

**O. S 327/2015 (Boalkhali)**

**Bangladesh Form No. 3701**

**HIGH COURT FORM NO.J (2 )**

**HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE**

**DISTRICT- CHATTOGRAM**

**IN THE COURT OF BOALKHALI ASSISTANT JUDGE COURT,**

**PATIYA, CHATTOGRAM**

**Present : Mr. Md. Hasan Zaman,**

**Senior Assistant Judge, Patiya, Chattogram.**

**Date of Delivery of Judgment : 18<sup>th</sup> day of November, 2024**

**Other Suit No. 327 of 2015**

**Rowshon Ara Begum & others .....Plaintiffs**

**-Versus-**

**Abdul Hadi and Others .....Defendants**

**This case came up for final hearing on 17/09/19, 20/11/19, 13/01/20, 30/01/20, 26/02/20, 21/10/2020, 02/01/23, 12/02/24, 23/01/24, 23/08/23, 19/11/23, 25/03/24, 24/10/22, 06/11/22, 16/11/22, 02/01/23 and 13/05/24.**

**In presence of :**

**Mr. Tipu Kumar Nath .....Advocate for Plaintiff.**

**Mr. Mohammad Muhiuddin .....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**

**Plaintiff's case in brief** is that the initial property owner, Izzat Ali, owned 57 decimals of land under R.S. Khatiyon No. 2124, specifically in R.S. Dag Nos. 5314, 5319, and 5324. Upon his demise, ownership passed to his heirs: three sons (Sirajul Ahmed alias Nurul, Shamsul Ahmed, and Sayedul Haq), two daughters (Julekha Begum and Saleha Begum), and his wife, Golchara Begum.

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On December 30, 1946, this land was sold via a registered deed to Jan Ali's sons, Abdul Sobhan and Abdul Samad Tandal. Their name was duly recoded in B.S. Khatian No. 653. Abdul Sobhan, who had no sons, was survived by his wife, Almas Khatun, and daughters, Tumbiya Khatun alias Ambiya Khatun and Shamsunnahar. Out of affection for them, Sobhan executed a gift deed on August 27, 1974, transferring 16.50 decimals of the disputed property and other non-disputed land to his wife and daughters, who took possession and continued enjoying the property. Following Almas Khatun's death, the land passed to her two daughters Ambiya Khatun and Shamsunnahar. Their names were mutated vide mutation Khatian No. 5924. To manage and sell the property, Ambiya Khatun and Shamsunnahar's heirs (her husband and three daughters) appointed Nurul Alam as her attorney via an Am-Moktar deed dated 26.09.2011 and 29.09. 2011. Using this power, Nurul Alam sold 04 decimals of the property (under B.S. Dag No. 7638) to Rawshan Ara Begum (Plaintiff No. 1) through a Kabala dated 28.11.2012. She has mutated her name vide mutation Khatian No. 6638.

Lands of **Schedule- 2** under R.S. Khatian No. 1845 of R.S plot No. 2637 originally owned by Fate Ali's son Abdul Rashid, who died leaving two sons Abdul Rahim and Abdul Jalil. Additionally, R.S. Dag No. 2702 (13 decimals) was recorded under Khilil Ahmed and others but later divided into smaller portions under multiple B.S. Dags.

The plaintiff alleges that three specific deeds—Sale Deed No. 4017 (dated July 12, 1977), Exchange Deed No. 1805 (dated March 27, 1983), and Sale Deed No. 5827 (dated December 26, 1985)—are fraudulent, forged, and void. They assert that: Abdul Sobhan had no right to transfer property to Ali Hossain through Sale Deed No. 4017 since Sobhan had already gifted his entire property to his family in 1974. Ali Hossain had no legitimate ownership of the disputed property but falsely exchanged or sold it to third parties, including Chand Mia. The defendants, through fraudulent deeds, created claims over the disputed land. For this, the plaintiffs seek a declaration from the court that these deeds are null, void, and unenforceable. Hence the suit.

