IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Appeal No. 276 of 2009

In the matter of:

Mosammat Anwara Begum being dead her heirs 1(a) Khandoker Jakir Hossain and others.
… Defendant nos. 5 and 6-Appellants.
-Versus-

Md. Mohosin Dewan and others.
…Plaintiffs-Respondents.

Mr. Swapan Kumar Dutta, with
Mr. Md. Shahajada,
Mr. Md. Abu Baker Siddique, Advocates
…For the appellant no. 1(a)-1(e) and 2.

Mr. Md. Mainul Islam, with
Mr. Khaled Saifullah, Advocates
… For the respondent nos. 1, 3 and 6-13.

Mr. Md. Alamgir Mostafizur Rahman, with
Ms. Saima Rahman, Advocates
... For the defendant nos. 2 and 8-Appellant nos. 3 and 4.

Heard on 08.05.2025, 21.05.2025
Judgment on 28.05.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of defendant nos. 5 and 6 in Title Suit No. 64 of 2005, this appeal is directed against the judgment and decree dated 27.04.2009 passed by the learned Joint District Judge, Second Court, Dhaka in that title suit decreeing the same against the defendant nos. 5-6 on contest and *ex parte* against the rest.

The precise facts leading to preferring this appeal are:

The present respondent nos. 1 to 13 as plaintiffs filed the aforesaid suit for declaration of title to the suit land and for declaration that the R.S. *Khatian* of the suit land described in schedule 'Kha' to the plaint is wrong. It is stated in the plaint *inter alia,* that one, Krishna Mohan Kaibarta alias Kokaram Kaibarta was the C.S. recorded owner of 15.78 acres of land of C.S. *Khatian* no. 241 and 1.58 acres of land of C.S. *Khatian* no. 395. He died leaving behind 3 sons named, Umacharan Kaibarta, Ramcharan Kaibarta and Harendra Nath Kaibarta. 77 decimals of land of C.S. *Khatian* no. 409 belonged to Umacharan Kaibarta, Ramcharan Kaibarta and Harendra Nath Kaibarta. Umacharan Kaibarta died leaving behind Suresh Chandra Das and Fakir Chandra Das. Ramcharan Kaibarta died leaving behind two sons namely, Jogesh Chandra Das and Nagendra Chandra Das. Harendra Nath Kaibarta died leaving behind one son named, Maron Chandra Das. Hence, S.A. *Khatian* no. 305 was recorded in the name of Fakir Chandra Das, Jogesh Chandra Das and Nagendra Chandra Das. Thereafter, Suresh Chandra Das died leaving behind 5 sons named, Gadadhar Chandra Das, Nani Gopal Das, Kalicharan Das (plaintiff no. 11), Thakur Das (plaintiff no. 12) and Makhan Chandra Das (plaintiff no. 13). Thus, Fakir Chandra Das died leaving behind Madhav Chandra Das and Jadab Chandra Das (plaintiff no. 6). Jogesh Chandra Das died leaving behind five sons named, Nepal Chandra Das, Roshraj Chandra Das, Netai Chandra Das, Direndra Chandra Das (plaintiff nos. 7-9) and Birndra Chandra Das. Jogendra Chandra Das died leaving behind three sons namely, Sahadev Chandra Das, Mohesh Chandra Das (plaintiff no. 10) and

Sudeb Chandra Das. Thus the plaintiff nos. 6 to 13 became the owners of 'kha' scheduled land to the plaint by amicable partition. On 22.11.2004, plaintiff nos. 6 to 13 sold 234 decimals of 'Kha' schedule land by sale deed no. 22204 to plaintiff nos. 1 to 5. On the same date, plaintiff nos. 6 to 13 executed a power of attorney being No. 22205 in favour of plaintiff no. 1, Md. Mohosin and plaintiff no. 3, Arif Bepari in respect of land of C.S. *Khatian* nos. 241,409, 395, 97 and 20 and S.A. *Khatian* nos. 305 and 500.

Subsequently, the plaintiffs went to the local *tahashil* office to have the mutation of 'Kha' schedule land in their names on 20.02.2005 where they came to know that the R.S. record was not prepared in their names but in the mother's name of the defendant nos. 1 to 14 in RS. *Khatian* No. 298, 271 and 102 which cast a cloud on the title of the plaintiffs in the suit land. The plaintiffs have title and possession over the suit land described in 'Kha' schedule to the plaint. Plaintiffs after collecting the certified copies of R.S. *Khatian* then instituted the suit on 07.03.2005.

