

Bangladesh Form No. 3701

HIGH COURT FORM NO.J (2 )  
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE  
DISTRICT- CHATTOGRAM

IN THE COURT OF SENIOR ASSISTANT JUDGE, 2<sup>ND</sup> COURT,  
PATIYA, CHATTOGRAM

Present : Mr. Md. Hasan Zaman,  
Senior Assistant Judge, Patiya, Chattogram.

Date of Delivery of Judgment : 28<sup>th</sup> day of May, 2023

Other Suit No. 36 of 2013

Sha Alam .....Plaintiffs

-Versus-

Md Harun and Others .....Defendants

This case came up for final hearing on 07/02/18, 22/07/18,  
16/11/22, 21/07/22, 28/08/18, 23/09/18, 21/5/19, 01/08/19,  
27/08/19, 18/11/20, 12/01/22 and 20/03/22.

In presence of :

Mr. A.K.M Shajahan Uddin .....Advocate for Plaintiff.

Mr. Debesh Gupt and Balaram Kanti Das.....Advocate for Defendants.

And having stood for consideration to this day, the court delivered the following judgment:-

This is a suit for declaration.

Case of the Plaintiff

1. The suit land as described in the schedule was originally belonged to one Abdul Khalek, whose name was duly published in R.S. Khatian No. 355. On May 20, 1938, Abdul Khalek executed a settlement deed (Patta) bearing No. 4179, granting possession of the property to one Abul Khair. Subsequently, in a revenue case (No. 96/44), the property was auctioned for arrears of rent, and one Janab Ali purchased it in the auction.
2. Later, the auction purchaser, Janab Ali, transferred the disputed property along with other land back to the original lessee, Abul Khair, by a settlement deed (Patta)

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bearing No. 2582, dated May 14, 1946. Thereafter, Abul Khair retained possession of the land as the rightful owner. While in possession, on August 21, 1969, Abul Khair sold 79 decimals of land, including the disputed land in Dag Nos. 375 and 381, to the plaintiff through a registered deed of sale (Kabla) bearing No. 6043, and handed over possession to the plaintiff.

3. Subsequently, on December 22, 1969, the plaintiff sold 12 decimals of land from Dag Nos. 375 and 381 to one Abdul Sabur through a registered deed bearing No. 148 and handed possession amicably in plot no. 381. Thereafter his name was recorded in B.S Khatian No. 83 under Dag No. 484. Upon Abdul Sabur's death, his heirs, the defendants No 34–38, inherited the property.

4. Thus, following the sale, the plaintiff retained ownership of 67 decimals of land in the disputed Dag. It is noted that R.S. Khatian No. 355 for Dag No. 375 recorded 95 decimals of land, which was subsequently included in B.S. Khatian No. 83 under Dag No. 470. Similarly, R.S. Dag No. 381 corresponds to B.S. Dag No. 484. The plaintiff asserts exclusive ownership and possession of the remaining 67 decimals of land in the disputed Dag without any encumbrance or adverse claim by any individual, including the defendants.

5. It is further asserted by the plaintiff that on June 3, 1946, Abul Khair purportedly executed a settlement deed (Patta) bearing No. 3143 in favor of his minor son, Munshi Mia. However, this settlement was ineffective as Munshi Mia did not acquire possession or ownership of the land in question. The plaintiff asserts that no Kabuliat (acknowledgment of lease) was ever executed by Munshi Mia in favor of Abul Khair, rendering the purported settlement void and without legal effect.

6. Furthermore, the land under the alleged settlement remained under the ownership and possession of Abul Khair, as evidenced by the final publication of R.S. Khatian No. 376 in his name. Similarly, B.S. Khatian No. 83 was also recorded in the names of Abul Khair and Abdul Sabur. However, the plaintiff argues that the recording of the B.S. Khatian in Abul Khair's name, instead of the plaintiff's, was erroneous and contrary to the facts.