### Defendant's Case :

**The defendants No. 4-8 contested the suit by filing written Statement contending, *inter alia*, that the disputed property under R.S. Dag No. 5341 comprises 12 decimals of land, which was originally belonged to Izzat Ali. Upon the death of Izzat Ali, the property devolved to his heirs, including three sons (Sirajul, alias Nurul Hoque, Shamsul Ahmed, and Sayedul Hoque), two daughters (Julekha Begum and Saleha Begum), and his wife (Golchara Begum). On December 30, 1946, these heirs sold the entirety of the 12 decimals of land in the disputed plot to Abdul Sobhan and Abdul Samad through a**

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registered deed. Thereafter on August 27, 1974, Abdul Sobhan executed a registered gift deed (No. 3234) transferring 6 decimals (equivalent to 3 gondas) of his share in the disputed property to his two daughters (Shamsunnahar and Ambiya Khatun) and his wife (Almas Khatun). The beneficiaries took possession of the gifted property and maintained their ownership.

It is further case of the defendants that for convenience, the recipients of the gifted property entered into an exchange agreement with one Oli Hossain vide deed No. 1805 dated 27.03.1983. Under this arrangement, they transferred their rights in 6 decimals of land (3 gondas) within the disputed Dag No. 2637 to Oli Hossain in exchange for 3 gondas of land from R.S. Dag Nos. 2607 and 2702. Ali Hossain thereby became the rightful owner of the 6 decimals of disputed property and continued possession under his ownership. On December 26, 1985, Ali Hossain sold the 6 decimals of land to the predecessor of defendants 1-8, Chand Mia, through a sale deed (No. 5827) and after his demise, his legal heirs, the defendants 1-8, inherited the property. Thus they have continued uninterrupted and peaceful possession of the land.

The defendants asserted that the plaintiffs are attempting to misuse the judicial system by filing a false and concocted case regarding the disputed property, despite the court's prior orders of Injunction against the plaintiff in Other suit No. 173/12. The court had issued an injunction on June 29, 2015, restraining the plaintiffs from interfering with the possession of the disputed property until the resolution of that case. Despite this, the plaintiffs have dishonestly filed the current suit on the same property. The defendants firmly contend that the plaintiffs' case is unfounded and motivated by malice, aimed at harassing them and creating confusion regarding the ownership of the disputed property. For this suit is liable to be dismissed.

**The defendants No. 13 contested the suit by filing written Statement contending, *inter alia*,** that the disputed property described under R.S. Dag No. 2637, consisting of 10 decimals of land of Schedule-2, was originally held by Abdul Rashid. His name was duly recorded in R.S. Khatian No. 1845. Upon his death, the ownership devolved upon his two sons, Abdul Rahim and Abdul Jalil, who continued to reside on the land with their families and cultivated it peacefully. After Abdul Rahim's death, his legal heirs (Defendants 9-12) inherited his share of the land. Similarly, following Abdul Jalil's death, his heirs (Defendants 13-18, including Md. Rafique and others) inherited his portion of the property. These heirs collectively enjoy peaceful possession of the land as lawful owners.

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The R.S. Dag No. 2702, comprising 13 decimals, was similarly held by Khalil Ahmed and others. This land was recorded in their names under R.S. Khatiyani No. 2463. Upon Khalil Ahmed's death, his son Sultan Ahmed inherited his rights. After Sultan Ahmed's demise, the property passed to his heirs (Defendants 26–28, including Md. Musa and others).

The records further indicate that: Upon the death of Obaidul Haq, his share of the property passed to his heirs, Rashid Ahmed and Abdul Hakim. Upon Rashid Ahmed's death, his heir (Defendant 29, Diluara Begum) inherited his rights. Similarly, Abdul Hakim's share passed to his heirs (Defendants 30–33, including Nur Mohammad and Nurul Azim). Upon Nurul Azim's death, his heirs (Defendants 34–39, including Md. Kofil and others) inherited his portion. Collectively, these defendants have inherited and maintained possession of the disputed property under their lawful raiyati rights. Their occupation and peaceful possession of R.S. Dag Nos. 2637 and 2702 have been continuous and known to all, including the plaintiffs and Defendants 1–8. The defendants claim to have maintained residential structures on the property, residing there with their families for several generations.

