Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 3160 of 2023
Amela Akhter Begum
.....petitioner
-Versus-
Md. Mosleh Uddina and others
.....opposite parties

Mr. Minhazul Haque Chowdhury with
Mr. Adnan Sarker and
Mr. Laxman Biswas Advocates
.....for the petitioner

Mr. Khondaker Nazmul Hasan with
Mr. Majedul Hasan Miajee, Advocates
.....for the opposite parties

Heard on: 23.10.2025, 28.10.2025, 04.11.2025, 26.11.2025 and 27.11.2025

Judgment on: 15.12.2025

In the instant revision Rule was issued on 16.07.2023 calling upon the opposite parties 1-5 to show cause as to why the impugned judgment and decree dated 12.04.2023 passed by the learned Additional District Judge, 1st Court, Narsingdi in Title Appeal No. 56 of 2013 disallowing the appeal with costs thereby affirming the judgment and decree dated 26.02.2013 passed by the learned Senior Assistant Judge, Narsingdi Sadar, Narsingdi in Title Suit No. 265 of 2010 decreeing the suit should not be set aside and/or such other of

further order or orders passed as to this Court may seem fit and proper.

Opposite parties 1-5 as plaintiff filed Title Suit Number 265 of 2010 in the Court of Senior Assistant Judge, Narsingdi Sadar, Narsingdi on 00.06.2010 for declaration of title and recovery of possession in respect of Ka schedule land and for cancellation of kabala deed number 2798 dated 25.03.1999 as described in schedule Kha to the plaint.

The case of the plaintiff in short is that one Toribullah was the owner in possession in 26 and 31 decimals of land of C.S. khatian 115 corresponding to C.S. plots 251 and 252 respectively. Thereafter said Toribullah died leaving behind wife named Ayatonnessa and three sons namely Maksud Ali, Ayat Ali and Abdul Jabbar and as per the Muslim Law wife of Torib Ullah inherited 19 decimals and each son inherited 41 decimals of land. Thereafter Ayat Ali transferred 15 decimals of land in favour of his mother and two brothers by registered deed number 2834 dated 14.07.1934 and delivered possession thereof. After the aforesaid transfer Ayatonnessa became owner of 26.50 decimals of land and said Maksud Ali and Abdul Jabbar became owners of 44.75 decimals each by way of purchase and inheritance. Later on Ayatonnessa sold

06(six) decimals of land from the suit plots to her three sons by registered deed number 3145 dated 24.11.1936 and delivered possession. Subsequently State Acquisition Khatian Number 209 was prepared in their names. During R.S. operation C.S. plots 251 and 252 were converted to R.S. plots 1610 and 1611. Thereafter said Abdul Jabbar being owner of 57 decimals of land in the aforesaid suit plots sold 03 decimals of land to Md. Sirajul Islam with specific boundary from the middle portion of the said plots by a registered kabala deed 6318 dated 30.04.1970 and delivered possession thereof. Subsequently Sirajul Islam sold the said land to Shahid Mia and Rafiq Mia by four separate registered kabalas 3031, 3011, 3012 and 3013 all dated 24.03.1981 with specific boundary and delivered possession thereof. Accordingly they maintained possession of the suit land upon clear demarcation and construction of a boundary wall and those purchasers being owners of 3 decimals of land sold 1.50 decimals to the plaintiff 1 by registered kabala 3975 dated 24.03.1985. Thereafter Shahid Mia being in enjoyment of the rest 1.50 decimals of land sold the same to plaintiffs 2-4 by another registered kabala 3976 dated 24.03.1985 and handed over possession to them. Since the aforesaid purchase the plaintiffs