7. The plaintiff claims that despite the invalidity of the June 3, 1946, settlement, Munshi Mia's heirs executed multiple deeds in favor of Defendant No. 49, including Deeds No. 5127 (dated August 23, 2000), No. 49 (dated January 14, 2001), No. 2570 (dated May 7, 2001), No. 1744/175 (dated March 14, 2002), No. 3884 (dated June 24, 2004), No. 10908 (dated December 2, 2009), and No. 829 (dated January 24, 2012). These deeds are alleged to be illegal, fraudulent, and void, as they are based on the invalid 1946 settlement and do not confer any lawful ownership or possession rights upon Defendant No. 49.

8. On January 1, 2013, the principal defendants, including Defendant No. 49, denied the plaintiff's title and possession, citing the absence of the plaintiff's name in the B.S. Khatian and the erroneous recording of the disputed property in Abul Khair's name. Upon obtaining a certified copy of the B.S. Khatian on January 10, 2013, the plaintiff discovered the said errors and the fraudulent nature of the defendants' claims. Although the incorrect B.S. Khatian does not create any impediment to the plaintiff's title and possession, the defendants, being encouraged by it, have denied the plaintiff's title. Consequently, a cloud has been cast over the plaintiff's clear title, compelling him to file the present suit for its removal.

9. It is noteworthy that Defendant No. 51, Bank Asia Limited, through Defendant No. 49, acting as a mortgagor, published an auction sale notice for the suit land in the *Dainik Purbokone* newspaper on 22.10.2015. However, such publication is unlawful. The Plaintiff is not liable for any loan that Defendant No. 49 may have taken. Therefore, the bank authorities have no legitimate grounds to auction the suit land.

10. **The defendants No. 48 contested the suit by filing written Statement contending, inter alia that** the property described in Schedule 1 of the plaint was jointly owned and possessed by Abdul Khaleq, Abdul Hashim, and Mokhlesur Rahman and accordingly R.S. Khatian was finalized in their names. Subsequently, Abdul Hashim and Mokhlesur Rahman died childless, leaving their brother Abdul Khaleq as their legal heir. Abdul Khaleq transferred his ownership and possession of the entire 1.18 acres of land in Schedule 1, along with other properties, to Abul Khayer by virtue of a Patta deed vide No. 4171 dated 20.05.1938. That Abul Khayer subsequently transferred the said property to Munshi Mia by Patta deed No. 3143 dated 03.06.1946. It is evident from the Plaintiff's mentioned deed No. 1582 dated 14.05.1946 that Jonab Ali acted merely as an intermediary sub-lessee. The deed explicitly states that Jonab Ali transferred intermediary rights (**Etemami rights**) to Munshi Mia, confirming that the lease deed No. 1582 pertains solely to intermediary tenancy rights.

11. It is further case of the defendant that Munshi Mia held lawful possession of the disputed property until his death, whereupon his heirs (Defendants Nos. 5-10) inherited the property. Defendants Nos. 5-10, as lawful heirs, continued their possession and subsequently sold specific portions of the property as follows:

- Defendant No. 5 sold 20 decimals (via deed No. 5217 dated 23.08.2000), 14 decimals (via deed No. 49 dated 14.01.2001), and 7 decimals (via deed No. 2570 dated 07.05.2001) to Defendant No. 49.
- Defendant No. 6 sold 4 decimals (via deed No. 1745 dated 14.03.2002) to Defendant No. 49.

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- Defendants Nos. 8-10 sold 7 decimals (via deed No. 1744 dated 14.03.2002) to Defendant No. 49.
- Defendant No. 7 sold 5 decimals (via deed No. 3884 dated 24.06.2004) to Defendant No. 49.

Furthermore, Defendant No. 7 empowered Azgar Ali as his attorney via power of attorney deed No. 10908 dated 02.12.2009, who then sold 6 decimals of land to Defendant No. 49 via deed No. 829 dated 24.01.2012.

12. Thus, Defendant No. 49 lawfully acquired a total of 63 decimals of land from multiple transactions, as reflected in R.S. Dag Nos. 372, 375, and 381. Subsequently, the Defendant's ownership was duly recorded, and B.S. (Bangladesh Survey) Khatian No. 1581 was created in name.

