title and possession over the suit land ?
- j. Whether the plaintiffs are entitled to get any decree or remedies as prayed for ?

During trial both parties adduced 04 witnesses each.

Upon considering of the evidences and hearing the parties Trial Court dismissed the suit on contest by it's judgment and decree dated 22.11.2001.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 03 of 2002 before the Court of District Judge, Jhalakathi, which was heard on transfer by the Joint District Judge, 2nd Court Jhalakathi, who by the impugned judgment and decree dated 17.01.2004 allowed the appeal and after reversing the judgment of the trial court decreed the suit in favour of the plaintiffs.

Challenging the said judgment and decree, defendant-petitioner obtained the instant rule.

Mr.Rafiqul Islam (Hiru), the learned advocate appearing for the petitioner drawing my attention to the judgment of the trial court submits that upon discussing the evidence on record trial court has found that defendant's contention of purchasing the suit property in auction by the Nabab Courts of Words Estate and thereafter settled the same in favour of Newaz Kha, the predecessor of the defendants and subsequently their title and possession as being affirmed in Title Suit No. 38 of 52 as well as Title Suit No. 106 of 1956 as would be apparent from exhibit no. D(II) the order passed in Miscellaneous Case No. 14 of 1957 and thereby trial court accepted the contention of the defendants and dismissed the suit of the plaintiffs rightly but the Appellate Court totally failed to appreciate the said findings of the trial court.

Learned advocate further submits that trial court has rightly held that suit is barred by limitation in as much as the plaintiffs were very much aware about the recording of S.A. and R.S. khatian long before as to their institution of Title Suit No. 106 of 1956 and the cause of action as shown in the suit is not correct but the Appellate Court overlooked the same. He further submits that trial court upon proper examination of the plaint of Miscellaneous case together with the Solenama filed in the said miscellaneous case being Misc. Case No. 14 of 1957 and the plaint of the instant suit found that the earlier case was filed by the plaintiff himself and accordingly the plaintiff's contention to the effect that earlier suit was filed collusively and void not acceptable and as such rightly dismissed the suit but the Appellate Court totally failed to appreciate this findings of the court below and allowed the appeal most illegally. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

On the other hand, Mr. Sk. Sharifuddin, the learned advocate appearing for the opposite parties submits that since defendants could not submit any document of their claim that suit property was ever been auction sold and been purchased by the Nabab Courts of Words Estate, defendant's contention is not been proved by any means. Appellate Court has rightly held the same.

Learned advocate further submits that when the plaintiffs claimed that they never instituted the earlier suit being Title Suit No. 38 of 52 or Title Suit No. 106 of 56 and accordingly a decree as being obtained on Solenama in the said suits were collusive, illegal and void, accordingly, any fact as being disclosed therein in Title Suit No. 106 of 56 regarding the defendant's contention are not been acceptable or admitted in any manner. Trial Court totally failed to consider this aspect of this case and dismissed the suit holding that the suit property is barred by limitation illegally. The Appellate Court being the last court of fact has rightly reversed the said observation of the trial court.

Learned advocate further submits that if the defendants contention is being accepted for argument sake, a property of the Nabab Courts of Words can not be settled to any persons as being claimed by the defendants. Upon discussing the oral evidences, the Appellate Court being the last court of fact has rightly found that defendants are not in possession into the suit land rather they accepted the possession of the plaintiffs on plot no. 209 proved the possession of the plaintiffs as being asserted and affirmed by the all P.Ws., which the trial court failed to assess the same but the Appellate Court has rightly found the possession of the plaintiffs into the suit property. Learned advocate further submits that exhibit no.3 the death certificate of Tajin Uddin Howlader proved

that the exparte decree obtained on 22.01.1957 against the Tajin Uddin Howlader and others (exhibit No. 4 and 4(a)) is obviously against a dead man and is nullity in as much as Tajin Uddin Howlader died on 12.09.1956 long before the said decree. Learned advocate further submits that plaintiffs are the admitted owner as a successive heirs of C.S. recorded tenant and there is nothing to show before the court that their title has been relinquished in any manner. On the contrary, defendant's contention of taking settlement from the Nabab Courts of Words since not been proved by any documentary evidence, the Appellate Court being the last court of fact has rightly found the title of the plaintiffs into the suit property and accordingly decreed the same in favour of the plaintiffs. Since the said judgment contains no illegality, Rule may be discharged.