are in possession of the same upon constructing a house and also demarcated the said land with a boundary wall. They opened mutation khatian of the said land by Mutation Case 1022 of 1998-99 and paid rent. The plaintiffs also rented the suit land to one Monju Mia for a term of five years. The defendant 1 showing her as transferee presented a false and frivolous deed 2798 dated 25.03.1999 in respect of 2.25 decimals of land owned by the plaintiffs showing plaintiff 1 as the executant of the said deed. Thereafter plaintiff 1being aware of the aforesaid frivolous deed filed a G.R. Case Number 40(4) of 1999 in the Sadar Police Station, Narsingdi against defendant 1. Pursuant to the criminal case filed by plaintiff 1 the signature of plaintiff 1 was examined by an expert and a report was submitted to the effect that the signature in the said deed is not in fact his signature and defendant 1 by filing an affidavit in the said criminal case denied the existence of such deed and on the basis of said affidavit defendant 1 managed to secure acquittal from the aforesaid criminal charge. Subsequently defendant 1 filed Title Suit 195 of 1999 claiming the suit land on the basis of the registered deed 2798 dated 25.03.1999 which was dismissed and an appeal was preferred by the defendant but

was withdrawn subsequently. Defendant 1 again on the basis of the same deed claimed ownership of the suit land on 29.05.2009 and dispossessed the plaintiffs from the suit land on 25.11.2009. Plaintiffs requested defendant 1 on 25.11.2009 to restore the possession of the suit land in their favour but were refused. After that the plaintiffs having collected the certified copy of the disputed deed obtained definite knowledge about the conspiracy of defendant 1 and filed the instant suit.

The petitioner as defendant 1 appeared and contested the suit by filing a written statement denying the material averments made in the plaint contending *inter alia* that Toribulla was owner in possession in C.S. khatian 115 in respect of 26 and 31 decimals of land corresponding to C.S. plots 251 and 252 respectively. Toribulla died leaving behind wife Ayatonnessa and three sons named Maksud Ali, Ayat Ali and Abdul Jabbar. Said Ayatonnessa sold 07 decimals of land to Amela Begum who is the mother of defendant 3 of the instant suit. After the death of said Toribullah each son inherited 7.75 decimals of land in C.S. plot 251 and 9 decimals of land in C.S. plot 252. Said Ayat Ali sold 43.25 decimals of land in favour of his brother Maksud Ali by

registered kabala 1602 dated 17.04.1936. While Maksud Ali was owner in possession in 89.50 decimals of land in the said khatian by way of purchase and inheritance died leaving behind one wife Sukkuri Bibi and one son named Giyas Uddin and three daughters named Sajeda, Momena and Amela. Abdul Hakim who is the father of defendant 2 also purchased 7.50 decimals of land from said Sukkuri Bibi and even though S.A. khatian 209 contains the name of the heirs of Maksud Ali but the name of defendant 1 was wrongly omitted from the said khatian. Thereafter Shahjahan and Golrehan purchased 12 decimals of land from the aforesaid C.S. plot from Giyas Uddin by registered kabala 2408 dated 09.03.1966 and got possession thereof. Later on said Giyas Uddin along with his uncle Abdul Jabbar sold 7.50 decimals of land to Shahjahan and Golrehan by another registered deed 7925 dated 23.12.1953 and delivered possession thereof. After death of the said Giyas Uddin 7.25 decimals of land was inherited by defendants 6-8. Thereafter said Abdul Jabbar sold 3 decimals of land from C.S. plot 251 and 1 decimals of land from C.S. plot 252 to defendant 1 by two separate registered deeds 12498 and 305 on 20.11.1984 and 05.02.1989 respectively and delivered possession of the same. Abdul Jabbar transferred

13.75 decimals of land in favour of his mother along with Shahjahan and defendant 1 by another registered deed 1953. Defendant 1 further purchased 8.50 decimals of land from Romizuddin by a registered deed 12150 dated 27.11.1976. The plaintiffs have no right, title and interest over the suit land and the defendant 1 is in enjoyment in possession of 06 decimals of land by inheritance and 12.50 decimals of land by purchase which in total stand 18.50 decimals for a period of more than 30 years upon payment of rent and taxes to the Government. Plaintiffs have filed the instant suit only for harassment and the same being false is liable to dismissed with costs.