On the contrary, the defendant nos. 5 and 6 contested the suit by filing written statement denying all the material allegations so made in the plaint. Defendant nos. 1 to 4 and 7 to 14 also filed a joint written statement but they ultimately did not contest the suit. Contesting defendant nos. 5 and 6 stated in their written statement that the mother of defendant nos. 1 to 8 entered into an agreement on 20.09.1965 to purchase land from Jogesh Chandra Das, Nagendra Das, Suresh Chandra Das, Fakir Chandra Das, Nitai Chandra Das, Rosraj Das and Madhab Chandra Das, appertaining to C.S. *Khaitan* No. 241, C.S. plot Nos. 720, 718, 493, 986, 417, 465, 1010, 1143, 942, 1978 and 962; C.S. *Khaitan* No. 17, C.S. plot No. 962 and C.S.

Khaitan No. 20; C.S. plot No. 1160 and C.S. *Khaitan* No. 395 C.S. plot No. 1021 measuring 13.70 acres of land of Mouza Bara Ashulia, Savar, Dhaka and handed over the possession of land in favour of the mother of the defendant nos. 1-14 with two houses over the land and the seller received Tk. 24,000/ from the purchaser. Thereafter, Fakir Chandra received Tk. 20,000/- and took time. In the meantime, the mother of the defendant nos. 1-14 namely, Nur Jahan Begum erected a home over there which was reflected in R.S. *Khaitan* No. 298, plot nos. 1430-1431. Thereafter, her name was recorded in R.S. *Khaitan* No. 102, 271 and 298. On 07.09.1991, Nur Jahan Begum died leaving behind 3 sons and 6 daughters who had mutated their names properly in the khatian and paid *khajna (*rent) to the local *tahashil* office. On 02.11.2004 Madhab Chandra Das, Nepal Chandra Das, Birendra Nath Das, Sahadev Das, Subed Das, Godadhar Das and Noni Gopal Das rectified the deed dated 20.09.1965 duly executed by their predecessors in favour of Nur Jahan Begum by way of a Declaration Deed being no. 21492. On 09.11.2004 Nitai Chandra Das, Rasharaj Das, Dhirenndra Chandra Das, Mohesh Chandra Das, Kali Charan Das, Makhan Chandra Das, Thakur Das and Jadav Chandra Das also rectified the deed dated 20.09.1965 duly executed by their predecessors in favour of Nur Jahan Begum by way of another declaration deed being no. 21938 which was executed and registered in favour of the defendants of the suit before the Sub Registrar, Savar, Dhaka.

It is further stated that Kali Charan Das and others had neither executed any Sale Deed No. 22204 dated 22.11.2004 nor handed over 2.34 acres of land in favour of plaintiffs nos. 1 to 5. It is further stated that the

plaintiff nos. 6 to 13 never executed any Power of Attorney being No. 22205 dated 22.11.2004. The said sale deed and Power of Attorney are forged. The plaintiffs have no right, title and possession over the suit land and the defendants have been enjoying title and possession therein. The plaintiff filed the suit on the basis of false statements and hence the same is liable to be dismissed with cost.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 06(six) different issues and the plaintiff examined 02(two) witnesses. In contrast, the defendants examined 04(four) witnesses in support of their case. Apart from that, the plaintiff also produced several documents which were marked as exhibit nos. 1-7 series while the defendants also produced some documents which were marked as exhibit nos. 'Ka-Cha (ক-চ) series'.

The learned Judge of the trial Court after conclusion of the trial and upon considering the materials and evidence on record decreed the suit against defendant nos. 5-6 on contest and *ex parte* against the rest by impugned judgment and decree dated 27.04.2009.

Being aggrieved by and dissatisfied with the said judgment and decree dated 27.04.2009 passed by the learned Joint District Judge, Second Court, Dhaka defendant nos. 5 and 6 as appellants preferred this appeal.