13. Due to an error in the B.S. record, which listed the disputed land under Abul Khayer and others, Defendant No. 49 filed Suit No. 173/2004 in the Court of the 1st Senior Assistant Judge, Patiya, seeking a declaration of his ownership and correction of the erroneous B.S. Khatian. The suit was decreed on 26.04.2005, and based on the decree, B.S. Khatian No. 704 was created, confirming Defendant No. 49's ownership over 57 decimals of land in B.S. Dag No. 470.

14. Defendant No. 49 has been cultivating the disputed land through sharecroppers, erecting boundary markers to delineate his property. Neither the Plaintiff nor any other party has any ownership or possession over the disputed property. The Plaintiff, with ulterior motives, sought to cancel the Defendant's B.S. Khatian through Mutation Case No. 461/2005, but the case was dismissed on 30.01.2013. There after, the Plaintiff initiated Criminal Miscellaneous Case No. 874/2013 under Section 145 of the Code of Criminal Procedure before the Additional District Magistrate's Court, alleging dispossession. However, the police investigation clearly established Defendant No. 49's possession, as confirmed by the report submitted by SI Abul Kalam Azad of Karnaphuli Police Station on 02.07.2013.

15. The Plaintiff, in a fraudulent manner, created a fake deed (No. 9014 dated 05.08.2010) outside the registration office, falsely naming Defendant No. 49 as the transferor and himself as the transferee. The Plaintiff used this fake deed to create B.S. Khatian No. 1727 through Mutation Case No. 777/2013. Upon discovery, Defendant No. 49 obtained a certified copy of the alleged deed from the Sub-Registrar's Office, which revealed discrepancies, proving that the deed related to entirely different parties and land. Consequently, Defendant No. 49 filed an objection in Mutation Case No. 777/2013, resulting in the cancellation of B.S. Khatian No. 1727 on 23.06.2013. The Defendant asserts that the Plaintiff is a land-grabber who fabricates false documents to usurp

property unlawfully. Based on the foregoing facts and circumstances, the Defendant submits that the Plaintiff's suit is entirely frivolous, baseless, and liable to be dismissed.

16. **The defendants No. 5-10 contested the suit by filing written Statement contending, inter alia that** the land in dispute is ancestral property of the defendants and has been in their possession as inheritable khas land. The disputed land is recorded under R.S. Khatian No. 355 and B.S. Khatian No. 83, with R.S. Plot Nos. 375, measuring 95 decimals, and 372, measuring 8 decimals, corresponding to B.S. Plot Nos. 470 and 467. The recorded owners of the R.S. Khatian were Abdul Hasim, Mokhlesur Rahman, and Abdul Khalek, and their names were duly finalized in the R.S. record. The ownership of the R.S. recorded land was transferred to Abul Khair through a registered Patta bearing No. 4179, dated 20.05.1938. Subsequently, when the rights of Abul Khair were auctioned, they were purchased by Janab Ali. Janab Ali, in turn, transferred his acquired ownership and possession to Abul Khair through a registered Patta No. 2582, dated 15.02.1946.

17. Thereafter, Abul Khair transferred the said land to Munshi Mia through a registered Patta deed No. 3143, dated 28.02.1946. Munshi Mia remained in possession of the disputed property until his death, upon which his heirs, the present defendants, inherited and have been in continuous possession of the property. Defendants 5 to 10 are heirs of Munshi Mia and have inherited their respective shares from him.