Trial Court framed as many as 4 issues and in course of trial plaintiffs examined 2 witnesses and defendants examined 4 witnesses and both the parties adduced documentary evidence in order to prove their respective cases.

The trial Court upon perusal of the pleading and hearing the parties and considering both oral and documentary evidence decreed the suit by judgment and decree dated 26.02.2013 and directed defendant 1 to deliver possession of the suit land within 60 days to the plaintiff and in default the plaintiff might get possession through the Court. As against the same defendant 1 preferred Title Appeal 56 of 2013 before

the District Judge, Narsingdi which on transfer was heard by the Additional District Judge, 1st Court, Narsingdi who heard the appeal and was pleased to dismiss the same by judgment and decree dated 12.04.2023 with the cost of taka 10 (ten) thousand.

Being aggrieved by and dissatisfied with the judgment and decree passed by both the Courts below defendant 1 came before this Court with this revision and obtained Rule on 16.07.2023.

Learned Advocate Mr. Minhazul Haque Chowdhury along with Mr. Adnan Sarker and Mr. Laxman Biswas appearing on behalf of the defendant-petitioners submits that the Court of appeal below being a final Court of fact without considering the materials on record and upon misreading and non-consideration of evidence adduced by the parties unlawfully disallowed the appeal with cost thus the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice. He then submits that the trial Court wrongly relied upon Exhibit-9 which is an affidavit sworn before the notary public in respect of the Kha schedule document but failed to appreciate that defendant 1 claimed ownership over the suit land by way of purchase through other

title documents and also by inheritance thus the finding on title and possession of defendant 1 as found by the trial Court is absolutely wrong and the Court thus committed error of law occasioning failure of justice. He then submits that the trial Court failed to appreciate that defendant 1 has no claim in respect of the suit land rather she claims separate piece of land and the finding arrived at by the Courts below being not supported by any investigation report is perverse and misconceived and liable to be set aside outright. He then submits that the Courts below without paying proper attention to the evidence on record wrongly decreed the suit but failed to appreciate that without any investigation report this suit cannot be decreed because the suit land is not identified by sufficient evidence thus the Courts below committed error of law occasioning failure of justice. He further submits that the Courts below also failed to consider that the possession of the defendant being based upon oral and series of documentary evidence is proved in accordance with law thus the judgment and decree passed by the Courts below being wrong is liable to be set aside. He then very candidly submits that the plaintiffs filed the instant suit in 2010 which is long after more than 11 years elapsed from the date of the impugned document

and the prayer for declaration of title as well as cancellation of documents as governed by Articles 120 and 91 of the Limitation Act respectively are apparently barred by law of limitation since the suit was filed neither within 06(six) years nor 03 (three) years and he also submits that Exhibit-8 shows that the plaintiffs had knowledge about the deed from 1999 and were also dispossessed in the same year but the suit was filed on false assertions and both the Courts below did not consider these material aspects of the case touching the merit of the case thus the Courts below committed error of law resulting in an error in such decree occasioning failure of justice. He support of his submission he refers to the cases of ANMW Nobi and another Vs. Md. Bolai Roy and others reported in 15 BLT(AD) 27 and Hamida Begum Vs. Fayez Ahmed reported in 77 DLR(HD) 108. He then refers to the schedule of the plaint and very strongly submits that the present suit is not maintainable without partition because the plaintiffs and defendant are co-sharers in the suit holding but the Courts below did not advert to this material aspect of the case thus the Courts below committed error of law occasioning failure of justice and in support of his submission he refers to the case of Sabiha Khanam Vs. Jaitun Bibi and

others reported in 3 BLC(AD) 175 and Jahangir Alam Vs. Shabdir Ahmed and others reported in 20 BLC(AD) 75. He also submits that the schedule as contained in Exhibit-6 series do not match with the Ka schedule land of the plaint and since the suit land is not specifically identified this suit is definitely barred under Order 7 Rule 3 of the Code of Civil Procedure. He then referring to the application for sending the suit back on remand filed on 15.07.2025 makes out an alternative contention that without local inspection or investigation the suit land cannot be specified and since vial issue has not been taken into consideration the remand is necessary.