The defendants categorically deny any claim of ownership or possession by the plaintiffs or Defendants 1–8 over R.S. Dag Nos. 2637 and 2702. They contend that the claim by Defendants 1–8 that Abdul Sobhan, allegedly acting as a buyer of the disputed property, sold it to Ali Hossain through Sale Deed No. 4017, dated July 12, 1977. The defendants argue that Abdul Sobhan failed to demonstrate any legitimate source of his alleged raiyati rights over the disputed property. He neither submitted a valid purchase deed nor established his ownership during the court proceedings. Additionally, there is no evidence to link Abdul Sobhan to the recorded owners or their heirs. The defendants contend that the Sale Deed No. 4017 executed by Abdul Sobhan in favor of Ali Hossain is legally invalid and without effect, as Abdul Sobhan had no title or connection to the disputed land. Consequently, Ali Hossain's claim of ownership and his subsequent exchange of the land under Exchange Deed No. 1805 (dated March 27, 1987) is also void. The defendants further assert that the Exchange Deed was a fabricated, ineffective document created solely for fraudulent purposes, and no valid transfer of rights occurred from Almas Khatun and others (via Ali Hossain) to Defendants 1–8. Defendants characterize the deeds and claims presented by Defendants 1–8 as false, fabricated, and malicious. They argue that Defendants 1–8 have no rightful claim to the disputed property and have conspired to harass the current defendants through fraudulent litigation. The defendants asserted that the claims of the plaintiffs and Defendants 1–8 are baseless, fraudulent, and aimed at disrupting their lawful possession of the land. The

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plaintiffs' case has been brought in bad faith and is intended to exploit the judicial system for undue benefit. thus the defendants claim dismissal of the suit with costs..

### **Issues:**

The following issues has been framed for proper adjudication of the case :

- 1) Whether the suit is maintainable in it's 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?
- 5) Whether the plaintiffs have any title over the suit land?
- 6) Whether the impugned deed No. 4017 dated 12.07.1977, deed No.1805 dated 27.03.1983 and deed No. 5827 dated 26.12.1985 are forged, fabricated, unenforceable and not binding upon the plaintiffs?
- 7) Whether the plaintiff may get the relief as prayed for?

### **Discussions and Decisions:**

To prove the plaint case, the plaintiff examined 02 witnesses namely **Nurul Alam as P.W.1 and Abu Jafar as 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 copies (C.C.) of R.S. Khatians No. 2124, 2102, 1714, 1845, 2463, and B.S. Khatians No. 2244, 653, 3122, 1345, 878, 148, referenced as Exhibit-1 (series).
2. Certified copy of the Kabala dated 30.12.1946, referenced as Exhibit-2 (series).
3. Certified copy of the Kabala dated 27.08.1974 bearing No. 3234, referenced as Exhibit-3 (series).
4. Payment receipts of land revenue (Khajna Dakhila), referenced as Exhibit-4.
5. B.S. Khatians No. 5924 and 6638, including mutation records (Namjari), referenced as Exhibit-5 (series).
6. Certified copy of the General Power of Attorney (Am-Moktanama) dated 26.09.2011 bearing No. 3484, referenced as Exhibit-6.
7. Certified copy of the General Power of Attorney (Am-Moktanama) dated 19.09.2011 bearing No. 3547, referenced as Exhibit-7.
8. Original Kabala document dated 28.11.2012 bearing No. 3805, referenced as Exhibit-8.
9. Certified copy of the Kabala dated 12.07.1977 bearing No. 4017, referenced as Exhibit-9.

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10. Certified copy of the Kabala dated 27.03.1983 bearing No. 1805, referenced as Exhibit-10.