Heard the learned Advocate of both the sides and perused the lower court's record and the impugned judgment.

Admittedly suit property was belonged to Chutu and Foyjauddin as Kor Korsha title holder. Plaintiffs are the successive heirs of the said C.S. recorded tenants in total 2.56 acres of land, which are presently recorded in R.S. khatian no. 1,8,29/6 corresponding to S.A. Khatian No. 59,148,54,101 and 218. Although which has been recorded into their name but in a portion it was wrongly been recorded in the defendants

predecessor name Abdul Wahed and others. It was alleged that due to the said wrong recording Tajin Uddin Howlader, the plaintiff's predecessor instituted Title Suit No. 38 of 52 before the court of the then Munsif, 3rd court, Barishal and that suit was dismissed on Solenama on 12.04.1952. Thereafter Abdul Wahed, the predecessor of the defendants instituted Title Suit No. 106 of 56 against the said Tajinuiddin Howlader and others and got a exparte decree on 22.01.1957. Challenging those said exparte decree a miscellaneous case was filed by Ekunuddin Howlader, the predecessor of the plaintiff under Order 9 Rule 13 being no. Miscellaneous Case no. 14 of 57 and that miscellaneous case also being dismissed on compromise on 17.05.1957. All these proceeding are been challenged by the plaintiffs as not being done by the plaintiffs or taken the order collusively beyond the knowledge of the plaintiffs or their predecessor and accordingly plaintiffs prayed for cancellation of the said judgment and decree. On the other hand, defendants claimed that property was owned and possessed by admittedly Chutu and Foyjauddin but due to arrears of rent Nabab Courts of Words Estate got a decree in rent suit and purchased the same in auction. Subsequently for recovery of khas possession Nabab Courts of Words Estate filed Title Suit No. 47 of 47 and got the possession in Execution Case No. 70 of 48, brought on the decree passed in the above Title Suit No. 47 of

47. Subsequently Newaz Kha and Tajinuddin Howlader got settlement of the said land from Nabab Courts of Words Estate but finally it was settled in favour of Newaz Kha on 08th Vadra 1356 B.S. alone. Challenging the Kabuliat and settlement, plaintiffs predecessor Tajimuddin filed Title Suit No. 38 of 52 against the Newaz Kha and Nabab Courts of Words Estate and the said suit was dismissed on Solenama. Subsequently, when the record was wrongly been recorded in the name of Tajinuddin and others along with the name of the defendant Abdul Wahed Kha he filed Title Suit No. 106 of 56 and got an exparte decree on 22.01.1957, which was challenged by the Ekun Uddin Howlader. predecessor of the plaintiffs in Miscellaneous Case No. 14 of 57 under Order 9 Rule 13, which was also been dismissed on Solenama on 17.10.57 and thereby the defendants title has been affirmed through that dismissal of the miscellaneous case. Plaintiff's suit was false as claimed by the defendants.

In view of the respective cases, the main question is to be considered whether the plaintiff's title as being the successor of C.S. recorded tenants was been abolished by way of rent suit and the decree obtained thereon by the Nabab Courts of Words Estate or not and whether the plaintiff's predecessor challenging taking settlement of the suit land by the defendants predecessor Newaz Kha as null and void has not been established due to the dismissal

of the said suit as well as miscellaneous case on compromise or not. Plaintiff challenged the said 02(two) suits being Title Suit No. 38 of 52 and Title Suit No. 106 of 56 and thereafter Miscellaneous Case No. 14 of 57 were collusive and not been done either by filing or contested by the plaintiffs predecessor. Admittedly plaintiffs are the successive heirs of Chutu and Fojauddin, who are the C.S. recorded tenant. Since the present khatian has wrongly been recorded, he instituted this suit together with claiming that the decree in Title Suit No. 38 of 52 and the order passed in Miscellaneous Case No. 14 of 57 arising out of Title Suit No. 106 of 56 are illegal. Defendants claimed that property was sold in an auction for arrears of rent and been purchased by the Nabab Courts of Words Estate. Court below found that nothing was shown before the court in support of this contention. Petitioner's lawyer, who appears for the defendants by showing exhibit D(II) try to establish the fact that all the fact relating to selling the property in auction in a rent suit are there in the judgment passed in Title Suit No. 106 of 56 but it is surprising to notice that plaintiff challenged the said judgment and decree saying that it was a collusive and plaintiffs were not aware of the said judgment and decree. The Trial Court failed to appreciate the grievances of the plaintiffs in the suit rather he has observed that the earlier miscellaneous case being Miscellaneous Case No. 14 of 57 was