On the other hand learned Advocate Mr. Khondaker Nazmul Hasan along with Mr. Majedul Hasan Miajee appearing on behalf of the plaintiff-opposite parties submits that both the Courts below upon proper perusal of the pleadings and evidence rightly decreed the suit which is immune from interference by this Court in this revision. He submits that the case of possession followed by dispossession under Article 142 of the Limitation Act has been properly proved by the plaintiffs by adducing sufficient and proper evidence and the Courts below upon proper appreciation of evidence correctly decreed the suit and since the judgment and

decree does not suffer any misreading or non-consideration of material evidence the same cannot be interfered with by this Court in revision and the contention made by the petitioner has got no basis. He refers to the depositions and exhibits filed by the plaintiffs and submits that PW 1 supported by PW 2 led evidence in accordance with the averments made in the plaint and Exhibits-6 and 3 series clearly show that plaintiffs have got title in the suit land. He also refers to Exhibit-10 and submits that earlier defendant 1 filed Title Suit 195 of 1999 against the present plaintiff in respect of the same land which was dismissed and the subsequent appeal filed at the instance defendant 1 was withdrawn and this fact has been clearly admitted by DW 1 in her deposition thus it is apparent from record that plaintiffs have been able to prove their title in the suit land. He continues that the fact of filing and dismissal of earlier Title Suit 195 of 1999 and withdrawal of the appeal is admitted by DW 1 herself and as such since she has no title she cannot maintain her forcible possession in the suit land by dispossessing the plaintiffs and the Courts below correctly found that plaintiffs have proved their title and the case of possession followed by dispossession from the suit land. He then refers to Exhibits-4 and 5 series along with the schedule

of the plaint and submits that plaintiffs adduced the original document of their title which are backed up by all previous original documents with clear specification showing specific possession in the suit land and the same has been duly considered by the Courts below and this concurrent finding being based upon law and fact cannot be disturbed in revision. He lastly submits that plaintiffs produced series of documents in evidence and the statement of PW 2 who is the son of Jabbar stating plaintiffs' previous possession followed by dispossession prove that the suit was correctly decreed by both the Courts below and the findings of fact being based upon evidence cannot be disturbed by this Court in revision following the provisions laid down in Section 115(1) of the Code of Civil Procedure. He finally submits that the lower appellate Court being the last Court of fact properly discussed the evidence on record and passed its independent finding elaborately and since the provisions as contemplated in Order 41 Rule 31 of the Code of Civil Procedure has been properly maintained by the appellate Court and the judgment and decree passed by the Courts below being proper and just are immune from interference by this Court.

Heard the learned Advocates for both sides and perused the materials on record and also gone through the impugned judgments passed by the courts below.

It is admitted by both the parties that the previous owner of the plaintiffs named Abdul Jabbar and the predecessor of defendant named Maksud Ali are full brothers. R.S. khatian number 1521 Exhibit-Ka(1) was finally published in the names of both brothers. In Exhibit-Ka(1) the share measuring 10 anna 13 gonda 1 kora 1 kranti was recorded in the name of Jabbar. From the said recorded share of Jabbar the plaintiffs as successive purchasers purchased the suit land by two registered kabala deeds dated 24.03.1985 Exhibit-6 series and entered into possession thereof upon due demarcation. In support of their case the plaintiffs produced the original copies of all prior kabala deeds of purchase since 1970 which are marked as Exhibit-4 and Exhbit-5 series comprising a total of five deeds. The statements made in the plaint as well as the deposition of PW 1 read with Exhibit-4 clearly prove that in the year 1970 Jabbar sold 3 decimals of land to Sirajul Islam with specific and definite boundaries. From Exhibit-5 series it appears that in the year 1981 Sirajul maintaining the same previously specified boundaries sold the said land to Rafiq and

