

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Appeal No. 67 of 2022

In the Matter of:

Memorandum of appeal from the original decree.

-And-

In the Matter of:

Government of the People's Republic of
Bangladesh, represented by the District Forest
Officer and others.

.....Defendant-appellants.

-Versus-

Shahadat Hossain and another.

...Plaintiff-respondents.

Mr. Md. Md. Yousuf Ali, D.A.G.with
Ms. Israt Jahan, A.A.G with

Ms. Kamrunnahar Lipi, A.A.G

..... For the appellants.

Mr. Md. Khalilur Rahman, Advocate with
Mr. Mehrab Hosan, Advocate

.....For the respondent Nos. 1 and 2.

**Heard on 03.12.2024 06.01.2025, 09.01.2025 and
20.01.2025 and Judgment on 27.01.2025.**

Sheikh Abdul Awal, J:

This first appeal at the instance of defendant appellants is directed against the Judgment and decree dated 20.03.2019 (decree signed on 25.03.2019) passed by the learned Joint District Judge, 2nd Court, Gazipur in Title Suit No. 433 of 2009 decreeing the suit.

Material facts relevant for disposal of the appeal, briefly, are that the respondents as plaintiffs instituted Title Suit No. 111 of 2005 in the Court of the learned Joint District Judge, 1st Court, Gazipur praying for declaration of title in the suit 11.02 acre land and also for further declaration that the R.S khatian No. 2 (Ext.12) prepared and published in the name of the Government in respect of the suit 11.02 acre land is baseless, illegal and not binding upon the plaintiffs. The suit was subsequently renumbered on transfer in the learned Joint District Judge, 2nd Court, Gazipur as Title Suit No.433 of 2009. The Plaintiffs' case as stated in the plaint in brief is that the suit land and other lands cited in C.S khatian No.1 (Ext.-2) of Mouza Hatiab under Police Station previously Keranigonj at present Joydebpur was owned and possessed by the then Bhawal Zamindar, Kumar Rabindra Narayan Ray Chowdhury, represented by Court of Wards; that the said Zamindar of Bhawal represented by Court of Wards settled totaling 11.02 acre suit land to the raiyots, Gaur Charan Barmon and others and thereafter, while the property was declared 'prozapattan' property they settled the suit land with tenants, Sree Goura Chan Barman, son of Raj Chandra Barman, Ohollya Barmani, wife of Dhukhi Ram, Sreemoti Bhalo Mati Barmani, wife of Nanda Kumar Barman, three brothers and sister by paying Tk. 120.00 as najar selami on 5.6.1933 in total got 12.36 acres of land from different dags and delivered possession to Gour Chan Borman and others, who opened Khatian No. B/162 under Jamindari Sheresta paying rents separately and enjoyed the suit property; that while Sreemati Bhalo Moti Borman was in possession of her share of land, died childless and Gora Chan inherited her property. During S. A survey the shares of Gourachan Borman and Ohallya were recorded in the name of

Dukhi Ram husband of Ohallya Barman in S. A. Khatian No. 8; that Dukhiram Barman died childless and later on Ohallya Barman also died childless and Goura Chand Barman having alive, the suit land totaling 12.36 acres devolved upon him and while he was in possession died leaving 2 daughters namely Srijoni Barmani and Jarmani Barmani. Manindra Chandra Barman having need of money, sold his share by saf kabala deed dated 22.4.75 to Basiruddin and Khairunnessa and delivered possession. Bashir while was in possession of his share died leaving two sons, Shamsul Huq and Fazlul Huq, who inherited his share; while Fazul Huq, Shasul Huq and Khairunnessa were in possession of the suit dag and khatian, gave power of attorney to Mst. Asha Shahadat by registered document No. 1095 dated 15.1.05. Asha shahadat on the strength of the said power of attorney, having in need of cash money sold the entire 6.02 acres of land to plaintiff No.1, Shahadat Hossain and delivered possession by registered deed No. 10157 dated 4.5.05, Sree Proshanna Chandra Barman also gave power of attorney to Shadat Hossain by registered deed No. 4979 dated 9.3.05 and having in need of cash money, by registered deed No. 13658 dated 11.6.05 sold 5 acres of land to plaintiff No. 2 and delivered possession. Thus the plaintiff Nos. 1 and 2 got possession in total 11.02 acres of suit land. While plaintiffs are in peaceful possession on 20.7.05, plaintiff No.1, went to tahshil office for mutating their names and also for payment of tax, tahsilder refused to take do the same on the ground that in R. S. record the names of the plaintiffs have not been recorded. On 30.7.05 the plaintiffs after obtaining R. S. khatian came to know that in khatian No.2, the suit land has been recorded in the name of Forest Department, hence the suit.