18. The plaintiff, in paragraph 3 of their plaint, has alleged that a total of 79 decimals of land under R.S. Plot Nos. 375 and 381 were sold to Abdul Sabur through two registered sale deeds, Deed No. 6043, dated 21.08.1969, and Deed No. 148, dated 22.12.1969. Out of this, 12 decimals of land under R.S. Plot Nos. 375 and 381 were transferred to Abdul Sabur, and the corresponding B.S. Plot No. 484 was recorded in Abdul Sabur's name. However, Abul Khair had already divested himself of all rights, title, and interest in the disputed property through the registered Patta deed No. 3143 dated 28.02.1946, and thus, he became entirely divested of any ownership or possession over the disputed land. Consequently, Abul Khair had no saleable title or possession to transfer to the plaintiff through the purported sale deeds No. 6043, dated 21.08.1969, or No. 148, dated 22.12.1969. These deeds are fabricated, collusive, and legally ineffective. The deeds were never validly executed, nor did they grant any lawful ownership or possession to the plaintiff. Moreover, prior to filing the present case, the plaintiff did not publicly claim any rights under these fraudulent deeds, and the defendants were not aware of such deeds until recently.

19. The plaintiff, being entirely devoid of any lawful title or possession, has filed this case to unlawfully usurp the ancestral property of the defendants. The defendants assert that they have always been in lawful possession and ownership of the disputed property.

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The plaintiff has no right, title, or possession over the scheduled land, and as such, is not entitled to any legal relief against the defendants. In light of these facts, the defendants pray for the dismissal of the plaintiff's suit with costs.

20. **The Defendant No. 51, a banking institution, has filed a written Statement contending inter alia that** based on the application submitted by Defendant No. 49, the bank provided financial facilities to this individual. As security for the said loan, Defendant No. 49 mortgaged the scheduled property to the bank. Subsequently, Defendant No. 49 executed a power of attorney authorizing the bank to sell the mortgaged property in the event of a default in repayment of the loan.

21. When Defendant No. 49 defaulted on the repayment of the loan, the bank issued repeated notices demanding settlement of the outstanding debt. Following the non-payment of dues, the bank initiated the process to auction the mortgaged property as per the provisions of Sections 12 and 33 of the Artha Rin Adalat Ain, 2003. A public auction notice was duly issued to recover the outstanding amounts.

22. The Plaintiff has brought this suit primarily to obstruct the bank's recovery proceedings and prevent the sale of the mortgaged property. The bank asserts that it possesses legal authority to sell the mortgaged property to recover the dues and that such actions are lawful and cannot be restrained by the Plaintiff. The Plaintiff has no legal ownership, possession, or entitlement to the scheduled property. The property is exclusively owned by Defendant No. 49, who mortgaged it to the bank. The Plaintiff's claims are thus deemed baseless, fictitious, and without merit. The bank has already instituted a money loan recovery suit, numbered 934/2015, against Defendant No. 49. This case is currently under adjudication in the Artha Rin Adalat. The Plaintiff's prayer for relief under Clause 5(a) of the plaint is legally untenable as the scheduled property is under lawful mortgage to the bank. The bank argues that the Plaintiff lacks any legitimate interest or stake in the scheduled property to warrant the sought relief. In light of the above, the Defendant bank contends that the Plaintiff's suit is devoid of substance and legally unsustainable resulting it liable to be dismissed with costs.

### **Issues:**

23. For the fair adjudication of this suit, the Court has framed the following issues for determination:

- 1) Whether the suit is maintainable in its present form and prayer?
- 2) Whether the plaintiffs have any cause of action for filing the suit ?
- 3) Whether the suit is barred by limitation?
- 4) Whether the suit is bad for non-joinder of necessary parties?

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- 5) Whether the plaintiff has any right, title, interest and possession over the suit land?
- 6) Whether the B.S khatian concerning the suit land is wrong?
- 7) Whether the plaintiff may get the relief as prayed for?