Shahid Mia by 4 registered kabalas. Subsequently in the year 1985 plaintiffs purchased the very same demarcated land with identical boundaries from the said purchasers by kabalas marked as Exhibit-6 series and took possession thereof. It is evident that the boundaries described in the plaint are fully identical with the boundaries mentioned in the deeds relied upon by the plaintiffs and the relief sought by the plaintiffs relates strictly to the said specifically demarcated land. From Exhibit-3 series and Exhibit-11 and Exhibi-12 series it is found that the plaintiffs mutated their names in respect of the suit land through Mutation and Separation Case Number 1022 of 1998-99 on 23.02.1999. It also appears that the plaintiffs have been possessing the suit land by paying rent along with other utility bills and a separate holding number 254/1 has been duly prepared in their names. Thus the continuous chain of documents conclusively embeds the title of the plaintiffs in the suit land and further shows that the plaintiffs remained in possession thereof until their dispossession on 25.11.2009.

In paragraph 5 of the plaint the plaintiffs have specifically stated that defendant 1 by falsely posing as the transferee and by fraudulently showing plaintiff 1 as the executant created a forged and illegal deed dated 25.03.1999

which has been marked as Exhibit-7. Upon coming to know of the said forged deed plaintiff 1 filed criminal case impleading the alleged transferee along with attesting witnesses of the said deed as accused under Sections 419, 420, 424, 467 and 468 of the Penal Code and the case was registered as Case Number 40(4) of 1999. It is pertinent to note that none of the aforesaid sections of the Penal Code relates to or involves the offence of criminal trespass. Therefore it is evident that the plaintiffs did not file the said criminal case in the year 1999 alleging any illegal entry or trespass by the defendant upon the suit land rather the criminal proceeding was initiated solely on the allegation of forgery and fabrication of Exhibit-7. Upon completion of investigation police report was submitted on 08.08.2001 Exhibit-8. A plain reading of Exhibit-8 reveals that plaintiff 1 did not execute Exhibit-7 as the thumb impression appearing on the said deed does not tally with or correspond to the admitted thumb impression of the plaintiff. The investigating agency found the said deed to be forged and fabricated.

After submission of the police report for the trial of defendant 1 and in an attempt to obtain relief from the said criminal proceeding defendant 1 executed an affidavit on

31.05.2006 Exhibit-9 before notary public wherein she categorically stated that she neither claimed nor had ever claimed any right or title or interest in the suit land on the basis of Exhibit-7 nor would she do so in future and she had no objection if the said deed was cancelled. The judgment dated 17.07.2008 passed in the said criminal case Exhibit-Gha shows that the criminal Court found that plaintiffs failed to prove the charges brought against her under Sections 420, 467 and 468 of the Penal Code beyond reasonable doubt and it is because Court exempted her from the criminal liability after the admission of the above mentioned facts before the Court.

It is significant to notice that nowhere in Exhibit-Gha it is stated that plaintiffs were in possession of the suit land and were subsequently dispossessed therefrom by the defendants. Although the issues of possession and dispossession were incidentally and unnecessarily referred to in Exhibit-8 no such allegation was ever made by the plaintiffs in the said criminal case instituted under the aforesaid sections of the Penal Code which do not relate to criminal trespass. In the present case plaintiffs made out a definite case that they were dispossessed on 25.11.2009 and the statement in Exhibit-8 on dispossession is merely the statement of the investigating officer and not that

of the plaintiffs as claimed either in the criminal case or in the present case.