Defendant Nos. 1 and 4 contested the suit by filing written statements denying all the material statements made in the plaint stating, inter-alia, that the suit is not maintainable in its present form and manner . The defendants' case is that the suit land situated at Hatiab Mouja under C. S. khatian No. 1, S. A. khatian No. 8, R. S. khatian No.2, S. A. khatian No. 104, R. S. khatian Nos. 504, 491, 489, 488, 490, 487, totaling 24.85 acres of land out of 11.02 acres of land, have been recorded in C. S. khatian No. 1 correctly and published finally and R. S. khatian has been recorded in the name of Forest Department of Bangladesh. S. A. khatian No. 8 is false and baseless, the suit land is the Government land and accordingly it is recorded in R. S. khatian in the name of forest department. The case of the plaintiffs is false and fabricated and since the land belonged to the Government, it cannot be recorded in the name of private individual, all the deeds of the plaintiffs are false and illegal and to grab the valuable Government property the suit has been filed and as such, the suit is liable to be dismissed.

At the trial the Plaintiffs to proof their case as made out in their plaint have examined 6 witnesses and exhibited 16 documentary evidences and the Defendants to prove its case as made out in its written statements have examined as many as 2(two) witnesses and exhibited in all 4 documents.

The learned Joint District Judge on the pleadings of the parties framed the following issues for determination:-

1. Whether the suit is maintainable in its present form and manner?
2. Whether the suit is bad for defect of parties?.
3. Whether the suit is barred by limitation?.

4. Whether the plaintiffs have right, title and possession in the suit land?
5. Whether the R. S. record is wrong and not binding on the plaintiffs?
6. Whether the plaintiffs are entitled to get any reliefs, as prayed for?

The learned Joint District Judge, 2nd Court, Gazipur after hearing the parties and on considering the materials on record by the impugned judgment and decree dated 20.03.2019 decreed the suit in favour of the plaintiffs.

Aggrieved Government defendants then preferred this First Appeal .

Mr. Md. Yousuf Ali, the learned Deputy Attorney General appearing for the appellants takes us through evidences and other materials on record including the impugned judgment and then submits that the CS Khatian of the suit land was recorded in the name of Bharat Samrat and R.S khatian was recorded in the name of the forest on behalf of the Government and khatian No. 8 of S.A record is created and forged, the the suit land is actually Government land which was correctly recorded in R.S khatian in the name of Forest Department of the Government of Bangladesh. He further submits that the plaintiffs claimed the suit land by way of permanent pattan which was a created document. Annexure-3, permanent pattan shows that pattan was signed by the unknown person, there is no names and seal in that pattannama and at the trial none was examined to prove the pattannama and none of the PWs deposed that they have seen it and it was not proved that the pattan was executed by appropriate authority. The learned Deputy Attorney General further submits that on behalf of the

Government, the Forest Department is the owner and the possessor of the suit land. The plaintiff- Respondent never possessed the suit land and the Forest Department has been possessing the suit land by paying rent up to 1429 BS to the Government which has already been produced before this Court as additional evidence.

The learned Deputy Attorney General further submits that at the trial the defendants examined two witnesses in which DW-1 Beat Officer, Shalna Forest office, Gazipur deposed in his chief that original owner of the suit land was Bhawal Zamaindar. In the year of 1938, the Government declared the suit land as Protected Forest by its Gazette Notification No. 23694 and thereafter, in the year 1950, after the abolition of Zamaindari System the suit land was acquired as vested forest on 2nd April, 1953, vide LR No. 4836 and 4889 and thereafter, Notification and proclamation was issued by the Government and by the Forest settlement officer under section 4 and 6 of the Forest Act, 1927 and finally the Government declared the suit land as "Protected Forest Land ". The learned trial Judge on consideration of the material on record and deposition of PW's and DW's wrongly found that on 5/6/1933, the plaintiff took permanent pattan from Bhawal court of wards Estate and also found that S.A khatian No. 8 was recorded in the name of predecessor of the plaintiffs and they have also paid rent, and in R.S record, the trial Court found that the classification of land is 'Baid', 'chala', and 'Tek' and accordingly the learned trial Judge gave wrong findings stating that as per 'pattan', the suit land was recorded in the name of predecessors of the plaintiffs in fact such findings of the trial Court is not based on proper appreciation of the evidences on record.

The learned Deputy Attorney General further submits that learned trial Court wrongly observed that the suit land was

transferred by way of 'Prajabili' although as per C.S and R.S. khatian the suit land is a 'Protected Forest Land'. The learned Deputy Attorney General further submits that in the written statement, the defendant-appellant stated that, the 'permanent pattan' and S.A khatian are created and forged yet the trial Court without discussing about the created and forged documents came to a wrong findings that S.A khatian was correctly recorded though in R.S khatian the type of suit land was written as 'Gajarigar', but the trial court mentioned the type of land is 'chala and baid' which is not correct. The trial court also mentioned that S.A record was not wrong and the defendants did not take any steps for correction which is not correct, the defendants always disclosed that the S.A record was forged and created and as such the court below without considering all these material of the case abruptly came to a wrong finding and decreed the suit, which is liable to be set-aside.