Mr. Swapan Kumar Dutta, along with Mr. Md. Shahajada, the learned counsels appearing for the appellants upon taking us to the impugned judgment and decree at the very outset submits that the same is bad in law and facts because the plaintiffs failed to prove their case as they examined only plaintiff no. 4 as PW1 out of 13 plaintiffs and even plaintiff

nos. 6 to 13 were also not examined who executed the alleged Power of Attorney No. 22205 dated 22.11.2004 in favour of plaintiff nos. 1 and 3 and thus the power of attorney was not proved nor the scribe, Md. Ishhaq Miah, identifier, Shukur Ali, composer, Md. Milan Miah, witness, Salah Uddin of deed no. 22204 dated 22.11.2004 were examined and the same deed was obtained by false personation and by practising fraud.

The learned counsel by referring to exhibit- 'Gha-1' submits that Nurjahan Begum, the predecessor of the appellants paid *khazna* (land development tax) and such *khazna Dakhila* is important evidence of possession and it is admitted that R.S. record was prepared and finally published in the name of the predecessor of the defendant-appellants which is good documentary evidence of possession where the plaintiffs failed to prove possession over the suit land and there is no assertion in the plaint about how the plaintiffs have been enjoying possession of the suit land.

He further submits that the R.S. records Exhibit-5, 5(Ka) and 5(Kha) were prepared in the name of Nurjahan Begum, the predecessor of the appellants and in the R.S. record, there are several persons but the plaintiff did not make them party and thus violated the provision of rule 8 of Order 1 of the Code of Civil Procedure. He further submits that, the plaintiff did not make party of the member of the mosque committee and also Gadadhar Chandra Das and Noni Gopal Das in the suit and the trial Court did not frame issue regarding the defect of parties and failed to discuss the issues separately.

The learned counsel contends that the plaintiff failed to provide or mention the boundaries of R.S. plots and the schedule of the power of attorney is also unspecified.

He further contends that the plaintiffs mutated their names on 04.04.2005 after purchasing the suit land thus it is not true that they did not know about the R.S. record and hence the cause of action described in the plaint is untrue.

The learned counsel by referring to exhibit 7(Ka) also contends that the Title Suit No. 388 of 2005 was filed before the learned Joint District Judge, Second Court, Dhaka by 12 plaintiffs but it was dismissed for non-prosecution on the basis of the prayer though the application was filed by only one plaintiff, that is plaintiff no. 1 and defendant nos. 5 and 6-appellant nos. 1 and 2 were not party in the above-mentioned suit.

In support of his contention, the learned counsel has referred to the decisions passed in the cases of ***Nazimuddin Mondal and another Vs. Kushal Mondal being Dead his heirs: 1(a) Son Md. Nasaruddin @ Nazor Ali and others***, reported in XVI ADC (2019)576, ***Erfan Ali Vs. Joynal Abedin Mia and others***, reported in 35 DLR (AD)(1983)216 and ***Reazuddin and others Vs. Jatindra Kishore Malaker and others,*** reported in 37 DLR(AD)(1985)202, ***M. Delwar Hossain Vs. Mohammad Ali and others***, reported in (2021) 21 ALR(AD)134 and ***Kabir Ahmed being dead his heirs 1(a) Mahmuda Khatun being dead her heirs: Noor Mohammad and others Vs. Mahohar Ali and others***, reported in XX ADC(2023)58. With these legal submissions and relying on these decisions the learned

counsel finally prays for allowing the appeal by setting aside the impugned judgment and decree.

Mr. Md. Alamgir Mostafizur Rahman, along with Ms. Saima Rahman, the learned Advocates appearing for the appellant nos. 3 and 4 by adopting submissions made by Mr. Swapan Kumar Dutta, contends that the proforma-respondent nos. 15 and 19 of the appeal being defendant nos. 2 and 8 in Title Suit No. 64 of 2005 were transposed by this Court as appellant nos. 3 and 4 by order dated 07.11.2022. The defendant nos. 2 and 8 filed written statement before the trial Court and they have been enjoying possession over the suit land since 1965 and the plaintiffs failed to prove their possession over the suit land.

In support of his contention, the learned counsel has also referred to decisions passed in the cases of ***Tayeb Ali Vs. Abdul Khaleque and others***, reported in 43 DLR(AD)(1991)87 and ***Delipjan being dead her heirs: Fazal Haque and other Vs. Shahed Badsha and others,*** reported in 66 DLR(AD)(2014)176.