In paragraph 6 of the plaint the plaintiffs have clearly and categorically stated that on 25.11.2009 at about 5 P.M. they were forcibly dispossessed from the suit land. It is also stated that on 29.05.2010 when plaintiffs demanded restoration of possession on last occasion the defendant refused such demand and asserted title on the basis of the deed mentioned in schedule-Kha. Thereafter on 06.06.2010 the plaintiffs upon obtaining the certified copy of the said deed filed the present suit. From Exhibit-7 it evidently appears that the certified copy of the said deed was also obtained on the same date which fully corresponds with the date of accrual of the cause of action as stated in the plaint. Moreover defendant 1 while examined as DW 1 has explicitly stated during cross-examination that she has no objection if Exhibit-7 is cancelled by an order of the Court. From the entire sequence of events it is apparent that defendant with an oblique motive has been unlawfully harassing the plaintiffs for a considerable period with the intent to wrongfully grab and appropriate the suit land.

Defendant 1 claims that she has title and possession in 8.5 decimals of land in the suit plots including 4 decimals of land by purchase from the common vendor Jabbar and accordingly produced the purchase deeds Exhibits Thha and Da. Exhibits Ka series and Kha series also show that she is the R.S. recorded tenant and has been paying rent in respect of 8.5 decimals of land. As discussed above defendant 1 has not claimed any interest in the suit land by dint of Exhibit-7 and thus it is clear that the 8.5 decimals of land belonging to defendant 1 does not in any way attract the suit land or affect the interest of the plaintiffs over the suit land.

It has already been discussed and found that plaintiffs have title and possession in the suit land and the defendant has title and possession in respect of her own share measuring eight and a half decimals in R.S. plot numbers 1610 and 1611. PW 2 who is the son of Jabbar corroborated PW 1 and stated in his deposition that on 25.11.2009 Wednesday plaintiffs were forcibly dispossessed from the suit land. It is a matter of great legal significance that no cross-examination whatsoever was conducted by the defendant challenging or disputing this material and vital statement of PW 2. Such non-denial amounts to admission and in view of Section 58 of the

Evidence Act a strong presumption arises in favour of the truth of the said unchallenged statement. On the other hand from a careful reading of the deposition of DW 1 it does not appear to have disclosed any specific denial by her against the case of dispossession of the plaintiffs.

Plaintiffs have further asserted that defendant earlier filed Title Suit 195 of 1999 claiming title over the disputed land on the basis of the same disputed deed Exhibit-7. Upon dismissal of the said suit defendant preferred Title Appeal Number 127 of 2004. During pendency of the appeal defendant forcibly dispossessed the plaintiffs from the suit land and subsequently withdrew the appeal on 24.02.2010 as evident from Exhibit-10. DW 1 during her cross-examination admitted that she filed Title Suit 195 of 1999 against plaintiff 1 with regard to the suit land which was dismissed and the appeal against such dismissal was withdrawn by her. Thus from a combined reading of the statement of plaint and admission made by DW 1 along with Exhibit-10 it becomes evident that defendant previously made repeated attempts both before civil and criminal Courts to wrongfully appropriate the suit land but failed in all such attempts.

The RS record 3122 Exhibit-Ka approves that the said khatian was prepared in the name of the defendant showing an area of 7.50 decimals of land. From the schedule of the plaint and Exhibit-3 it is clearly established that plaintiffs were dispossessed from 3 decimals of land out of RS plot 1610. DW 1 has admitted that she is in possession of a total area of 16.75 decimals under the suit khatian. This admission clearly indicates that the defendant is in possession of land in excess of her lawful share of eight and a half decimals.

The only reasonable inference from the above facts is that although the defendant formally denied Exhibit-7 but she nevertheless relied upon the foundation of the said forged deed at a later point of time and in the year 2009 wrongfully denied the title of the plaintiffs and forcibly dispossessed them from the suit land.

Therefore upon a comprehensive consideration of the evidence on record it explicitly appears that plaintiffs have successfully proved their title and also case of possession followed by dispossession in the suit land and also their case of cancellation of Exhibit-7 which cannot be left outstanding.