The learned Deputy Attorney General further submits that earlier on 31/05/2010, the same suit was dismissed in which the trial court found that C.S khatian No. 1 was correctly recorded and R.S khatian also correctly recorded in the name of Forest Department on behalf of Government of Bangladesh and the learned trial Court also found that, S.A khatian No. 8 was forged and created. Since the owner of the suit land is the Government of Bangladesh, private individual cannot claim the ownership of the same suit land and the registered deeds which have been created by the plaintiffs is also illegal. The R.S kahtian No. 2 is rightly recorded in the name of Forest Department on behalf of Bangladesh Government and the Forest Department has been possessing the suit land about more than seventy (70) years. The earlier trial judge also found that originally the suit land was in the

name of Bhawal court of wards and thereafter in the year 1938 the suit land was protected and declared as forest land, vide Notification No. 23694/For dated 14/11/1938. In the year, 1950 the suit land was acquired by Gazette Notification No. 4836 and 4849 dated 02/4/1956. Notice under section 4, dated 13/4/1955 and notice under section 6, dated 04/7/1957 of the Forest Act, 1927 was duly complied with. The learned Judge of the earlier trial court also found that after publication of Gazette Notification dated 2nd April, 1956 being number 4836 and 4849 the Zamindar or anyone cannot claim about the forest land which is suit land. The plaintiff Respondents also failed to prove their title. The plaintiffs by suppressing the fact created the forged documents only to grab the Government valuable property. In the earlier judgment the learned trial court rightly found that plaintiffs claim was that they took permanent pattan in the year 1933, but they could not produce any documents before the Court below and that the claim of the plaintiffs did not exist without any document. Furthermore, after acquisition by the Government Gazette Notification the suit land came under the control of the Government by operation of law. So the question does not arise to record the suit land under S.A khatian No. 8 which is forged and created. There is no document regarding the possession of the plaintiffs and as such, on the basis of wrong S.A record, no title was proved as because only by a record, cannot prove the title and considering all these facts and circumstances, earlier the trial court dismissed the suit, but on the basis of the same facts and documents and without controverting the same fact, later on the trial court decreed the suit which is liable to be set-aside for the ends of justice. The learned Deputy Attorney General further submits that when the Government decided to constitute the suit

land as 'Reserved Forest land, the Government issued notification under section 4 of the Forest Act, 1927 and thereafter a proclamation was issued by the Forest settlement officer under section 6 of the Forest Act, 1927, since there was no claim after the publication of Gazette Notification under section 6, the Government declared the suit land as forest reserved land, vide notification under section 20 of the Forest Act, 1927 and finally declared the suit land as 'Reserved' Forest' "সংরক্ষিত বনভূমি". Finally, the learned Deputy Attorney General submits that the learned Joint District Judge had passed the impugned judgment by not applying his judicial mind to the materials on record and the same is liable to be set-aside. The learned Deputy Attorney General in support of his submission has relied on the decisions reported 17BLD (AD) 91, XII ADC 88 (AD) 91.

In reply, Mr. Md. Khalilur Rahman, the Learned Senior Advocate appearing for the plaintiff-Respondent Nos. 1 and 2 submits that on scrutinization of documents of the Government, it is found that the Ext. ka dated 14.11.1938 is the photostat copy of the notification under section 38 of the Forest Act, 1927 without explaining the whereabouts of the original in which stated that a private owners of private forest can enter into an agreement with the Government to protect his/their said private forest land. But from the said notification it is revealed that the said notification would not be acted upon before publishing regular Gazette and no such subsequent Gazette was produced and proved by the Government. Section 38 of the Forest Act is connected with the management and administration of the private persons' Forest by the Government and not the Government Forest and the said section 38 was abolished in the year 1959 by Ordinance No. 34 of 1959 giving opportunity to the private persons for management

and administration of their own forest subject to some control and supervision of the Government as stated in amended section 38A-38D of the Forest Act, 1927. So, the Government cannot claim the suit land as of Government Forest land on the basis of said notification under section 38 of the Forest Act, 1927 as the said notification suggests nothing that the suit land as of the Government forest. Moreover, since before 1938, the suit property was remained in the superior ownership of Zamindar Kumar Rabindra Narayna Ray Chowdhury as possessory right thereof was handed over to the Plaintiffs' original predecessors, Gaur Charan Barmon and others on 05.06.1933 vide Ext. 3 and since the said Ext. 3, the proja Pattaninama has been proved as acted upon by the subsequent Gazette stating as of Gazette under section 3(1) of the State Acquisition and Tenancy Act, 1950, exhibit-15 without any objection, which is known as projabili property Gazette, as such, the Government in no circumstances can claim title in the projabili property. Ref. 14 MLR (A/D) 401 and 19 MLR 01. He adds that on the other hand, the alleged Gazette under section 3(2) of the State Acquisition and Tenancy Act, 1950 which marked as Ext. ka-2 of the said State Acquisition and Tenancy Act, 1950 from the side of the Government it shows that the said Gazette is nothing but a mere general declaration regarding vesting of khas possessed properties of the previous Zamindar Kumar Rabindra Narayan Ray Chowdhury without citing any property therein, which has no connection whatsoever in respect of the suit projabili property. The Learned Advocate for the respondents further submits that the Gazette under section 3(2) will not be applicable to the suit 11.02 acre property of the plaintiffs as plaintiffs' suit property was not khas property of the previous Zamindar Kumar Rabindra

Narayan Ray Chowdhury- represented by Court of Wards; Rather from the date of proja pattani dated 05.06.1933 the suit property was the tenanted/projabili property which has been proved by the plaintiffs, vide different Exhibits like Exhibits 3, 4, 5, 6, 14 series and also Ext. 15.