### Discussions and Decisions:

24. To prove the plaint case, the plaintiff examined 02 witnesses namely Md. Faruk (P.W. 1) and Md. Anis (P.W. 2) before this court. **During examination of P.W.1** the following documents were produced and proved, which have been marked as Exhibits:-

1. Certified copy of the R.S. Khatian No. 355, B.S. Khatian No. 83, and P.S. Khatian No. 376	<b>Exhibit 1 Series</b>
2. Certified copy of Patta No. 2582 dated 14.05.1946	<b>Exhibit 2</b>
3. Power of Attorney dated 06.02.2014	<b>Exhibit 3</b>
4. Certified copy of Deed No. 6043 dated 15.08.1969	<b>Exhibit 4</b>
5. Certified copy of Kabala C.C. Deed No. 148 dated 07.01.1970	<b>Exhibit -5</b>
6. Certified copy of Kabala Deed No. 977 dated 12.02.1971	<b>Exhibit 6</b>
7. Certified copy of information regarding Misc. Case No. 96/44	<b>Exhibit 7</b>
8. Certified copy of order and plaint of Non-G.R. Case No. 2005/15	<b>Exhibit 8</b>
9. Certified copy of the order in Special Case No. 62/15	<b>Exhibit 9</b>

25. On the other hand, to prove the defendant's case, the defendants No.5-10 examined witnesses namely **Nasima Akter as D.W.1 and Nurul Amin as D.W.2** before the court. During examination of **D.W.1** the following documents were produced and proved, which have been marked as exhibits:-

1. Certified copy of R.S. Khatian No. 355 and B.S. Khatian No. 83	<b>Exhibit Ka1 Series</b>
2. Certified copy of the news extract dated 20.10.2013	<b>Exhibit- Kha1</b>
3. Original copy of Deed No. 3143 dated 03.06.1946	<b>Exhibit Ga1</b>
4. Certified copy of Jabeeda of Deed No. 2582 dated 14.05.1946	<b>Exhibit Gha1</b>

26. The defendants No.49 examined 02 witnesses namely **Md Ayub Ali as D.W.3 and Md Alamgir as D.W.2** before the court. During examination of **D.W.3** the following documents were produced and proved, which have been marked as exhibits:-

1. Certified copy of Kabala Deed No. 5217 dated	<b>(Exhibit-Ka-2)</b>
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23.08.2000	
2. Certified copy of Kabala Deed No. 49 dated 14.01.2001	(Exhibit-Kha-2)
3. Certified copy of Kabala Deed No. 2570 dated 07.05.2001	(Exhibit-Ga-2)
4. Certified copy of Kabala Deed Nos. 1745 and 1744 dated 14.03.2002	(Exhibit-Gha-2)
5. Certified copy of Kabala Deed No. 3884 dated 24.06.2004 (	(Exhibit-Uma-2)
6. Certified copy of the judgment and decree in Other Suit No. 173/2004 dated 26.04.2005 by the Court of 1st Senior Assistant Judge	(Exhibit-Cha-2)
7. Certified copy of B.S. Namjari Khatian No. 704	(Exhibit-Chha-2)
8. Certified copy of the order in Namjari Mutation Case No. 461/2005	(Exhibit-Ja-2)
9. Certified copy of the order in Misc. Case No. 874/13 of the Additional District Magistrate Court	(Exhibit-Jha-2)
10. Certified copy of Kabala Deed No. 9014 dated 05.08.2010	(Exhibit-Eo-2)
11. Certified copy of the order dated 10.06.2013	(Exhibit-Ta-2)
12. Certified copy of the order in Namjari Case No. 77/2013	(Exhibit-Tha-2)

27. The defendants No.51, Bank Asia Ltd, examined 01 witness namely **Ovijit Das Gupta as D.W.5** before the court. During examination of **D.W.5** the following documents were produced and proved, which have been marked as exhibits:-

1. Deed of Power of Attorney	(Exhibit-Ka-3)
2. Original copy of Loan Sanction Letter	(Exhibit-Kha-3 Series)
3. Certified copy of Mortgage Deed No. 4656 dated 20.04.2010	(Exhibit-Ga-3)
4. Certified copy of Power of Attorney Deed No. 4657 dated 20.04.2010	(Exhibit-Gha-3)
5. Certified copy of the Judgment and Decree in Money Loan Case No. 934/2015	(Exhibit-Uma-3)

### Decision with Reasons

**28. Issue no. 1, 2 and 3 Whether the suit is maintainable in it's present form and prayer? + Whether the plaintiffs have any cause of action for filing the suit ? + Whether the suit is barred by limitation?**

All these issues are taken up together for the sake of brevity and convenience.