11. Certified copy of the Kabala dated 26.12.1985 bearing No. 5827, referenced as Exhibit-11.

On the other hand, to prove the defendant's case, the defendants examined **04** witnesses namely **Abdul Hamid as D.W.1 and Jahangir Alam as D.W.2, Md Rafiq as D.W.3 and Abdul Halim as D.W.4** 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. 2124 - Exhibit A
2. Certified copy of B.S. Khatian No. 653 - Exhibit B
3. Certified copy of Kabala dated 30/12/1946 - Exhibit C
4. Certified copy of Deed of Gift No. 3234 dated 27/08/1974 - Exhibit D
5. Certified copy of Ewaz Nama No. 1805 dated 27/03/1983 - Exhibit E
6. Certified copy of Kabala No. 5827 dated 26/12/1985 - Exhibit F

### **Decision with Reasons**

#### **Issue no. 1, 2 and 3**

**Whether the suit is maintainable in its present form and prayer?**

**Whether the plaintiffs have any cause of action for filing the suit ?**

**Whether the suit is barred by limitation?**

All the issues in the suit are addressed together for the sake of brevity and judicial convenience. Upon a thorough examination of the plaint, the written statement, and the evidence presented on record, it becomes apparent that the suit is of a purely civil nature. There exists no legal or procedural bar preventing this Court from entertaining and adjudicating the matter. Consequently, the suit is well maintainable in its present form.

The plaint clearly discloses a sufficient cause of action for the plaintiffs to institute the present suit. It is evident from the averments made in the plaint that the plaintiffs assert their ownership and possession of the disputed property through lawful purchase. In contrast, the defendants, who allegedly lack any legal right, title, interest, or possession over the said property, have sought to deny the plaintiffs' title. Furthermore, the defendants are now staking a claim to the suit property based on three impugned deeds, namely: 1. Deed No. 4017, dated 12.07.1977, 2. Deed No. 1805, dated 27.03.1983, and Deed No. 5827, dated 26.12.1985. These deeds have been categorically alleged by the plaintiffs to be forged, fabricated, and legally unenforceable.

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The plaintiffs contend that they became aware of the existence of these impugned deeds on 13.02.2014 during proceedings in Other Suit No. 173/2012, which had been initiated by the defendants No.1-8. Subsequently, on 25.10.2015, the plaintiffs obtained certified copies of the said deeds and became fully apprised of their contents. The existence of these impugned deeds has cast a cloud over the plaintiffs' lawful right, title, interest, and possession concerning the suit property, as described in the schedule annexed to the plaint.

The cause of action for the present suit arose on and from 25.10.2015, the date on which the plaintiffs became aware of the contents of the contested deeds. The suit was filed on 26.11.2015, well within the statutory period of limitation. Hence, the suit is not time-barred under the law of limitation. In light of the above, the suit is deemed maintainable in its current form, and the plaintiffs have established a prima facie cause of action. Accordingly, all the issues are resolved in favor of the plaintiffs.

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

Upon reviewing the pleadings, written statement, all evidence, and documents on record, nothing has been found to suggest that the suit suffers from any defect attributable to the plaintiff. Furthermore, during the submission of arguments, the defendant side did not raise any objection regarding this matter. Therefore, the issue in question is hereby resolved in favor of the plaintiff.

### **Issue No : 5 ,6 and 7**

**“ Whether the plaintiffs have any title over the suit land?”**

**“Whether the impugned deed No. 4017 dated 12.07.1977, deed No.1805 dated 27.03.1983 and deed No. 5827 dated 26.12.1985 are forged, fabricated, unenforceable and not binding upon the plaintiffs?”**

**“ Whether the plaintiff may get the relief as prayed for ?”**

The plaintiff claims ownership of 6 decimals of land described in the 1st schedule of the plaint. It appears that the land described in the 1st schedule is recorded under R.S. Khatian No. 2124. From **Exhibit-1**, it is evident that as per R.S. Khatian No. 2124, R.S. Dag Nos. 5314, 5319, and 5341, measuring 24, 21, and 12 decimals respectively, totaling 57 decimals of land, were owned by Izzat Ali through purchase. **Exhibit-2** establishes that after the death of Izzat Ali, his heirs transferred the said land to Abdul Sobhan and Abdul Samad through a sale deed executed in 1946. The plaintiff claims that the B.S. Khatian No. 653 was prepared in the name of Abdul Sobhan in respect of the disputed land, and this is corroborated by **Exhibit-1(c)**.