He further submits that the Gazette published under section 4 of the Forest Act, 1927 dated 13.05.1955 (Ext.Ka-1) is nothing but a mere preliminary general declaration about intention of the Government to declare already existed forest as reserve forest without any provision of serving notices upon the probable affected persons stating that such property covered by the already existed Government forest would be declared as reserved forest later on after following the subsequent provisions of the Forest Act, 1927. So, the said Gazette under section 4 of the Forest Act, 1927 is nothing but a primary stage of declaring some already existed Government forest land as of reserved forest. So, the land covered by that Gazette under section 4 of the Forest Act, 1927 may be changed thereafter on scrutinization before publication of the next notification and Gazette under section 6 and also thereafter before final Gazette notification under section 20 of the Forest Act, 1927 if it is found on scrutinization that some of the land cited in the preliminary Gazette is not actually Government forest land but was erroneously included in those previous Gazette under section 4 of the Forest Act, 1927. The Government though subsequently in the midst of the argument had managed to have submitted a photostat copy of the notification under section 6 of the Forest Act, 1927 without

explaining the whereabouts of the original. He further submits that D.W.1 Mr. Tusaddeque Hossain, a Bit Officer, Shalna Bit office, was cross examined on that Gazette under section 6 by the the Plaintiffs, he replied as follows:

"৬ ধারার গেজেটে নালিশী দাগের জমির কোন উল্লেখ নাই।"

"বন বিভাগ জমিদারকে ক্ষতিপূরণ দিয়াছে কিনা আমি বলতে পারবো না।"

"নালিশী জমি জমিদারী প্রথা উচ্ছেদের পর বন বিভাগ পেয়েছে।"

"বাদীদের বরাবরে এস.এ রেকর্ড হয়েছে।"

On the other hand, D.W.2, the Forester, Md. Khalilur Rahman stated in his cross examination as follows:

"(ক) আর.এস পর্চায় নালিশী জমির ধরন চালা ও বাইদ (চাষের জমি)।"

From the aforesaid admitted facts as found from the reply of cross examination of DWs, it is apparent that if no property is found in the Gazette published under section 4 and 6, then the said non cited property in the Gazette under section 4 and 6 can never be included and published under section 20 of the Forest Act, 1927. Moreover, nature of the suit land, having not been cited in the subsequent Gazette under section 20 as of Forest Land, rather having been cited as of chala land and 'আদি' land and on scrutinization of the said Gazette under section 20 of the Forest Act, 1927 (Ext. kha), it transfers that out of total 11.02 acre suit property recorded in total 5 (five) R.S Plots, 1.76 acre land of 4 (four) R.S Plots being 0.25 acre land of R.S Plot No.488, 0.41 acre land of R.S Plot No. 489, 0.90 acre land of R.S Plot No.490, 0.12 acre land of R.S. Plot No.491 and 0.08 acre land of R.S. Plot No. 504 total 1.76 acre land was cited as of forest land and the balance 9.26 acre land recorded in another R.S Plot No. 487 was not cited therein and

as such, there is no problem in giving decree over that non cited 9.26 acre land out of 11.02 acre suit land of R.S Plot No. 487. In respect of the remaining 1.76 acre land cited in the Gazette under section 20 out of the total suit 11.02 acre land, Mr. Md. Khalilur Rahman submitted that those 1.76 acre land was not also the Government Forest land as it was never used and owned as of forest land by Government nor possessed the same by predecessor of Kumar Rabindra Narayan Ray Chowdhury as khas land. After prozapattani made on 05.06.1933 Ext. 3, it has been proved by the Plaintiffs as of owned and possessed tenanted projabili property of their predecessors Gaur Charan Barmon and others from the date of said Pattanama dated 05.06.1933, which had been acted upon by the subsequent documents like proja pattani B khatian No.162 (Ext.4), projabili property Gazette (Ext. 15), S.A khatian No. 8 (Ext.6), Government rent receipts (Ext.14). The Learned Advocate further submitted that the entire or part of the suit land in question was never Government forest land and as such, the question of declaring the suit land as of reserved forest on the basis of mere citing thereof in the Gazette under section 20 of the Forest Act, 1927 does not arise at all.

