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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, 2ND COURT,
PATIYA, CHATTOGRAM**

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

Date of Delivery of Judgment : 30th day of July, 2023

Other Suit No. 137 of 2011

Mohammad Ismail ChowdhuryPlaintiff

-Versus-

Laila Begum and OrsDefendants

**This case came up for final hearing on 5/3/18; 23/10/18; 24/09/20
;07/02/21; 30/09/21; 30/05/22; 25/08/22; 22/9/22 ; 15/06/23 and
20/07/2023.**

In presence of :

Mr. Kabir Sekhar NathaAdvocate for Plaintiff.

Mr. Dipak Kumar ShilAdvocate for Defendants.

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

This is a suit for declaration and recovery of khas possession.

Case of the Plaintiff

**1. Plaintiff's case in brief is that the suit property, described in the schedule,
pertains to the land recorded under R.S. Khatian No. 1622, Dag No. 1648, of Shikalbaha
Mouza. Later this property was recorded under B.S. Khatian No. 492, Dag Nos. 2198**

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(measuring 12 decimals) and 2201 (measuring 21 decimals). Of this, 2 decimals are recorded as a road. Lands measuring 30 decimals of R.S. Khatian No. 1622, Dag No. 1648 was belonged to Nazir Ali, alias Nazir Ahmad. That Nazir Ahmad, had two brother named Kala Mia and Omda Mia. However, R.S Khatian was recorded only in the name of Nazir Ali alias Nazir Ahmad. They held a total of 35 decimals of land, out of which they sold 23.50 decimals to Zafar Ahmad vide deed No.1730 dated April 8, 1946. Following this sale, Zafar Ahmad became owner of 23 decimals and remaining 11.66 decimals were in the possession of Omra Mia, another son of Mohammad Ibrahim.

2. Subsequently, Omda Mia sold 10.66 decimals of land to Alhaj Abdul Jalil Chowdhury vide deed No. 5286 dated November 18, 1964. Abdul Jalil Chowdhury purchased it in the benami of his wife, Ayla Begum Chowdhurani. It is further stated that Abdul Jalil Chowdhury had purchased several other properties in the benami of his wife, Ayla Begum.

3. Furthermore, Abdul Jalil Chowdhury also purchased 23.66 decimals of land from Zafar Ahmad in the same dag by way of sale Deed No. 5285 dated November 18, 1964. again in the benami of his wife, Ayla Begum. Subsequently, Ayla Begum, in acknowledgment of the benami transactions, executed a Release Deed (Na-Dabi) vide No. 1435 dated 17.02.1975 in favor of Abdul Jalil Chowdhury.

4. While in possession, Abdul Jalil transferred the entire land described in the schedule, along with other properties, to Alhaj Khalilur Rahman Chowdhury and Hafiz Marjina Khanam by two registered sale Deed vide Nos. 13401 and 13402 dated 21.08.1980. Subsequently, Khalilur Rahman and Marjina Khanam transferred the property to their son, the plaintiff, Md. Ismail Chowdhury, through two gift deeds (Heba) dated December 22, 1999, bearing Deed No. 6351, and November 23, 1999, bearing Deed No. 6379, respectively. Thus, the plaintiff, having received the property as a gift from his parents, is now the lawful owner and possessor of the suit land. To facilitate management and legal matters, the plaintiff executed a General Power of Attorney in favor of his brother, Md. Yusuf Chowdhury, on September 5, 2011, who now manages and oversees the property on behalf of the plaintiff.

5. It is further case of plaintiff that the defendants' claim that Nazir Ahmad died in 1945 is false, as he actually passed away many years after the independence of Bangladesh. The B.S. survey was inaccurately recorded in the name of Nazir Ahmad. Additionally, Defendant No. 6's claim that his predecessor-in-interest purchased the land through certain deeds is unfounded, as these deeds are fictitious, fraudulent, void, and inoperative. The plaintiff states that the B.S. survey inaccurately recorded the suit land under Dag Nos. 2198 and 2201 as "Nal" (vacant land). While Dag No. 2198 now

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contains a small pond, Dag No. 2201 includes a salt factory established by the plaintiff, surrounded by a boundary wall.