Per contra, Mr. Md. Mainul Islam, the learned counsel appearing for respondent nos. 1, 3 and 6-13 vehemently opposes the contention taken by the learned counsel for the appellant and submits that, the defendants as plaintiffs earlier instituted Title Suit No. 388 of 2005 before the learned Joint District Judge, Second Court, Dhaka against the plaintiffs seeking declaration that the sale deed no. 22204 dated 22.11.2004 and Power of Attorney No. 22205 dated 22.11.2004 are forged, fraudulent, void and not binding upon the defendants and subsequently, the plaintiff of the above-mentioned suit prayed for non-prosecution of the suit. Upon hearing the

plaintiff, the learned Joint District Judge, Second Court, Dhaka dismissed the suit for non-prosecution on 15.05.2008. In the above-mentioned suit, defendant no. 2, Emdadul Haque was plaintiff no. 2 and defendant no. 8 Shahnaj Begum was plaintiff no. 6. So, defendant nos. 2 and 8 that is the appellant nos. 3 and 4 who have no right to contest the suit or this instant appeal.

The learned counsel by referring to paragraph no. 22(h) to the written statement contends that the defendant nos. 5 and 6 are the owners in $\frac{1}{6}$ th share only in the suit land.

He further contends that, there is no need to provide specification of property in the plaint rather specification of land should be described in the application for injunction. In support of his contention, he referred to the decision passed in the case of ***Sufala Rani and another Vs. Balai Mondal being dead his heirs: Mahesh Mondal and others***, reported in 2019(2)16 ALR(AD)85.

With those submissions, the learned counsel finally prays for sending back the suit on remand to the trial Court to get an opportunity to prove his case by adducing further evidence.

We have considered the submission so advanced by the learned counsel for the appellant and that of the respondents at length, perused the memorandum of appeal, including the impugned judgment and decree and all the documents appended in the paper book.

On going through the plaint with regard to possession of the suit land, we find that the plaintiffs only asserted in paragraph 10 to the plaint that-

"তাহাদের পূর্ববর্তীগণক্রমে নালিশী সম্পত্তিতে বাদীগণ মালিক স্বত্ববান ভোগ দখলকার নিয়ত ছিলেন ও আছেন।" In this statement it has not been described that how the plaintiffs have been in possession over the suit land. Furthermore, PW1, DM Akbar Hossain also failed to describe how they possessed the suit land. Since the plaint does not disclose any material fact showing the mode and manner of possession of the plaintiffs in the suit land, the instant suit is thus barred under the provision of Order 6 Rule 2 of the Code of Civil Procedure. The evidence on possession as adduced by the plaintiffs is not at all satisfactory as in cross-examination, PW1 stated that- "নালিশী দাগের মধ্যে কে কোথায় কিভাবে (১৯.৭৬ একর) দখলে আছে তা বলতে পারব না।"

On the other hand, DW1, Md. Mozibur Rahman stated that "হিন্দু মালিকরা চলে যায়। নুরজাহান বেগম ভোগ দখল করত।... আমরা ভোগ দখলে আছি।"

DW3, Md. Badiul Alam in his evidence also stated that- "নুরজাহান বেগম জামে মসজিদকে দান করে। মসজিদ বর্তমানে পাকা। মসজিদ ১ তলা। ... মসজিদের পশ্চিমে নুরজাহানের বাড়ি। ঐ স্থানে পাকা সেমি পাকা ৪টি ঘর ও ১ টা দো-চলা বিল্ডিং আছে। ঐ ঘরে নুরজাহানের ছেলে মেয়ের কাছে আমি মাঝে মাঝে মজিবুর সাহেবের সাথে যাই।"

In cross-examination DW3 stated that- "নুরজাহান বেগম এর বাড়ীর দাগ নম্বর ১৪৩৩। মসজিদ ও বাড়ীর দাগ এক। বাড়ীর একই দাগে। বাড়ীর উত্তরে রাস্তা, পশ্চিমে ও দক্ষিণে নুরজাহান বেগম এর নিজস্ব জমি, পূর্বে দান করা মসজিদ ও নুরজাহান বেগম এর নিজস্ব কবর স্থান।"