Learned Advocate for the petitioner Mr. Chowdhury with much ingenuity referred to Exhibit-8 and Exhibit-Gha

and submitted that since the plaintiffs had instituted a criminal case in the year 1999 challenging Exhibit-7 and since the police report directly or incidentally mentioned the issue of possession and dispossession in the year 1999 the present suit filed in 2010 is barred by limitation. He further argued that in the present suit the reliefs of declaration of title and cancellation of deed are substantive reliefs and as such both are barred under Article 120 and Article 91 of the Limitation Act. On that ground he contended that no decree could legally be passed in the present suit. He did not put forward any reply on the question as to why the relief of recovery of possession could not be the substantive relief. He also contended that the trial Court committed an error of law by delivering the impugned judgment without framing any specific issue on limitation and without recording and finding thereon rendering the judgment unsustainable in the eye of law. In support of his submissions Mr. Chowdhury relied upon the cases of ANMW Nobi and another Vs. Md. Bolai Roy and others reported in 15 BLT(AD) 27 and Hamida Begum Vs. Fayez Ahmed reported in 77 DLR(HD) 108. Exhibit-8 and Exhibit-Gha along with the pleadings and other relevant evidence on record have already been discussed in detail hereinbefore. Upon such

consideration this Court has clearly arrived at the finding that the plaintiffs filed the instant suit well within the prescribed period of limitation reckoning from the date of accrual of the cause of action as pleaded in the plaint. Therefore even if no specific issue on limitation was framed no prejudice has been caused to the defendant in the trial of the suit. Moreover had such an issue been framed the result would have remained the same in view of the facts and evidence on record. It also calls for attention that defendant did not raise any question in respect of raising such issue in appeal. Therefore the principles laid down in 15 BLT and 77 DLR cases are not applicable considering the facts and circumstances of the present case which are wholly distinct and materially different.

Mr. Chowdhury further submitted that since the present suit is filed against co-sharer the same is not maintainable in its present form without seeking partition of the joint property. In support of this contention he referred to the cases of Sabiha Khanam Vs. Jaitun Bibi and others reported in 3 BLC(AD) 175; Jahangir Alam Vs. Shabdir Ahmed and others reported in 22 BLC(AD) 75. As already discussed earlier the plaintiffs have clearly proved that from the year 1970 and through all subsequent transactions culminating in the deeds marked as

Exhibits 4, 5 series and 6 series the suit land has been transferred with specific and definite boundaries. The same boundaries of Exhibits 4, 5 series and 6 series have been described in the schedule of the plaint and accordingly possession has been asserted over a clearly identified and demarcated portion of land. Since the plaintiffs have filed the instant suit against the defendant-co-sharer with respect to a specifically demarcated portion of land with defined boundaries there remains no legal bar to the maintainability of the present suit without a prayer for partition. Accordingly for the reasons stated above the precedents of 3 BLC and 22 BLC cases relied upon by Mr. Chowdhury are not applicable to the facts and circumstances of the present case.

Petitioner raised the question of remand upon absolutely frivolous grounds. Remand cannot be granted as a matter of course. Remand of a suit for fresh trial should not be ordered on mere technicalities or flimsy grounds. Remand should not be lightly made if the evidence on record is sufficient for the Court to decide the question itself. Order of remand of a case for fresh hearing when there is sufficient evidence on record tantamounts to shirking the responsibility affecting the course of justice. No remand order can be passed to give an

opportunity to a party to fill up the lacuna in his or her case. Considering the facts and circumstances of the present case and the overall discussions I find no substance in the application for remand filed on 15.07.2025 and hence the application is rejected.

In view of the foregoing discussions, findings and reasons this Court finds no merit in this Rule.

Accordingly the Rule is discharged. The judgment and decree passed by both the Courts below are hereby affirmed.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J:

Naher-B.O