6. The plaintiff further submits that the defendants, being successors-in-interest to Nazir Ahmad and others, have no claim, title, or possession over the suit land. In 2010, the plaintiff discovered the inaccuracies in the B.S. survey when he sought information from the local Tahsil Office. Upon obtaining certified copies on October 27, 2010, the plaintiff became aware that the land had been mistakenly recorded in the name of certain non-entitled individuals. The plaintiff asserts that the erroneous B.S. record does not interfere with his longstanding ownership and possession over the suit land. Therefore, the plaintiff has filed this suit seeking a declaration of his lawful ownership and possession over the suit land and for rectification of the erroneous B.S. record.

Defendant's Case :

7. **The defendant No. 1 contested the suit by filing written Statement contending, *inter alia*,** the disputed property originally belonged to Nazir Ali, also known as Nazira Ahmed, whose name was duly recorded in R.S. Khatyan . Thereafter Nazir Ali passed away leaving his heirs, namely his daughters Laila Khatun, Ambia Khatun, and Afia Khatun, along with his brother Omda Mia. Upon demise of Ambia Khatun, her rights and interests were inherited by her children: Abdul Sabur, Masuda Khatun, Mosammat Farida, Momtaz Begum, and Bulu Akter. On January 1, 2011, defendant no. 2, Afia Khatun sold 3.50 decimals to defendant no. 6 through a registered sale deed. Similarly, other co-heirs, including Laila Khatun, Abdul Sabur, Mosammat Farida, Momtaz Begum, and Bulu Akter also sold the same to defendant no. 6 and delivered possession thereof.

8. On the other hand, Omda Mia's rights in the property were inherited by his son Zafar Ahmed upon his death. Subsequently, Zafar Ahmed's interest in the property devolved upon defendants no. 3 to 5 upon his passing. Defendant no. 3 later sold 10.66 decimals of the property to defendant no. 6 who is now currently in possession and enjoying the property peacefully.

9. The plaintiff has no title, possession, or lawful claim to the disputed property. The plaintiff's assertion that Nazir Ali sold the disputed property on April 8, 1946, or at any time, is baseless and unfounded. Nazir Ali passed away in 1945, making it impossible for him to have executed any sale deed in 1946. The claim of such a transaction is purely fictitious and fabricated.

10. The disputed property does not belong to one Kala Mia, as alleged by the plaintiff. Kala Mia, as claimed by the plaintiff, had no authority to execute any sale deed

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on June 8, 1946, or any other date, and the plaintiff's assertions in this regard are legally untenable. The plaintiff's alleged deed dated June 4, 1946, is fraudulent, fabricated, void, and without any legal effect. The purported sale deed no. 1730 dated June 8, 1946, is neither executed nor registered by Nazir Ali or any of his lawful representatives.

11. The plaintiff appears to have forged documents, including the alleged sale deed of 1946, with the intent to usurp the disputed property unlawfully. The disputed property was lawfully purchased by Nazir Ali on January 11, 1926, and his title and possession were duly recorded in the R.S. and P.S. Khatiyans in his name. Upon his death, his heirs lawfully inherited the property as per inheritance laws, and the claim of Kala Mia being a brother of Nazir Ali is entirely false and baseless.

12. Furthermore, the plaintiff's claims based on subsequent deeds, including documents dated November 18, 1964, February 17, 1975, August 21, 1980, November 23, 1999, and September 5, 2011, are all fraudulent, forged, void, and devoid of any legal validity. The alleged deeds of gift, release, and power of attorney mentioned by the plaintiff are all fabricated and were created with the ulterior motive of grabbing the property unlawfully. The plaintiff having no possession, ownership, or connection with the disputed property has filed this suit just to to harass and financially burden the innocent defendants. For this this suit shall be liable to be dismissed.

13. The defendant No. 6 contested the suit by filing written Statement contending, *inter alia*, that the suit land originally belonged to Nazir Ali, also known as Najir Ahamad, who was in possession of the said property. Accordingly, the R.S. Khatian has been finally published in his name. Upon his demise, his ownership devolved upon his second wife Fulbanu, and his daughters Laila Khatun, Ambia Khatun, Afia Khatun, his brother Omra Mia, and his sister Latif Jan. Upon the demise of Fulbanu, her daughters Laila Khatun and Afia Khatun inherited her share. The said Latifjan sold her interest in the suit land to Khair Ahamad and Nurul Amin through a registered sale deed No. 2943 dated 09/05/1979, and delivered possession accordingly.