The Learned Advocate further submitted that if the suit land is considered as of Forest Land against actual ownership and possession of the plaintiffs on the basis of Gazette dated 27.05.2012 published under section 20 of the Forest Act, 1927 during the pendency of the present Title Suit No. 433 of 2009 filed on 27.08.2005, then it will not only be a barred by the

principle of lis-pendency but also by the provision of order 7 Rule 7 of the Code of Civil Procedure, 1908 as established in the Ruling reported in 28 DLR 392, wherein it has been held that the suit is to be tried and decided according to the facts involved in the case at the time of filing of the suit. In respect of filing of the Government rent receipts as per R.S record, Mr. Md. Khalilur Rahman submitted that even if those land development payment receipts as per R.S khatian No. 2 is considered as of genuine, then also it is found that in the said receipts the nature of the land has been cited as of agricultural land (কৃষি জমি).

In respect of suit R.S khatian No.2 Ext. 12 the Learned Advocate submitted that any record of right prepared and published without any basic foundation is not a record of right. In the case of Narendra Chandra Das and another -Vs- Sree Sree Gopal Bigraha and another reported in 3 XP 201 and in the case of Md. Azizur Rahman-Vs- Most. Hasina Jamil reported in 21 BLD 163, it has been held that record of right prepared and published without any base will not relinquish the ownership and possession of the person/persons who are real owners in possession.

In respect of the report submitted by Advocate Commissioner dated 13.04.2013 (Ext. 16) the learned Advocate submits that the Advocate Commissioner investigated the suit property on 13.04.2013 and has cited everything in his report which he has seen in the suit property in field verification. It is submitted that Advocate Commissioner has got no authority to say, who is in

possession over the suit property, but he has every authority ascertain the materials of possession as found by him in the suit property and also has right to state its nature and character as he was directed by the Court in its writ issued to the Advocate Commissioner. So, the Learned Advocate Commissioner in his investigation, report (Ext.-16) has rightly stated that he had seen ghars in the suit properly and also stated that he had found no forest in the suit land; rather he found the suit land as of cultivable land. Moreover, the defendants did not file any written objection against the said investigation report Ext.16. So, the report has become a piece of evidence amongst other evidences on record. From a reading of that Commissioner's report along with other evidences on record of the suit, it is found that Plaintiffs' uninterrupted ownership and possession for more than 60 years has also been found as proved. It is stated in section 110 of the Evidence Act that he who possesses the land, he owns the land. Ref: 28 DLR (A/D) 61. So, on that point of view also the ownership of the Plaintiffs in the suit property has been deemed as proved.

These are the points which were argued by the learned Advocates for the respective parties. Now, to deal with the contentions raised by the parties before us it would be convenient for us to decide first whether the plaintiffs having been able to prove the Patton nama dated 05.06.1933 and the Government having prepared and published SA khatian No.8 in the name of Gaur Charan Barmon and others admitting them as raiyots under previous Bhawal Zamindars and also received land development taxes on the basis of said S.A record, as such, the said S.A

recorded owners Gaur Charan Barmon and others have acquired title in their S.A recorded 11.02 acre suit land.

On scrutiny of the record, it appears that PW-1, Shamsul Huq, stated in his deposition that- “নালিশী জমি হাতিয়া মৌজায় C.S. ১নং খাতিয়ান S.A. খতিয়ান ৮ এবং C.S. ও S.A. দাগ ১০৪ নং। দাগে মোট জমি ৫৮.৬৫ একর। ১১.০২ একর নালিশী জমি। এই মোকদ্দমার মূল সম্পত্তির মালিক ছিলেন ভাওয়াল রাজ জমিদার। C.S. ১নং এর সার্টি: কপি দাখিল করেছি। যা প্রদঃ '২' চিহ্নিত হয়েছে। ১৯৩৩ সালে নালিশী সম্পত্তি পত্তন দেন ৫/৬/৩৩ তাং পত্তন দেন শ্রী গৌরচান বর্মন ও ভাল মতি ও অহল্যা বর্মন বরাবরে। পত্তন মূলে দখল বুঝিয়ে দেন। যার মূল কপি দাখিল করিয়াছি। প্রদ-'৩' চিহ্নিত হোল।” PW-2, Fazlul Huq Dorji, stated in his deposition that- “বর্তমানে বাদী পক্ষ ভোগ দখল করে।”, PW-3, Sree Lal Mohon Barman, stated in his deposition that-“ আমি এই মোকদ্দমার বাদী, বিবাদী ও নালিশী জমি চিনি। নালিশী জমির পার্শ্বে আমার জমি আছে। নালিশী জমি সাবেক ১০৪ দাগের জমি। নালিশী জমি ১টি দাগে। মোট জমি ১১.০২ একর। উক্ত সম্পত্তি বাদী ভোগ দখল করে। বাদীদের পূর্বে মনিন্দ্র ও প্রশান্ত। বাদী পক্ষ শোন, কাঠাল গাছ লাগিয়ে, বাড়ী ঘর নির্মাণ করিয়া ভোগ দখল করিয়া আসিতেছে। নালিশী জমিতে বন বিভাগের কোন স্বত্ব স্বার্থ ও দখল নাই। নালিশী জমি বন বিভাগ ভোগ দখল করে নাই বা করে না।” PW-4, Md. Abul Hatem, stated in his deposition that- “নালিশী জমিতে বাদীদের দখল আছে বিবাদীদের কোন স্বত্ব ও দখল নাই।” PW-5, Asha Shahadat, stated in his deposition that- “আমি এ মোকদ্দমার ২নং বাদী। ১ নং বাদী আমার স্বামী।” This witness exhibited rent receipts, Gazette of projaboli property etc. PW-6, Md. Delwar Hossain, Advocate Commissioner who stated in his deposition that-“আমি বিজ্ঞ আদালত কর্তৃক TS ৪৩৩/০৯ নং মোকদ্দমায় ২৮/৩/১৩ খ্রিঃ তাং Local Inspection এর জন্য Advocate কমিশনার নিয়োগ প্রাপ্ত হই। আমি ৭/৪/১৩ তাং সকাল ১০.০০ টায় নালিশী জমি পরিদর্শন করে ১৫/৪/১৩ খ্রিঃ তাং Report দাখিল করি। এই সেই প্রতিবেদন, প্রদঃ ১৬। এতে এই স্বাক্ষর (প্রদঃ ১৬/১) আমার।”