filed by the plaintiffs but the P.W.1 plaintiff in strong voice in his deposition has denied the contention that that miscellaneous case was not been filed by him. The Appellate Court being the last court of fact after considering the evidence on record has observed that

"দে: ১০৬/৫৬ নং মোকদ্দমার মূল নথি পর্যালোচনা করিয়া দেখা যায় যে, বিবাদীপক্ষের পূর্ববর্তী আ: ওয়াহেদ গং বাদী হইয়া বাদীপক্ষের পূর্ববর্তী তাজনদ্দিন হাওলাদারের বিরুদ্ধে নালিশী জমিতে কর্ষাস্বত্তে থাকা ঘোষনার প্রার্থনায় মোকদ্দমাটি আনয়ন করেন এবং ২২/১/৫৭ ইং তারিখে উক্ত দে: ১০৬/৫৬ নং মোকদ্দমাটি একতরফাসূত্রে ডিক্রী হইলে বিবাদী একুমদ্দিন, ইমানদ্দিন ও ছলেমদ্দিন মজহর শ্রেণীভুক্ত হইয়া উক্ত একতরফা রায় ও ডিক্রীর বিরুদ্ধে ১৪/৫৭ নং ছানী মোকদ্দমা দায়ের করেন। পরবর্তীতে ১০/৮/৫৭ ইং তারিখের ২৩ নং আদেশের মাধ্যমে ১৪/৫৭ নং ছানী মোকদ্দমাটি সোলেসূত্রে ডিসমিস হইয়াছে বলিয়া নথি পর্যালোচনায় দেখা যায় কিন্তু দেং ১০৬/৫৬ নং মোকদ্দমা সংক্রান্ত ১৪/৫৭ নং ছানী মোকদ্দমার সোলে দরখাস্ত পর্যালোচনা করিয়া দেখা যায় যে, উক্ত সোলে দরখাস্তে মজহর ও ১-৭ নং তরফ ছানী পক্ষ সোলেনামা দাখিল করা হইয়াছে মর্মে উল্লেখ রহিয়াছে। অথচ অত্র ছানী মোকদ্দমা সংক্রান্ত মূল মোকদ্দমায় ১-৭ নং তরফছানীর কোন অস্তিত্ব নাই। অর্থাৎ ১৪/৫৭ নং ছানী মোকদ্দমার বিবাদী মজহর পক্ষ হইতে মূল মোকদ্দমার বাদী আ: ওয়াহেদ খা গং ০৫ জনকেই তরফছানী হিসাবে পক্ষভুক্ত করিলে ও ছোলেনামায় ১-৭ নং তরফছানী উল্লেখ করার বিষয়টি আমার বোধগম্য নয়। এমনকি উক্ত সোলেনামায় অর্থাৎ দেং ১০৬/৫৬ নং মোকদ্দমা

সংক্রান্ত মিস ১৪/৫৭ নং মোকদ্দমায় তরফছানি আ: ওয়াহেদ খা গং ১০/৮/৫৭ ইং তারিখের সোলেনামায় কোন দস্ততখত করেন নাই। উক্ত অবস্থায় দেং ১০৬/৫৬ নং মোকদ্দমা সংক্রান্ত ১৪/৫৭ নং ছানী মোকদ্দমাটি সোলেসূত্রে নিষ্পত্তির বিষয়টিও যে, প্রতারনামূলকভাবে হাসিল করা হইয়াছিল তাহ বলাই বাহুল্য। আর দেং ১০৬/৫৬ নং মোকদ্দমায় বাদীপক্ষ যে, বিবাদীপক্ষের উপর সঠিকভাবে সমন জারী না করিয়াই ২২/১/৫৭ ইং তারিখে একতরফা ডিক্রী হাসিল করিয়াছিল তাহা বিশ্বাস করার সংগত কারন রহিয়াছ বলিয়া আমি মনে করি।"

