Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 3841 of 2014
Md. Abdul Kuddus Morol and others
.....petitioners
-Versus-
Abdul Goni Hawlader being dead his heirs:
1(a) Setara Begum and others
.....opposite parties

Mr. Ahmed Nowshed Jamil with
Ms. Sayeda Shoukat Ara, Advocates
.....for the petitioner

Mr. Md. Moniruzzaman with
Mr. Md. Ershad Ali Gazi, Advocates
.....for the opposite parties

Mr. Md. Yousuf Ali, Deputy Attorney General with
Mr. Rakib Hossain,
Mr. Mohammad Salah Uddin Sikder and
Mr. Kamrunnahar Lipi, Assistant Attorney Generals
...for the opposite parties 311-315

Heard on: 05.11.2025, 10.11.2025, 11.11.2025, 12.11.2025, 23.11.2025, 24.11.2025, 25.11.2025 and 26.11.2025

Judgment on: 07.12.2025

In the instant revision Rule was issued on 14.10.2014 calling upon the opposite parties 1-179 to show cause as to why the impugned Order Number 36 dated 16.06.2014 passed by the learned Additional District Judge, 3rd Court, Khulna in Title Appeal No. 11 of 2012 rejecting applications for addition of party and application for adjournment thereby allowing the

said appeal by the impugned judgment and decree dated 16.06.2014 upon setting aside the judgment and decree dated 02.10.2011 passed by the learned Joint District Judge, 1st Court, Khulna in Title Suit No. 687 of 1978 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 1-178 as plaintiffs instituted Title Suit 687 of 1978 on 02.12.1978 in the Court of the then Subordinate Judge, Khulna seeking declaration of title in respect of 680 acres of land. The case of the plaintiffs in brief is that the suit holdings under Mouza Tatultala within Police Station Botiaghata of District Khulna originally belonged to Kailash Chandra Chattapaddhoy, Abdul Haque Sarder, Darik Mondal, Hiralal Gosh, Rupchand Mondal, Reazuddin Munsi, Shashi Bhushan, Jagendranath Paul and others. A river named Kazibacha used to flow along the northern west and southern sides of the said holdings and during the C.S. operation the said river was recorded in C.S. plots 539, 83, 92, 240 and 91.

It is further case of the plaintiffs that gradually strips of land (*Char*) arose out of the bed of the river Kazibacha which subsequently turned into forest land. The petty landowners (Gatidars) settled 129 acres of land in the year 1338 B.S. in

favour of the plaintiffs and some of their predecessors through amalnama at an annual rental of Tk. 9.50. Upon obtaining such settlement the plaintiffs entered into possession by constructing homesteads, mosque, madrasa, road and by planting various fruit bearing trees thereon. Similarly another strip of land measuring 129 acres arose in the year 1348 B.S. out of the bed of the said river and some of the plaintiffs and their predecessors obtained settlement thereof through amalnama and dakhila. Thereafter due to gradual recession of the river Kazibacha further land measuring 203 acres was accreted in the year 1352 B.S. which was also settled in favour of the plaintiffs. Ultimately in the year 1356 B.S. the total accreted land stood 680 acres. It is also stated that the Government of the then East Pakistan in the year 1959 instituted Title Suit 05 of 1959 (reference case) before the District Judge, Khulna claiming the suit land as accretion from the river kazibacha but the said suit was dismissed. According to the plaintiffs they have been in continuous possession of the suit land for more than 40 years. The plaintiffs further contend that the accreted land having arisen out of the bed of the river kazibacha ought to have been recorded in their names but in the map of latest survey it transpires that landlords of Mouza

Jalma in collusion with the survey officials managed to have some portions of the accreted land recorded in their names. It is asserted that the land of Mouza Jalma which was previously lost by diluvion never reappeared and still remains submerged. Nevertheless the accreted land has been erroneously recorded in plots 1151 and 1152 under mouza Mathabhanga in the names of defendants 23-30. Accordingly the map and khatian prepared in respect of Mouza Jalma and Mouza Mathabhanga are alleged to be void, collusive and erroneous. The plaintiffs further state that the defendants have recently denied their title on the basis of such incorrect records of right. Hence the suit.