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**Exhibit-3** further reveals that Abdul Sobhan transferred 16.50 decimals of land under R.S. Dag Nos. 5314, 5319, and 5341 to his two daughters, Tambia Khatun alias Ambia Khatun and Shamsunnahar, and his wife, Almas Khatun, through a deed of gift executed on 27.08.1974 and registered as Deed No. 3234. The plaintiff claims that upon the death of Almas Khatun, her share devolved upon her two daughters. It is evident that Tambia Khatun alias Ambia Khatun and Shamsunnahar became the owners of 16.50 decimals of land under the aforementioned dags and were in possession of the same. In respect of B.S. Dag No. 7638, measuring 6 decimals of land, it is found from **Exhibit-5** that B.S. Mutation Khatian No. 5924 was prepared in the names of Ambia Khatun and Shamsunnahar. From **Exhibits-6 and 7**, it is evident that Ambia Khatun and Shamsunnahar appointed Nurul Alam as their attorney to manage and preserve the 6 decimals of land. Through **Exhibit-8**, it appears that Nurul Alam, as attorney, transferred 4 decimals of land under B.S. Dag No. 7638 to plaintiff No. 1, Rowshan Ara Begum, by Sale Deed No. 3805 dated 28.11.2012. **Exhibit-5(a)** shows that a separate Mutation Khatian No. 638 was prepared in the name of Rowshan Ara Begum for 4 decimals of land under B.S. Dag No. 7638. Thus the plaintiff claims to have derived valid title to the 6 decimals land described in the 1st schedule through this chain.

The plaintiff has contended that the defendants' deed of sale dated 12/07/1977 (Registered Deed No. 4017, Exhibit-9) is forged, fabricated, and void. According to the plaintiff, Abdul Sobhan, the vendor of the said deed, had no title to transfer 6 decimals of land under R.S. Dag Nos. 2637 and 2702 (Schedule 2). Further, the plaintiff asserted that despite the claim that the property was obtained through the Ewaznama deed dated 27/03/1983, Ambia Khatun, Shamsunnahar, and Almas Khatun did not actually take possession of the property. Therefore, the plaintiff argued that the said Ewaznama is unlawful and void, rendering all subsequent deeds invalid and unenforceable. Consequently, the plaintiff claimed that the predecessors of the defendants, including Chand Mia, acquired no title or interest over the disputed property.

On the Other hand, the defendants claim that the original owner of the disputed R.S. Plot No. 5341, measuring 12 decimals of land, was Izzat Ali. Upon Izzat Ali's death, his heirs—three sons (Sirajul alias Nurul Haque, Shamsul Ahamad, and Saidul Haque), two daughters (Jolekha Begum and Saleha Begum), and his wife Golchara Begum—succeeded to the property. Subsequently, these heirs, through a registered deed of sale dated 30.12.1946 (**Exhibit-Ga**), transferred the entire 12 decimals of the disputed plot to Abdul Sobhan and Abdul Samad. Consequently, Abdul Sobhan and Abdul Samad became joint owners in equal shares and possessors of the land. From **Exhibit-Gha**, it appears that Abdul Sobhan, by way of a registered gift deed dated 27.08.1974 (Deed No. 3234), transferred his 6 decimals (3 gonda) of the disputed plot to his two daughters,



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Shamshunnahar and Ambia Khatun, and his wife, Almach Khatun, thereby vesting them with ownership and possession.

From **Exhibit-9**, it is evident that on 12.07.1977, Oli Hossain purchased 6 decimals of land from the disputed R.S. Plot Nos. 2637/2702 through a registered deed of sale (Deed No. 4017). Furthermore, as evidenced by **Exhibit-Uma**, Shamshunnahar, Ambia Khatun, and Almach Khatun, for their convenience of possession, entered into a registered exchange deed (Deed No. 1805) dated 27.03.1983 with Oli Hossain. Under this arrangement, they transferred 3 gonda of land within the disputed R.S. Plot Nos. 5341, 5319, and 5314 to Oli Hossain in exchange for 3 gonda of land from R.S. Plot Nos. 2607/2702 described in schedule-2. Thus, by virtue of this exchange deed, Oli Hossain claims to have acquired ownership and possession of 6 decimals (3 gonda) of the disputed land. **Exhibit-Cha** reveals that Oli Hossain subsequently sold this property to the predecessor of defendants Nos. 1-8, Chand Mia, through a registered sale deed (Deed No. 5827) dated 26.12.1985. Following Chand Mia's demise, defendants Nos. 1-8 now claim to be in possession of the disputed land described in Schedule-1 as their lawful successors.