14. The said Ambia Khatun, having inherited the suit land from her father, transferred her share land to her son Sabur and daughters Mashuda Khatun, Mosammat Farida, Momtaz Begum, and Bulu Akter. While Afia Khatun sold 3.50 decimals of the land to the defendant through a registered sale deed No. 11274 dated 01/11/2011 and transferred possession accordingly. Likewise, Laila Khatun, Abdus Sabur, Mosammat Farida, Mashuda Khatun, Momtaz Begum, and Bulu Akter, while being in possession of the suit land, sold their respective shares to the defendant Mohiuddin Murad by a registered sale deed No. 665 dated 20/01/2011 and delivered possession accordingly.

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15. Upon the demise of Omra Mia, his son Jafar Ahamad inherited his share. Upon the demise of Jafar Ahamad, his son Nurul Amin and daughter Ayesha Khatun inherited his interest. The said Nurul Amin, through a registered sale deed No. 3159 dated 22/03/2011, sold 10.66 decimals land to the defendant and transferred possession accordingly. Likewise, Ayesha Khatun, while in possession of the suit land, sold 5.50 decimals of land to the defendant through a registered sale deed No. 5387 dated 16/05/2011 and delivered possession accordingly.

16. The defendant, having purchased the suit land, has been exercising ownership and possession over the same by excavating a pond, planting and cutting trees, fishing in the pond, and transforming the homestead land with the knowledge of the plaintiff and the public at large. The plaintiff neither had nor has any ownership or possession over the suit land. The B.S. Khatian of the suit land has been correctly recorded in the defendant's name, and the B.S. mutation Khatian has been duly finalized in his favor.

17. As per the plaintiff's claim, Nazir Ali, also known as Najir Ahamad, did not sell the suit land or any part thereof to Jafar Ahamad on 08/04/1946 or on any other date. It is an established fact that Nazir Ali, also known as Najir Ahamad, passed away in 1945; hence, the alleged sale in 1946 is a fabricated and fictitious claim. The suit land does not belong to Kala Mia. As per the plaintiff's claim, Kala Mia had no legal capacity to sell the land on 08/06/1946 or any other date. The plaintiff's alleged deed dated 04/06/1946 is forged, fraudulent, void, and inoperative.

18. Nazir Ahamad, also known as Nazir Ali, acquired ownership and possession of the suit land through purchase on 11/01/1926, and his name was duly recorded in the R.S. Khatian. After his demise, his three daughters and brother, Omra Mia, inherited the land. There was no person named Kala Mia as his own brother. The plaintiff's claims regarding deeds dated 18/11/1964, 17/02/1975, 21/08/1980, 23/11/1999, and 05/09/2011 are forged, fraudulent, and void. Ahali Begum never obtained ownership under the alleged deed of 18/11/1964, and Abdul Jalil had no legal capacity to execute a release deed or sell the land. Khalilur Rahman and Marjina Khanam never acquired ownership through purchase or any other means, and the plaintiff gained no rights over the land through the alleged deeds of 22/12/1999 or 23/11/1999.

19. The plaintiff fraudulently created gift deeds, a fabricated power of attorney, and other documents to unlawfully occupy the land. He never had control, management, or possession of the land, nor did he excavate any pond there. The plaintiff is a fraudulent land grabber and habitual litigant, aiming to financially and mentally harass the defendant through false and vexatious litigation. Hence, the plaintiff is not entitled to any relief.

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Issues:

20. From the rival pleadings of both the parties and considering the submissions of learned advocate of both the parties at the time of arguments, 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) Is the suit bad for non-joinder of necessary parties?
- 5) Whether the plaintiff has any right, title 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:

21. To prove the plaint case, the plaintiff examined 02 witnesses namely **Md Ismail Chowdhury as P.W.1 and Md Mohiuddin 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. Record of Rights (R.S.) Khatian No. 1622, P.S. Khatian No. 1658, and B.S. Khatian No. 492.	Exhibit 1 Series
2. Original Deed No. 1730 dated 10/04/1946.	Exhibit 2
3. Original Deeds No. 5258 and 5256 dated 18/11/1964.	Exhibit 3 series
4. C.C of Deed No. 1435 dated 17/02/1975.	Exhibit 4
5. C.C of Deed No.. 13401 and 13402 dated 21/08/1980.	Exhibit 5
6. Original Deed No. 6351 dated 22/12/1999.	Exhibit 6
7. Original Deed No. 6379 dated 23/12/1999.	Exhibit 7
8. C.C of Deed No.. 5022 dated 30/10/2010.	Exhibit 8