He further stated that- "নুরজাহান বেগম ৭২০ দাগের ১ বিঘা জমি আশুলিয়া জামে মসজিদের নামে ওয়াকফ করে দেয়। এখানে তখন পাকা মসজিদ আছে। মসজিদের পশ্চিমে বাড়ী। নুরজাহান বেগম মারা যায় ও তার স্বামী ও মারা যায়। মসজিদের পশ্চিমে তাদের কবর।"

In cross-examination PW1 also admitted that- "নালিশী ৭২০ দাগে ১টি মসজিদ আছে। He kept on stating that, ৩৪৩৩ দাগ মসজিদ হিসাবে নুরজাহান বেগমের নামে

মুসলমান মাদ্রাসার সাথে লিখা আছে। নালিশী আর.এস রেকর্ডে নুরজাহান বেগমের নামে দখলীয় কলামে উল্লেখ আছে।”

DW1 stated in cross-examination that- “১৯৭৫ ইং সালে শ্বাশুরী মসজিদকে ওয়াকফ করে। এর আগে নালিশী জমিতে কোন মসজিদ ছিল না।”

In examination-in-chief, DW2, Md. Rafiqul Islam stated that- “ঐ মসজিদের আশে পাশে কনষ্ট্রাকশন এর কাজ করেছি। আমি মসজিদের কাজ কর্ম দেখাশুনা করি। নুরজাহান বেগম শুনেছি মসজিদকে দান করে। ... নুরজাহান বেগম এর বাড়ী মসজিদের পশ্চিমে। ঐ বাড়িতে আমি যাই। ... মসজিদ ১ বিঘা জমির উপর। মসজিদের ১ বিঘা জমির পাশে মসজিদ মার্কেট তৈরী হচ্ছে।”

Since the plaintiffs have not been found in possession of the suit property they cannot claim title over the same and that proposition has already been settled in the decision passed in the case of ***Madaris Ali and others Vs. Biswamber Das being dead his heirs*** reported in 46 DLR(1994)34.

Moreover, it appears from exhibit-‘Ga’ that Nurjahan Begum (mother of the defendant nos. 1 to 8) created a *waqf* by registered deed no. 18356 dated 29.08.1975 dedicating 01 Bigha land of *Khatian* no. 305, plot no. 720 of Bara Ashulia, Savar, Dhaka for construction of a mosque. Later on, 0.26 acres out of 13.33 acres of R.S. khatian 298 exhibits- 5ka were recorded in the name of a mosque and the remaining land was recorded in the name of Fazar Ali Bepari and Nurjahan Begum and others. R.S. *Khatian* no. 271 (exhibit-5) was recorded in the name of Nur Jahan Begum and R.S. *Khatian* no. 102 {exhibit- 5(Kha)} was recorded in the names of Ijjat Ali Dewan and Nurjahan Begum and others. It appears from exhibit-‘Gha’ that 13.03 acres of land of *Khatian* nos. 305, 500, 26, 317 and 29,

plot nos. 720, 718, 942, 1143, 483, 984, 465, 990, 967, 1160, 717 and 1159 were mutated on 15.08.1985 in the name of Nur Jahan Begum. Exhibit-Gha (ঘ) series shows that the rent of suit land was paid by Nurjahan Begum. The above-mentioned documents are evidence of possession and title of the defendants. Thus we find that the plaintiffs could not prove possession in the suit land to the satisfaction of the Court.

Upon perusal of the impugned judgment and decree, it appears that the trial Court framed as many as 6(six) different issues following the provisions of Order XIV of the Code of Civil Procedure which are as follows:

১) অত্র মামলা অত্রাকারে ও প্রকারে চলিতে পারে কিনা?

২) অত্র মামলা তামাদি দোষে অচল কি না?

৩) নালিশী ভূমিতে বাদীগণের স্বত্ব-দখল বিদ্যমান আছে কি না?

৪) আরজীর ক-তপসীলের অর্ন্তগত খ-তপসীল বর্ণিত ভূমিতে বাদীর স্বত্ব, স্বার্থ ও দখল বিদ্যমান আছে কি না?

৫) আরজীর তপসীল বর্ণিত আর,এস রেকর্ড ভ্রমাত্নক ভাবে বিবাদীগণের পূর্ববর্তীর নামে রেকর্ড হইয়াছে কি না?