Upon comprehensive analysis, it is evident that both parties have acknowledged that the property mentioned in Schedule 1 (the disputed property) was acquired by Tumbia Khatun alias Ambia Khatun, Shamsunnahar, and Almas Khatun through a deed of gift dated 27/08/1974 (Exhibit-3). From the said deed, it is apparent that the entire property under R.S. Dag No. 5341 was vested in their ownership. The plaintiff claimed that after the demise of Almas Khatun, the property under the said dag devolved upon Ambia Khatun and Shamsunnahar. From the documents presented, particularly Exhibit-'Uma' (the Ewaznama dated 27/03/1983) and Exhibit-9 (the sale deed No.4017 dated 12/07/1977), it is evident that Oli Hossain purchased 6 decimals of land under R.S. Dag Nos. 2637 and 2702 and subsequently, through the exchange, obtained 6 decimals (3 gandas) of land under R.S. Dag Nos. 5314, 5319, and 5341. Although the plaintiff has challenged the validity of these deeds as forged and fabricated, there is no substantial evidence to support such claims. It is completely immaterial that by the said Ewaznama deed Almas khatun and others did not get any property of R.S plot Nos. 2637 and 2702. It is evident that Ambia Khatun, Shamsunnahar, and Almas Khatun themselves executed the said Ewaznama deed through valid signatures. The subsequent denial of this fact by the successor in interest cannot be accepted under the law. The Ewaznama deed in question is a registered document and is over 30 years old. According to the settled principles of law under the Evidence Act, 1872 (Section 90), a registered document over 30 years old carries a presumption of genuineness unless proven otherwise. In the case of *Abdul Jalil vs Amina Khatun* [34 DLR (AD) 228], where it was held that a registered

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deed cannot be challenged without cogent evidence. Therefore, I find that the said Ewaznama deed is valid and legally enforceable.

Evidence shows that Oli Hossain sold the disputed property to Chand Mia, whose legal heirs (defendants) are now in possession. As Exhibit-6 is presumed valid, the subsequent sale deed dated 26.12.1985 (Exhibit-7) is also deemed lawful. While the plaintiff relies on mutation records (Exhibit-5), it is well-established that mutation does not confer title. The Supreme Court in *Abdul Jalil vs. Abdul Kader* (40 DLR 275) held that mutation entries are fiscal in nature and do not establish ownership against a valid title. The plaintiff has failed to rebut the validity of the registered exchange deed (Exhibit-6) conclusively. Consequently, the subsequent transfer of the property to the defendants' predecessors-in-title remains valid. The plaintiff's reliance on mutation records cannot override the defendants' chain of title. Hence, the plaintiff has no subsisting right, title, or interest in the 1st schedule property.

In light of the above considerations, it appears that the plaintiffs have failed to establish their case to the requisite standard of proof. The claim that the disputed property still belongs to the plaintiffs or their predecessors-in-interest is untenable, as the defendants have successfully demonstrated a lawful chain of title originating from the Ewaznama deed. Therefore, it is concluded that the plaintiffs have no legal or equitable rights over the disputed property as described in Schedule No. 1 of the plaint. Consequently, the plaintiffs are not entitled to any relief sought in this suit, and the suit is liable to be dismissed. Thus the issue No.5-7 are disposed of in disfavor of the plaintiffs.

**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. 4-8/13 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,  
Boalkhali Assistant Judge, Court,  
Patiya , Chattogram.

Md. Hasan Zaman  
Senior Assistant Judge,  
Boalkhali Assistant Judge, Court,  
Patiya , Chattogram.