22. On the other hand, to prove the defendant's case, the defendants examined **02** witnesses namely **Mohiuddin Murad as D.W.1 and Nur Islam as D.W.2** before the

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court. During examination of **D.W.1** the following documents were produced and proved, which have been marked as exhibits:-

1. Certified Copy (C.C.) of R.S. Khatian No. 1622, P.S. Khatian No. 1658, and B.S. Khatian No. 492.	Exhibit Ka
2. Original copy of the rent receipt (Khajna Dakhila).	Exhibit Kha
3. Original copy of Deed of Sale (Kabla) No. 665 dated 20/01/2011.	Exhibit-Ga
4. Original copy of Deed of Sale (Kabla) No. 11274 dated 01/11/2011.	Exhibit-Gha
5. Original copy of Deed of Sale (Kabla) No. 5387 dated 16/05/2011.	Exhibit-Uma
6. Original copy of Deed of Sale (Kabla) No. 3159 dated 22/03/2011.	Exhibit-Cha
7. Original copy of the certificate issued by Bank regarding the mortgage.	Exhibit-Chha
8. Original copy of Deed of Sale (Kabla) No. 123 dated 11/01/26.	Exhibit-Ja
9. Certified Copy (C.C.) of Deed of Sale (Kabla) No. 2943 dated 09/05/79.	Exhibit-Jha

Another witness namely **Abdul Kayum** has been examined as **C.W.1** who deposed and produced the Balam Book of death regiser.

Decision with Reasons

23. Md Ismail Chowdhury (P.W.1) for the plaintiff and **Mohiuddin Murad** as **D.W.1** for the defendants has given statements admitting the facts of the plaint and written statements respectively.

24. 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.

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.

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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 inheritance. 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 27.10.2010 and the suit was filed on 21.09.2011 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.

25. ISSUES NO.4 :

“Is the suit bad for non-joinder of necessary parties?”

Perusing the plaint, written statement and other materials on record, I do not find anything from which it can be ascertained that the suit is bad for defect of parties. Moreover, Ld. Advocate for the contesting defendants did not argue on this issue. Accordingly, this issue is decided in favour of the plaintiff.

26. Issue No : 5 ,6 and 7

“Whether the plaintiff has right, title, interest 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?”

All these issues are taken up together for the sake of brevity and convenience. The plaintiff claims title over a total of 33 decimals of land situated within B.S. Khatian No. 492, specifically comprising 12 decimals in B.S. Dag No. 2198 and 21 decimals in B.S. Dag No. 2201. The plaintiff relies on R.S. Khatian No. 1622 (**Exhibit-1**) which indicates that R.S. Dag No. 1648, covering an area of 35 decimals, was recorded solely in the name of one Najir Ahmed. However, the plaintiff asserts that the actual ownership of the said 35 decimals of land belonged jointly to three brothers, namely Najir Ahmed, Kala Miah,

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and Omra Miah, but the R.S. Khatian was erroneously recorded exclusively in the name of Najir Ahmed.

27. From **[Exhibit-2]** it transpires that on 10.04.1946, through Deed No. 1730, Najir Ahmed and Kala Miah transferred 23.33 decimals of land in R.S. Dag No. 1648 to one Jafar Ahmed. Subsequently, a P.S. Khatian No. 1658 **[Exhibit-1(ka)]** was published in the names of Najir Ahmed and Jafar Ahmed. Furthermore, the B.S. Khatian No. 492, as evidenced by **[Exhibit-1(Kha)]** was also recorded in the names of Najir Ahmed and Jafar Ahmed, which the plaintiff claims to be incorrect.

28. As per the registered sale deed dated 18.11.1964, bearing No. 5285 **[Exhibit-3]**, Jafar Ahmed transferred his purchased 23.33 decimals of land to one Ahila Begum Chowdhurani, the wife of Haji Abdul Jalil Chowdhury. Additionally, from **[Exhibit-3(Ka)]**, it is evident that on the same date, Omra Miah, the son of Mohammad Ibrahim, executed another sale deed bearing No. 5286, transferring 10.50 decimals of land to Ahila Begum Chowdhurani.