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Perusing the plaint, written statement and the evidences appearing in the record, it appears that the suit is purely civil in nature and there is no bar to try this suit by this Court. Therefore, the suit is well maintainable in its present form.

29. The plaint reveals sufficient cause of action for the plaintiffs for bringing the instant suit. It appears from the plaint that the plaintiff is the owners and possession holders of the disputed property by way of purchase. Having no right, title, interest and possession, the defendants are denying the plaintiffs title over the suit property. Now, the defendants are claiming the suit land on the basis of erroneous B.S Record. This act of defendants clouded the right, title, interest and possession of the plaintiffs over the schedule property mentioned in the plaint. The cause of action of the instant suit arose on and from 10.01.2013 and the suit was filed on 31.03.2013 which is within the statutory period of limitation. Thus, the suit is well maintainable and has sufficient cause of action and is not barred by limitation. Accordingly, all these issues are decided in favour of the plaintiffs.

30. **ISSUES NO.4 : “Is the suit bad for non-joinder of necessary parties?”**

Upon perusal of the plaint, written statement, all evidence, and documents on record, no material has been found to conclude that the suit is vitiated by any defect attributable to the plaintiff. Moreover, during the submission of arguments, the defendant did not raise any objection regarding this matter. Therefore, the issue under consideration is decided in favor of the plaintiff.

31. **Issue No : 5 ,6 and 7 “Whether the plaintiff has any title and possession over the suit land?” + “Whether the B.S khatian concerning the suit land is wrong?” + “Whether the plaintiff may get the relief as prayed for?”**

The plaintiff claims title over 67 decimals of land described in the schedule of the plaint, which corresponds to R.S. Khatian No. 355, Dag No. 375, later incorporated into B.S. Khatian No. 83, Dag No. 470. It is undisputed by both parties that the total 118 decimals

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of land in R.S. Khatian No. 355 originally belonged to Abdul Hasim, Mokhlesur Rahman, and Abdul Khaleq, as evidenced by **Exhibit-1**. Both parties further acknowledge that upon the demise of Abdul Hasim and Mokhlesur Rahman without any heirs, their brother Abdul Khaleq succeeded to their ownership and took possession of the entire land. It is also accepted by both parties that Abdul Khaleq, by way of Patta No. 4179 dated 20.05.1938, granted a lease of the disputed land to one Abul Khayer.

32. According to the testimony of plaintiff's witness P.W.1, the scheduled property was auctioned in revenue suit No. 96/1944 due to arrears of rent, and one Jonab Ali became the auction purchaser. Although the plaintiff has not submitted any Baynama (deed of sale) or possession certificate in support of this auction, the certified copy of the Kabala (**Exhibit-2**) dated 14.05.1946 establishes the authenticity of the auction in case No. 96/1944. Exhibit-2 also reveals that Jonab Ali transferred the disputed property to Abul Khayer through Kabala No. 2582.

33. **Exhibit-4** demonstrates that on 15.08.1969, Abul Khayer transferred 79 decimals of land, comprising R.S. Dag No. 375 and non-disputed Dag No. 381, to the plaintiff, Shah Alam, by virtue of Kabala No. 6043. Out of the 79 decimals, the plaintiff subsequently transferred 12 decimals to Abdul Sabur on 22.12.1969 through Kabala No. 148 (**Exhibit-5**). The plaintiff now claims title over the remaining 67 decimals of land.

34. On the other hand, the defendants contend that Abul Khayer had earlier transferred the entire disputed land to Munshi Mia by way of Patta No. 3143 dated 03.06.1946. Upon reviewing **Exhibit-G1**, which is the said Patta Kabala, the veracity of this transfer is established. Upon further scrutiny of this Kabala, it appears that Jonab Ali held an *Etamam* (intermediary) tenancy right. The plaintiff's submitted Kabala No. 2582 dated 14.05.1946 explicitly states the *Etamam* tenure. Since Abul Khayer had already divested his ownership by transferring the scheduled land to Munshi Mia in 1946 (as evidenced by **Exhibit-G1**), the plaintiff could not have acquired any valid title through Kabala No. 6043 dated 15.08.1969. The transfer of *Etamam* tenancy rights does not

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confer ownership upon the transferee. Therefore, as the plaintiff's purchase under Kabala No. 6043 did not vest any ownership in him, he holds no title or interest in the disputed land.