Defendants 1, 31, 74, 78, 122 and 131 entered appearance and filed separate written statements denying the material contentions made in the plaint. The specific case of the contesting defendant 1 in brief is that certain *char* lands appertaining to Touzi Number 1444 arose in the bed of the river kazibacha under Mouza Tetultala of Police Station Batiaghata of District Khulna which were settled in favour of her husband along with others. Another strip of land measuring 129.22 acres also formed as accretion in connection with Touzi Numbers 120, 1144 and 1444 which were claimed by various persons including the then Province of East

Pakistan and the husband of defendant 1 namely Abdul Haque Sarder along with Nalini Bala Devi and others. It is further stated that the collector of Khulna attached the said *char* lands under Section 3 of the Bengal Alluvial Lands Act. 1920 (Act Number V of 1920) and referred the matter to the District Judge, Khulna who in turn sent it to the Court of the then Subordinate Judge for adjudication giving rise to Title Suit 05 of 1959 (reference suit). Upon hearing the suit was decreed on 07.02.1962 against the Government and the collector was directed to restore possession of the disputed land to the successful parties by evicting others therefrom. Since delivery of possession in 1962 the husband of defendant 1 has been in possession of the lands comprising various S.A. plots of Mouza Tatultala and has been regularly paying rent and obtaining rent receipts.

Defendant 122 now opposite party 179 also contested the suit by filing a written statement contending that the suit land is admittedly an accreted land arising from the bed of the river Kazibacha and the landlords had no title or possession therein. By operation of law the land vested in the Government. The suit is barred under Sections 86 and 87 of the State Acquisition and Tenancy Act. It is further contended that the

plaintiffs had previously instituted Title Suit Numbers 486 of 1976 and 587 of 1976 which were dismissed and the present suit has been filed on false and fabricated statements and is liable to be dismissed with costs.

During pendency of the suit the contesting defendants filed an application alleging that plaintiff number 148 had instituted the suit using fictitious names and addresses of several persons showing them as co-plaintiffs. Upon hearing both parties the trial Court by judgment and order dated 16.07.1994 dismissed the suit on the ground of maintainability.

Being aggrieved plaintiffs preferred First Appeal 317 of 1994 before the High Court Division and upon hearing the appeal was allowed by judgment and decree dated 07.03.2010 and the suit was remanded for fresh trial. After remand upon receipt of the lower Court records the trial Court by Order Number 287 dated 11.07.2010 directed issuance of notice to the parties. However the office of the Court informed only the Government Pleader representing defendant number 122 while the learned advocate representing the other contesting defendants were not notified. As a result although they had

earlier filed written statements but failed to contest the suit after remand.

Thereafter the trial Court framed as many as five issues. During trial the plaintiffs examined 4 witnesses while contesting defendant 122 examined 1 witness. Both parties also adduced documentary evidence in support of their respective cases. Upon consideration of the pleadings and evidence and submissions of the parties the trial Court by judgment and decree dated 02.10.2011 dismissed the suit on contest against defendant number 122 and exparte against the rest of the defendants.

Against the said judgment and decree the plaintiffs as appellants preferred Title Appeal 11 of 2012 before the District Judge, Khulna which was subsequently transferred to the Court of the Additional District Judge, Third Court, Khulna for hearing. The appeal was registered on 23.01.2012 and on that very date the plaintiff-appellants filed an application seeking dispensation of service of notice upon defendant-respondents 2-131 which was allowed by Order Number 03 dated 26.01.2012. Consequently the present petitioners remained unaware of the proceeding both in the suit and in the appeal.

On 10.06.2014 the present petitioners 1-3 filed an application for being added as parties in the appeal contending *inter alia* that lands measuring 2.55 acres and 16.60 acres respectively had arisen as *char* lands on the northern and southern sides of the river kazibacha in the year 1942 under Mouza Tatultala of Police Station Batiaghata of District Khulna and Kalikanto Chatterjee, Anil Kumar Gosh, Gobindo Nath Das and Abdul Haq Sarder who is the husband of Begum Rezia Khatun (defendant 1) each acquired 4.78 acres of land out of total 19.15 acres by way of permanent settlement through kabuliyat from the then Collector of Khulna in Miscellaneous Case 54 of 1946-47. It is further stated that the said land along with other *char* lands subsequently increased in area and upon survey the then Collector found 129.22 acres of strips of land in existence. For determination of ownership thereof the Collector after attaching the land referred the matter to the District Judge, Khulna by initiating Miscellaneous Case 261 of 1954-55 in accordance with the provisions of the Bengal Alluvial Lands Act, 1920. The said miscellaneous case was subsequently registered as Title Suit 05 of 1959 as a reference case. In the said suit Abdul Haq Sarder was impleaded as defendant 2 and upon adjudication he