29. The plaintiff claims that Haji Abdul Jalil Chowdhury had actually purchased the disputed land in the benami of his wife, Ahila Begum Chowdhurani. This assertion is supported by a Declaration of Release (Nadabi Muktinama) executed on 17.02.1975 through Deed No. 1435 **[Exhibit-4]**, whereby Ahila Begum Chowdhurani acknowledged that the suit land was in fact owned by her husband, Haji Abdul Jalil Chowdhury. Consequently, by virtue of this Nadabi Muktinama, Haji Abdul Jalil Chowdhury acquired ownership over the disputed land.

30. From **Exhibits-5 and 5(Ka)**, it is further revealed that on 21.08.1980, Haji Abdul Jalil Chowdhury transferred a total of 34 decimals of land, comprising 17 decimals each, in favor of Khalilur Rahman and Hafiz Marzina through registered sale deeds bearing Nos. 13401 and 13402, respectively. Subsequently, on 22.12.1999, the said Khalilur Rahman and Hafiz Marzina transferred the subject property to their son, the plaintiff Ismail Chowdhury, through a registered gift deed bearing No. 6351 **[Exhibit-6]**. On the

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following day, 23.12.1999, another registered gift deed bearing No. 6379 [Exhibit-7] was executed in favor of the plaintiff.

31. Thereafter, the plaintiff, having acquired ownership of the disputed land by way of the said gift deeds, appointed his brother, Mohammad Yusuf Chowdhury, as his general attorney (Aam-Mokhtar) to manage and oversee the suit property. Accordingly, the plaintiff claims absolute ownership and possession over the entire 33 decimals of land as detailed in the suit schedule.

32. On the other hand, the defendant asserts that the original owner of the suit property was Nazir Ali, as evidenced by the R.S. Khatian in his name. The defendants claim that the R.S. Khatian is correct. From the defendant's submitted [Exhibit-Ja], being the original sale deed No. 123 dated 11/01/1926, it appears that prior to the R.S. survey, Nazir Ali purchased 33 decimals (16 gonda 2 kora) of land. This supports the contention that R.S. Khatian No. 1622 was lawfully recorded solely in the name of Nazir Ali.

33. It is further claimed by defendants that upon the demise of Nazir Ali, his property devolved upon his daughters—Laila Khatun, Ambia Khatun, and Afia Khatun—and his full brother, Omra Mia. However, as per the plaintiff's submitted [Exhibit-2], dated 08/06/1946, it appears that Nazir Ali and his brother Kala Mia sold 23.33 decimals of land to Jafar Ahmed. The defendants claim this deed to be forged, fabricated, and void, contending that Nazir Ali passed away in 1945, and that he had no brother named Kala Mia. To support this claim, the defendants have produced a photocopy of the Thana Death Register as [Exhibit-I], which records the death of Nazir Ali on 20/11/1945.

34. Upon examining the testimony of Witness C.W.1, it is evident that the submitted death register copy lacks authentication and does not contain any other recorded deaths from the year 1945. This raises doubts about the credibility of the document, indicating a possible deliberate attempt to backdate Nazir Ali's death to 1945. The plaintiff contends that Nazir Ali died much later, after the independence of Bangladesh. The P.S. and B.S

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Khatian is recorded in the name of Nazir Ali, which corroborates that he did not pass away in 1945. Again from the plaintiff's [Exhibit-8], it is evident that Nazir Ahmed, also known as Nazir Ali, executed a registered sale deed No. 5022 on 30/10/1950, transferring non suit property. This confirms that Nazir Ali was alive at the time of executing the impugned sale deed dated 08/06/1946. Given that the 1946 deed is a registered document and more than 30 years old, it is considered valid and legally sound.

35. Although Nazir Ahmed was the sole recorded owner in the disputed dag, the impugned 1946 sale deed indicates that Nazir Ahmed and his brother Kala Mia jointly transferred 23.33 decimals of land. However, it remains unclear how Kala Mia acquired ownership in the suit dag. Since Jafar Ahmed received 23.33 decimals through the 1946 deed, it follows that the entire transfer originated from Nazir Ali's share.