35. As per the defendants, after the demise of Munshi Mia, defendants Nos. 5-10 succeeded as his heirs. A review of the defendants' submitted documents, namely **Exhibits Ka2, Kh2, Ga2, Gh2, Gha2(1) and Uma2**, shows that defendant No. 49, Haji Md. Ayub Ali, purchased a total of 57 decimals of land from the heirs of Munshi Mia (i.e., defendants Nos. 5-10) through various sale deeds ( $20 + 14 + 7 + 4 + 5 + 7 = 57$  decimals).

36. Due to a recording error, the land in B.S. Khatian was mistakenly recorded in the name of Abul Khayer. Consequently, defendant No. 49 initiated Misc. Case No. 173/2004, which resulted in an *ex parte* decree dated 26.04.2005. Pursuant to this decree, Mutation Khatian No. 704 was created in the name of defendant No. 49. The authenticity of the decree and mutation is established through Exhibits Cha2, Cha2(Ka), and Chha2(1). Exhibit-Ja2 further reveals that the plaintiff challenged the said mutation Khatian, but his objection was rejected. The investigation report of Misc Case No.874/2013 reveals that the defendant No. 49 through Bargadar has been in possession of the said purchased land. **Exhibit Jha(2)(Kha)** proves the fact as true.

37. The defendants have also raised an allegation that the plaintiff fraudulently created a forged Kabala No. 9014 dated 05.08.2010 and, based on it, secured the creation of Mutation Khatian No. 1727. However, upon objection by defendant No. 49, the said mutation Khatian was cancelled. The authenticity of this cancellation is evident from Exhibits EO2 and Th2.

38. Additionally, **the defendant No. 51**, Bank Asia Limited, has submitted relevant documents, including a sanction letter (**Exhibit-Kh3**), mortgage deed (**Exhibit-Gh3**), and **power of attorney (Exhibit-Ga3)**, which indicate that defendant No. 49, Md. Ayub Ali, mortgaged the disputed land to the Bank Asia Limited, Bahaddarhat Branch, as collateral for a loan. Exhibit-Umo3 further confirms that the bank has already obtained a

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decree in Money Loan Case No. 934/2015 against defendant No. 49 for recovery of outstanding dues. From a comprehensive review, it is evident that the mortgaged land, currently under the ownership of defendant No. 49, is in the possession of the defendant No.51, Bank Asia Limited.

39. Upon a thorough analysis of the facts and evidence, it appears that the plaintiff has neither title nor possession over the scheduled disputed land. Consequently, the plaintiff is not entitled to any relief in this suit. It appears that the plaintiffs have hopelessly failed to discharge their initial burden to prove their right, title, interest and possession over the suit property. Thus, all these issues are decided in disfavor of the plaintiffs.

40. Keeping in consideration of the plaint, written statement and other materials on record of this case and hearing of the Ld. Advocates for both the parties to the suit, I have no hesitation to hold that the plaintiff is not entitled to get it's relief as prayed for.

**In result the case succeeded.**

**Court fee paid is correct**

**Hence, It is Ordered**

that this suit for declaration be dismissed on contest against the **defendant no. 5-10/49/51** and ex-parte against the rest without any order as to cost.

The case is thus disposed of.

**Typed & Corrected by me**

Md. Hasan Zaman  
Senior Assistant Judge,  
Senior Assistant Judge, 2<sup>nd</sup>Court,  
Patiya , Chattogram.

Md. Hasan Zaman  
Senior Assistant Judge,  
Senior Assistant Judge, 2<sup>nd</sup>Court,  
Patiya , Chattogram.