obtained a decree in respect of 32.78 acres of land. Pursuant thereto the District Kanungo assessed rent and delivered possession of the said land to Abdul Haq Sarder. It is further contended that in the case of Padmabati reported in 44 DLR 465 the title and possession of said Abdul Haq Sarder over the decreetal land have been duly recognized and affirmed and as such the claim of the present petitioners is founded upon a valid and subsisting title. It is further stated that Abdul Haq Sarder subsequently got his name mutated in the relevant khatian by initiating Miscellaneous Case 10 of 1974-75. Upon his death he left behind his wife Begum Rezia Khatun who is defendant 1 in the instant suit. It is further contended that Begum Rezia Khatun transferred 22.85 acres of land to Sheikh Abu Naser and Dr. M.A. Jabber by a registered kabala dated 22.07.1996. During the Diara operation the said land was erroneously recorded in the name of the Government whereupon Sheikh Abu Naser and Dr. M.A. Jabber instituted Title Suit 151 of 2001 in the Court of the Joint District Judge, Khulna which upon hearing was decreed by judgment and decree dated 05.02.2006. Against the said judgment the Government preferred First Appeals 281 of 2006 and 193 of 2006 both of which were dismissed by judgment and decree

dated 15.10.2008. It is further stated that Dr. M.A. Jabber and another subsequently transferred 0.32 acres of land to petitioner 1 named Md. Abdul Quddus Morol by kabala dated 15.05.2011 and 1.0725 acres to petitioner 1 Md. Abdul Quddus Morol along with petitioner 2 S.M. Motiur Rahman alias Motiar and petitioner 3 Shikder Anisur Rahman Tofi by two separate kabalas both dated 23.08.2011. As such the said petitioners claim to have acquired a subsisting interest in the suit land and contend that they are necessary parties to the proceeding. In support of their claim they filed a list of documents on 10.06.2014 including the decision made in the Padmabati case reported in 44 DLR 465 evidencing the acquisition of title and possession of Abdul Haq Sarder who was the predecessor-in-interest of defendant 1.

On 16.06.2014 petitioners 4-12 also filed an application in the appeal seeking addition as parties reiterating inter alia that 2.55 acres and 16.60 acres of land respectively arose as *char* lands on the northern and southern sides of the river kazibacha in the year 1942 under Mouza Tatultala of Police Station Batiaghata of District Khulna. It was further asserted that Kalikanto Chatterjee, Anil Kumar Gosh, Gobindo Nath Das and Abdul Haq Sarder each obtained 4.78 acres of land

out of total 19.15 acres by permanent settlement through kabuliyat from the then Collector of Khulna in Miscellaneous Case 54 of 1946-47. It is further stated that the said lands along with other *char* lands subsequently increased in area and upon survey the Collector found 129.22 acres of *Char* land in existence. For determination of ownership thereof the matter was referred to the District Judge, Khulna by initiating Miscellaneous Case No. 261 of 1954-55 under the provisions of the Bengal Alluvial Lands Act, 1920 after attachment of the land. The said proceeding was subsequently renumbered as Title Suit No. 05 of 1959 (reference case) wherein Abdul Haq Sarder as defendant 2 obtained a decree in respect of 32.78 acres of land which was affirmed by a Division Bench of this Court in Padmabati case reported in 44 DLR 465. Thereafter the District Kanango assessed rent and delivered possession of the said land to Abdul Haq Sarder who also got his name duly mutated in the khatian through Miscellaneous Case 10 of 1974-75. It is further contended that after the death of Abdul Haq Sarder his widow Begum Rezia Khatun transferred 22.85 acres of land to SK. Abu Naser and Dr. M. A Jabber by kabala dated 22.07.1996 and subsequent litigation as stated hereinbefore culminated in affirmation of their title. It is

further stated that Abu Nasir appointed Dr. M. A Jabber as his constituted attorney in respect of 11.1250 acres of land and acting as such Dr. Jabbar transferred portions of land to the present petitioners 4-12 by several registered kabalas dated 03.02.2009 and 04.11.2009. Accordingly the said petitioners claim to be successive transferees from defendant 1 and assert that they have a subsisting interest in the suit land rendering them necessary parties to the proceeding.