In similar way, regarding the suit being Title Suit No. 38 of 52 the Appellate Court found that

"দেং ৩৮/৫২ নং মোকদ্দমার নথি পর্যালোচনা করিয়া দেখা যায় যে, বাদীপক্ষের পূর্ববর্তী তাজনদ্দিন হাওলাদার বাদী হইয়া নেওয়াজ খা গং বিরুদ্ধে নালিশী জমিতে কর্ষাস্বত্ব সাব্যস্তেত দখল সহীরতরের প্রার্থনায় দেং ৩৮/৫২ নং মোকদ্দমাটি আনয়ন করিয়াছেন। এবং ১২/৪/৫২ ইং তারিখে উক্ত মামলাটি সোলেসূত্রে ডিসমিস করা হইয়াছে। কিন্তু ১২/৪/৫২ ইং তারিখে বাদী তাজনদ্দিন হাওলাদার উক্ত সোলেনামার সমর্থনে স্বাক্ষর প্রদান করিয়াছিলেন এমন কোন প্রমান দেং ৩৮/৫২ নং মোকদ্দমার ১২/৪/৫২ ইং তারিখের আদেশে পাওয়া যায় নাই। তদুপরি অত্র মোকদ্দমার আরজী ও সোলেনামায় বাদীপক্ষের পূর্ববর্তী তাজনদ্দিন হাওলাদারের দস্ততখত থাকিলেও উক্ত দেং ৩৮/৫২ নং মোকদ্দমাটি যে, তাজনদ্দিন হাওলাদার কর্তৃকই দাখিল করা হইয়াছিল তদবিষয়ে সন্দেহের অবকাশ রহিয়াছে। কারন উক্ত মোকদ্দমার আরজীতে মোট জমির পরিমান তপছিল তারিখ

ইত্যাদি এবং সোলেনামার ২য় পৃষ্ঠায় ও কাটাকাটি এবং ওভার রাইটিং করা হইয়াছে উপরন্তু দেং ৩৮/৫২ নং মোকদ্দমাটি বাদীপক্ষের পর্ববর্তী তাজনদ্দিন হাওলাদার নালিশী জমিতে কর্ষাস্বত্ব সাব্যস্তেত দখল সহীরতরের দাবীতে আনয়ন করিলেও বিনা স্বার্থে সম্পূর্ণ দাবী ত্যাগ করিয়া বিবদীর সংগে নালিশী স্বত্ব ত্যাগ পূর্বক সোলেনামা দাখিল করার বিষয়টি ও অবিশ্বাসযোগ্য।"

Upon giving an anxious thought on the facts and scenario of this case together with the documents annexed to the records, I am of the opinion that the findings and observations passed by the Appellate Court on Title Suit No. 38 of 52 and Title Suit No. 106 of 56 together with the miscellaneous case No. 14 of 57 contains no illegality.

Moreover, exhibit no. 3, the death certificate of Tamijuddin Howlader proved that he died on 12.09.56 and the decree in Title Suit No. 106 of 56 dated 22.01.57 obviously was passed against the dead man and accordingly the decree is also null and void. Regarding the possession, the Appellate Court being the last court of fact upon discussing the evidences on record has come to a finding that plaintiffs have got the possession over the suit land. In view of the above facts and circumstances of the case, when the defendants contention of taking settlement of the property from the Nabab Courts of Words Estate are not been proved by any evidence as well as the property was at all being acquired by the

Nabab Courts of Words Estate by way of rent suit not been proved. On the contrary, plaintiffs are found to be the successive heirs of C.S. recorded tenant and the judgment and decree passed in Title Suit No. 38 of 1952 and Title Suit No. 106 of 1956 and the order passed in Miscellaneous Case No. 14 of 1957, which is arising out of the said Title Suit are observed above as collusive, null and void, plaintiffs are entitled to get a decree as prayed for. The Appellate Court has committed no illegality in awarding a decree in favour of the plaintiffs. The impugned judgment is thus contains no illegality. I am of the opinion that the rule contains no merits to interfere with.

In the result, the Rule is discharged without any order as to costs and the judgment and decree passed by the Appellate Court is hereby affirmed.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

Send down the L. C. Records and communicate the judgment to the court below at once.