36. The plaintiff asserts that the remaining 10.50 decimals of land in the suit dag were transferred by Omra Mia through [Exhibit-3(Ka)]. However, Omra Mia did not exclusively own 10.50 decimals, as the R.S. record names Nazir Ahmed as the sole recorded owner. Upon the demise of Nazir Ahmed, his legal heirs—his daughters Laila Khatun, Ambia Khatun, and Afia Khatun—and his full brother Omra Mia inherited the property. Thus, after deducting the transferred 23.33 decimals, the remaining 9.67 decimals were inherited as follows: each daughter receiving 2.15 decimals, while Omra Mia inherited 3.22 decimals. Consequently, the validity of [Exhibit-3(Ka)] extends only to the extent of 3.22 decimals.

37. Based on Exhibits-3 and 3(Ka), Ahila Begum Chowdhurani acquired a total of 26.55 decimals (23.33 + 3.22). Consequently, through the chain of transfers, the plaintiff has established ownership over 26.55 decimals of land in the suit dag.

38. On the other hand the defendants claim to have purchased the property from the daughters and heirs of Nazir Ahmed. According to the defendants, upon the demise of Ambia Khatun, her share devolved upon her heirs, including her son Abdul Sabur and daughters Mosuda Khatun, Most. Farida, Momtaz Begum, and Bulu Akhter. [Exhibit-

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Ga] shows that on 20/01/2011, Laila Khatun and Abdul Sabur transferred 16 decimals of land to Defendant No. 6. Similarly, **[Exhibit-Gha]** indicates that on 01/11/2011, Afia Khatun transferred 3.50 decimals to Defendant No. 6. **Exhibits-Uma** and **Exhibit- Cha** show that Defendant No. 6 also purchased 5.50 + 10.67 decimals from the heirs of Jafar Ahmed. This establishes that Defendant No. 6 acquired 35.67 decimals in total. However, Jafar Ahmed had already transferred 23.33 decimals to Ahila Begum on 18/11/1964 via registered deed No. 5285 (Exhibit-3). Consequently, Defendant No. 6 could not have acquired any valid title through **Exhibits-Uma and Cha**. Therefore, Defendant No. 6's valid acquisition is limited to 6.45 decimals through purchases from the daughters of Nazir Ahmed.

39. Regarding possession the plaintiff's witness, P.W.1, testified that he is in possession of the suit land by constructing a salt factory and digging a pond. He also mentioned that 2 decimals have been acquired for a union council road. The disputed land is divided into two portions: 21 decimals in the larger portion and 12 decimals in the smaller portion. Witness P.W.2 corroborated this testimony, confirming the existence of a salt mill and a pond on the land.

40. Conversely, the defendants' witness, D.W.1, denied the existence of a salt mill within the disputed dag but acknowledged the presence of two ponds. D.W.2, during cross-examination, admitted that there is a mill on the east side of the pond, separated by 100 feet of vacant land. However, he could not identify the owner of that vacant land. This confirms that the salt mill within the disputed dag belongs to Plaintiff Ismail. Therefore, despite the defendants' claim of possession over the pond area, substantial portions of the disputed land remain under the plaintiff's possession.

41. Upon a comprehensive examination of the evidence and legal documents presented, it is evident that the plaintiff has failed to establish a valid claim to the entire suit land as described in the schedule. The plaintiff has asserted ownership over 33 decimals of land; however, the analysis of the title documents and witness testimony

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indicates that the plaintiff is only entitled to 26.55 decimals. The remaining 6.45 decimals of land lawfully belong to defendant No. 6 by virtue of purchase from rightful successors.

42. In view of the foregoing analysis, it is apparent that though the B.S khatian is found to be erroneously recorded, the plaintiff has neither title nor possession over the entirety of the suit land. Furthermore, as the plaintiff has not sought partition, the relief sought cannot be granted. Thus it appears that the plaintiff has 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 plaintiff.

43. 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 failed.

Court fee paid is correct

Hence,

It is Ordered

that this suit for declaration be dismissed on contest against the defendant no. **1 and 6** 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, 2ndCourt,
Patiya , Chattogram.

Md. Hasan Zaman
Senior Assistant Judge,
Senior Assistant Judge, 2ndCourt,
Patiya , Chattogram.