DW- 1, Md. Tosaddek Hossen, stated in his deposition that- “১৯৩৮ সালে গেজেট নোটিফিকেশন নং-২৩৬৯৪ মূলে Protected Forest হিসাবে

ঘোষণা দেওয়া হয়। This witness also stated that ১৯২৭ সালের বন বিভাগের ৪ ধারা অনুযায়ী সংরক্ষিত বন হিসাবে এবং একই আইনের Forest Settlement খামার ও DC গাজীপুর কে ০৬ ধারা মোতাবেক নোটিশ করে বাদিকে আমি গেজেট ও নোটিফিকেশনের কপি আদালতে দাখিল করিলাম। প্রদর্শনী-ক সিরিজ।” This witness in his cross-examination stated that-“৬ ধারার নোটিশে নালিশী দাগের জমির কোন উল্লেখ নাই। This witness in his cross-examination also stated that “বাদীদের বরাবরে নামে SA রেকর্ড হইয়াছে। SA খতিয়ান বাদীদের দেয়া গৌর চন্দ্র বর্মণ নামে রেকর্ড হইয়াছে তা আমার জানা নাই।” This witness denied the suggestion in cross-examination in the following language “সত্য নহে যে, বাদীপক্ষ পত্তন নিয়া ভোগ দখলে থাকাকালে তাদের নামে SA রেকর্ড হয়। সত্য নহে যে, R.S রেকর্ড জাল বন বিভাগের নামে হইয়াছে।” DW- 2, Md. Khalilur Rahman, stated in his deposition that –“বাদী পক্ষ যখন এই মামলা দায়ের করে তখন জবাবে ২০ ধারার গেজেটের কথা ভুল ক্রমে বলা হয়নি। পরে জবাব সংশোধন করে এটা সংযুক্ত করা হয়েছে। This witness in his cross-examination stated that- " ২০১২ সনের পেজেট। এই মামলা হয়েছে ২০০৫ সনে, তারপর এই গেজেট। R.S কোন দাগে কতটুকু জমি বলতে পারবো না। R.S পর্চায় নাঃ জমির ধারণা চালা ও বাইদ। (চাষের জমি) লেখা আছে। This witness in his cross-examination stated that-“বন বিভাগে নাঃ সম্পত্তিতে স্বত্ত্ব ও দখল নাই।”

On scrutiny of the above quoted evidence, it appears that DWs. stated nothing in their respective evidences as to genuineness of pattan nama. PWs. 1-4 categorically stated in their evidence that plaintiffs have been possessing the suit property, their predecessor got the suit property on the basis of patton nama (ext. 3) . D.W.1-2 having admitted that the suit property was not cited as forest land in the C.S, S.A and R.S record; rather the suit land was cited as Tak, Chala and Baid land in the respective records. DW-2 admitted the possession of the plaintiffs in the suit land. Moreover, on perusal of Patton nama dated 05.06.1933 (Exhibit- 3) it appears to us that the same is more than 90 years old

document of 05.06.1933 which admitted in evidence and no one challenged that document in question as forged document. Therefore, we are led to hold that pattonnama is an old valid document, which has been duly acted upon and pursuant to pattonnama so many transfer deeds have been executed relating to suit land. Thus, the suit land cannot be a forest land and the Plaintiffs having been able to prove their unbroken possession over the suit land over a period of 60 years.

Now, let us consider whether the suit property was enlisted as forest land in official gazette in accordance with law. In this connection, we feel it necessary to go through the provisions of Section 4, 6 and 20 of the Forest Act, 1927 for having a better view of the dispute in question.

“Government cannot declare any private land of a private person as a reserve forest by applying the provisions as stated in section 4,6 and 20 of the Forest Act 1927.