৬) বাদী প্রার্থীত মতে ডিক্রী পাইতে পারে কি না?

It transpires from the impugned judgment and decree that the trial Court did not state its finding and decision by giving independent reason upon each separate issue but discussed them together going beyond the provision provided in Order 20, Rule 5 of the Code of Civil Procedure which speaks as follows:

> "In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue."

Rule 5 imposes a mandatory obligation upon the Court to give findings and decisions on each issue as framed and the Court must provide reasons for each finding. It is settled that the trial Court must decide all material issues. It is also settled that the object of Rule 5 of Order 20 of the Code of Civil Procedure is to keep the issues separate and distinct and render decisions on each separately. In this regard reliance may be placed in the decision passed in ***Kalahasti Veeramma Vs. Prattipati Lakshmayya and Others***, reported in AIR 1948 Mad 488.

It appears from deed no. 22204 and Power of Attorney No. 22205 both dated 22.11.2004 that there is no boundary in the schedule. Even the plaintiffs did not mention boundaries in respect of R.S. plots in 'Kha' schedule to the plaint. Since they gave boundaries of C.S. plots, so they also should mention boundaries in respect of R.S. plots. In this regard, Rule 3 of Order VII of the Code of Civil Procedure provides as under:-

> "Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers and where the area is mentioned, such description shall further state the area according to the notation used in the record of

> settlement or survey, with or without, at the option of the party, the same area in terms of the local measurement."

In ***Noor Mohammad Khan and others Vs. Government of the People's Republic of Bangladesh and others,*** reported in 42 DLR (1990) 434, this Court held:

> "In the schedule of the plaint, the plaintiffs have not given any boundary or other specification of the suit land to identify the same and thus the suit land is vague and unspecified portion of the suit plot. Under the provision of Order 7, rule 3 of the Code of Civil Procedure the plaintiffs shall give clear description of the suit land in the plaint sufficient to identify the same. We are of the view that the plaintiffs having failed to comply with the mandatory requirement of law in giving clear description or boundary sufficient to identify the suit land the plaintiffs are not entitled to any decree for such defect in the plaint even if they can succeed in proving their title to the suit land as no court can pass decree for unspecified land."

The above-mentioned view was affirmed by the decision passed in the case of ***Hedayetullah Vs Foyjun Nessa Begum,*** reported in 18 BLC (AD) (2013) 139.

So, the submission placed by the learned counsel for the respondents to that effect does not stand at all.

The submission made by Mr. Md. Mainul Islam for sending back the suit on remand to the trial Court is not acceptable. Because, it is well settled that the remand order should not be made as a matter of course. When evidence on all material points is there on record, the Court is not justified sending the case back to the Court below for reconsidering the matter. Unnecessary order of remand creates additional expenditure and tends to delay the administration of justice. In this regard in ***Attor Mia and another Vs. Mst. Mahmuda Khatun Chowdhury***, reported in 43 DLR(AD)(1991) 78 the Appellant Division held:

> "Unnecessary and totally inexplicable order of remand entails hardship, agony of a fresh hearing, delay additional expenditure..."

The plaintiffs filed the suit for declaration of title and a further declaration that R.S. *Khatian* of the suit land described in the schedule 'Kha' to the plaint is wrong. It appears from R.S. *Khatian* no. 298 {Exhibit- 5(Ka)} and R.S. *Khatian* no. 102 {Exhibit- 5(Kha)} that the records were prepared in the name of Nurjahan Begum along with other persons but the plaintiff failed to make those persons party in the suit. Moreover, it appears from *Khatian* no. 298 {Exhibit- 4(Ka)} that there is a mosque in plot no. 1433 and hence mosque is a necessary party to the suit but the committee of the mosque was not made party in the suit so the suit suffers from defect of parties.

Given the above facts, circumstances of the case and discussion and observation made hereinabove, we are of the view that the learned Judge of the trial Court decreed the suit without taking into consideration of the materials and evidence on record in its proper perspective.

Overall, we find no substance in the impugned judgment and decree which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to costs.

The judgment and decree dated 27.04.2009 passed by the learned Joint District Judge, Second Court, Dhaka in Title Suit No. 64 of 2005 is thus set aside.

Let a copy of this judgment along with the lower Court records be transmitted to the Court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Md. Ariful Islam Khan
Bench Officer