Preamble the forest Act, 1927 discloses that the act was enacted for the purpose of already existed forest of the Government and not for creating any new forest over the land remained in ownership and possession of the private person land like of the present plaintiffs-respondents. The purpose of the said enacting preamble of the forest Act, 1927 has made clear by section 3 of the act which reads as follows:

“the government may constitute any forest land or any waste land [or any land suitable for afforestation] which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest-

produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.”

So, from a plain reading of the preamble and contents of section 3 discloses that the Government must be satisfied that the land in question is of existed forest of the Government both in consideration of its ownership and nature”.

It is stated that the provisions of section 4 , 6 and 20 of the forest Act are to be followed categorically. Appellants tried to show that Government has issued notification under section 4 , 6 and 20 , so the land cited in those 3 notification became automatically Government reserved forest. It is to be noted that notification under section 4 is nothing but a mere declaration of intention of the Government of declaring already existed forest as reserved forest. The process of declaring reserve forest actually starts by the notification issued under section 6 (c) of the Forest act, 1927. It is specifically stated in this section that Forest settlement officer is to serve written notice upon the person who may be affected by declaring any existed forest land as a reserve forest directing him to appear before the officer stating the nature of his right in his property proposed to be declared as reserved forest. But the appellants totally failed to submit any such written notice mandatory to be served under section 6 (c) before the Court.

Section 11 of the forest Act, 1927 provides a mandate upon the Government to the effect that any

land owned and possessed by a private person as per C.S. and S.A. khatian, is required to be acquired by effectively declaring the Government forest as reserved forest then Government is to acquire the said private land of private person by starting L.A. Case and also mandatory to pay adequate compensation against the land owned and possessed by that private person. But in this case though the plaintiffs-predecessor Goruchoron Barman and others as owners by riyoti right which is admitted by the appellant-Government which had prepared and published as projabily property in gazette and thereafter S.A. Khatian No.8 prepared in the name of the plaintiff - respondents and Government appellant received a development rent from them, so without issuing any notice of acquisition byn any L.A. Case for acquisition of this suit property, could not be acquired merely under section 6 and 20 of Forest Act , 1927. So the notifications under section 6 and 20 of the Forest act having been made violating of the provisions of the Act, 1927 and also violating fundamental property right of the present plaintiff-respondents and thus, such notices are found of without jurisdiction and of no legal effect .

It is found from a reading of section 20 of the Forest Act , 1927 that the Government is to be satisfied that before final declaration of any land already existed forest of Government as ' reserve forest ' the private land which fallen within the said declared land has been acquired by starting and

completing land acquisition case. But in the present case we found no existence of any such land acquisition case.

So in view of the above, it is clear that the provisions section 4 , 6 and 20 are applicable in the existed forest of the Government and not for creating a new forest over the land owned and possessed by the private person.

Therefore, we are unable to see eye to eye to such submissions of the learned Deputy Attorney General that the property has been declared as reserve forest land in official gazette in accordance with law. Furthermore the learned Deputy Attorney General in the course of argument referring previous judgment passed on 31.05.2010 gave more emphasis that the earlier trial Court on assigning cogent and sound reason dismissed the suit holding that suit land is Government land and the plaintiffs have/had no right title, and possession in the suit land.

In reply, Mr. Md. Khalilur Rahman submitted with force that when the Judgment of the Trial Court is set-aside and the case sent on remand to decide afresh by the Higher Court as happened in the present case by the Judgment of this Division dated 07.12.2011, the previous Judgment of the Trial Court dated 31.05.2010 has lost its existence and force.

In the facts and circumstances of the case as discussed above, we find substance in the submission of the learned Advocate Mr. Md. Khalilur Rahman. Since the earlier judgment of the Trial Court is set-aside and the suit is remanded to the trial court to decide afresh by the Higher Court. Therefore, we do not think it wise to avert to the lengthy findings of the earlier

judgment dated 31/05/2010. Mr. DAG has dealt with some unnecessary facts.

We have already discussed above as to Pattan nama that we find it is an old document of 05.06.1933 (Exhibit-3) which has been acted upon and the same was admitted in evidence and no one challenged the said Pattan nama during trial and pursuant to the Pattan nama time to time so many registered instruments were duly executed in accordance with law. The Plaintiffs though could not cite the executor of the Pattannama as witness before the court due to his non availability after expiry of so long time. The plaintiffs for proving raiyoti settlement also have submitted and proved the subsequent projabili property Gazette published by the then Government under section 3(1) of the State Acquisition and Tenancy Act, 1950 marking the same as Ext. 15, wherein the entire land of concerned J.L. No. 19 of Mouza 'Hatiab' including the suit land, has been cited as of tenanted land under Zaminder Kumar Rabindra Narayan Ray Chowdhury and the Plaintiffs have also submitted and proved the S.A khatian No. 8 prepared and published by the Government in the names of Plaintiffs' original predecessors, Gaur Charan Barmon and others following the said Gazette, marking it as Ext.6 without any objection. The plaintiffs to prove the fact of acted upon of the said S.A khatian prepared by the Government for realization of rent submitted and proved as many as 6 Government rent receipts issued by concerned Government Towshildar of Shalna Towshil Office admitting the Plaintiffs' said original predecessors, Gaur Charan Barmon and others as tenants/owners under the Government marking it as Ext. 14 series without any objection

from the Defendant Government. The Learned Deputy Attorney General appearing for the Government Appellant though raises question regarding not proving the Pattannama dated 05.06.1933 Ext. 3 and Zamindary rent receipts as per requirements of the Evidence Act; but did not raise any question regarding the subsequent acted upon documents like, projabili property Gazette, S.A khatian, Government rent receipts etc. Besides, the D.W.1, Mr. Tusaddaque Hossain, bit officer had admitted about publication of the said S.A khatian No.8 in the names of Plaintiffs' predecessors, Gaur Charan Barmon and others.

Another contention raised by Mr. Md. Khalilur Rahman in respect of the report of the Advocate Commissioner dated 13.04.2013 (Ext. 16) as noted above, we like to address it as the same is pertinent and useful. It is found that the Advocate Commissioner investigated the suit property on 13.04.2013 and has cited everything which he has seen in the suit property in field verification. However, the proposition of law is by now well settled that Advocate Commissioner has got no authority to say who is in possession over the suit property but he has every jurisdiction to ascertain the materials of possession as found by him in the suit property and also has right to state its nature and character as he was directed by the Court in its writ issued to the Advocate Commissioner. So, the Learned Advocate Commissioner in his investigation, report (Ext.-16) has rightly stated that he had seen ghars in the suit property and also stated that he had found no forest in the suit land; rather he found the suit land as of cultivable land.

Moreover, the Defendants had not filed any written objection against the said investigation report Ext.16. So, the report has become a piece of evidence amongst other evidences on record. From the reading of that Commissioner's report along with other evidences on record of the suit, it is found that Plaintiffs' uninterrupted ownership and possession for more than 60 years has also been found as proved. So, on that point of view also the ownership of the plaintiffs in the suit property has been deemed as proved.

It is found that the Pattan nama dated 05.06.1933 (Exhibit- 3) is more than 80 years old document and therefore the Court is entitled to presume that it is a genuine document as per provisions of section 90 of the Evidence Act. Even if the said Pattan nama dated 05.06.1933 (Exhibit- 3) is defective and unregistered, the plaintiffs have been in possession beyond the statutory period of limitation. Moreover, the plaintiff respondents have been able to proof of lawful ownership of the suit land and unbroken possession over the suit land for the last 80 years. Therefore, we find no substance in either of the contentions as raised by the learned Deputy Attorney General for the appellants, rather we find there is a good deal of substance in the contentions raised by Mr. Md. Khalilur Rahman.

The decisions cited by the learned Deputy Attorney General for the appellants are distinguishable on facts.

It appears that the trial Court after a detailed discussions of the evidence and attending circumstances borne out by

records found the claim of the plaintiffs true and decreed the suit on the following findings:

“উপরোক্ত শুনানী ও পর্যালোচনায় বাদী পক্ষের বিজ্ঞ আইনজীবীর বক্তব্য যথার্থতা প্রতীয়মান হয়। নালিশী ভূমি সি. এস. এবং এস. এ. রেকর্ডের বর্ণনা মোতাবেক বন বিভাগের সম্পত্তি নহে। ১৯৫০ সনের রাষ্ট্রীয় অধিগ্রহণ এবং প্রজাস্বত্ব আইনের বিধান অনুযায়ী নালিশী ভূমি রক্ষিত বন ভূমি হিসাবে সরকারের অনুকূলে ন্যাস্ত নয় মর্মে দৃষ্ট হয় না। ফলে এস.এ. রেকর্ডের ধারাবাহিক মালিকানায় সকল কাগজপত্র দাখিল করে নালিশী সম্পত্তির মালিকানা এবং মৌখিক স্বাক্ষর দিয়ে এডভোকেট কমিশনার মাধ্যমে সরজমিনে পরিদর্শন করে নালিশী সম্পত্তিতে ঘরবাড়ী নির্মাণ করে দখল থাকার বিষয়টি প্রমাণ করতে সক্ষম হওয়ায় আর. এস. ০২ নং খতিয়ান বন বিভাগের নামে রেকর্ড হওয়া ভুল ও ভ্রমাত্মক হওয়ায় বাদীপক্ষ অত্র মোকদ্দমায় প্রতিকার পেতে পারেন মর্মে সিদ্ধান্ত হয়।”

The findings are based on relevant evidence on record and those suffer from no error of law or of procedure affecting the merit of the case. The learned Joint District Judge, 2nd Court, Gazipur appears to have considered all the material aspects of the case and justly decreed the suit by his judgment and decree dated 20.03.2019 (decree signed on 25.03.2019), we find no reason to interfere therewith.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant first Appeal must fail.

In the result, the appeal is dismissed. The Judgment and decree dated 20.03.2019 (decree signed on 25.03.2019) passed by the learned Joint District Judge, 2nd Court, Gazipur in Title Suit No. 433 of 2009 decreeing the suit is hereby maintained.

In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.