On 11.06.2014 defendant 74 named Halim Beg filed an application before the appellate Court seeking adjournment on the ground that he had not been informed about the proceedings after remand and as such required time to prepare his case. However the learned Additional District Judge, 3rd Court, Khulna without assigning any reason whatsoever rejected both the applications for addition of party and for adjournment by order dated 16.06.2014 and on the same day proceeded to allow the appeal by the impugned judgment and decree dated 16.06.2014.

Being aggrieved thereby the present petitioners 1-12 being transferees claiming through defendant 1 along with petitioner 13 who is defendant 74 in the original suit have preferred this revision and obtained the present Rule.

Learned Advocate Mr. Ahmed Nowshed Jamil along with Ms. Sayeda Shoukat Ara appearing on behalf of the petitioners submits that after remand from the High Court Division although the trial Court directed issuance of notices to the parties but the said order was not duly communicated and behind the back of all the defendants except defendant 122 the suit proceeded and was ultimately disposed of. He further submits that the plaintiffs thereafter preferred the appeal and obtained an order dispensing with service of notice upon the non-contesting defendants as a result of which the defendants had no occasion to know about the disposal of the suit or the filing of the appeal. Upon coming to know of the appeal they filed applications seeking an opportunity to contest the same but the appellate Court rejected such applications without assigning any reason thereby causing serious prejudice. He further contends that defendant 1 was also kept in the dark regarding the arrival of the case record after remand and was exempted from receiving notice of the appeal and the appellate Court while passing the impugned judgment and decree failed to consider these material aspects of the case thereby committed error of law resulting in an error in such decree occasioning failure of justice.

Learned Advocate further submits that the Court of appeal below committed error of law resulting in an error in such decree occasioning failure of justice inasmuch as it failed to appreciate that amalnama (Exhibit-52) is not a certified copy nor was it proved by any competent authority and as such cannot be treated as admissible secondary evidence in support of the plaintiffs' title. He further submits that Exhibit-52 does not disclose the names of all the landlords except that of Kailash Chandra Chottopadhaya and therefore the said amalnama is forged and fabricated yet the appellate Court erroneously relied upon the same and wrongly decreed the suit.

He also contends that on a plain reading of Exhibit-52 it appears that out of 148 plaintiffs only 48 are shown as recipients therein which clearly renders the document doubtful and unreliable. He further submits that the alleged amalnama covers only 203 acres of land whereas the plaintiffs have claimed title over 680 acres without producing any cogent evidence in support thereof and as such the suit was liable to be dismissed but the appellate Court decreed the suit upon fanciful consideration thereby committed error of law occasioning in failure of justice. He referring to the evidence

on record further submits that the plaintiffs examined 4 P.Ws. in support of their case of possession but none of them could state specifically about the actual possession of the plaintiffs in the suit land thus in absence of proof of possession the plaintiffs are not entitled to a decree for declaration of title under Section 42 of the Specific Relief Act but the Court of appeal below failed to appreciate this vital aspect of the case and committed error of law occasioning failure of justice in decreeing the suit upon wrongful consideration.

He further contends that admittedly the suit land includes mosque, madrasha and road yet the plaintiffs did not exclude those portions while preparing the plaint and as such they are not entitled to any decree in respect of lands over which they have no title but the Court of appeal below without adverting to this aspect wrongly allowed the appeal thus committed error of law occasioning failure of justice.

He very inwardly submits that the appellate Court committed an error of law in rejecting the applications for addition of parties filed by the present petitioners 1-12 claiming under defendant 1 in the appeal inasmuch as their title had already been established in the Padmabati case reported in 44 DLR 464 and the appellate Court could not sit

in judgment over a decision passed by the High Court Division and the impugned judgment is bad in law and liable to be set aside. He lastly submits that the judgment passed by the trial Court was based on proper appreciation of evidence and the same has not been reversed by the appellate Court in accordance with the settled principles laid down in Order 41 Rule 31 of the Code of Civil Procedure and the impugned judgment being perverse and misconceived is liable to be set aside forthwith.

In support of his submissions he has referred to the cases of Md. Abdul Jabbar Sarder Vs. Assistant Custodian Enemy Property, Pabna and others, 6 ADC 523; Bangladesh Textile Mills Corporation (BTMC) Vs. Delwary Begum and others, 29 BLC(AD) 308; Kashaituli Jame Mosque Waqf Estate Vs. Md.Abdus Salam Bepari and others, 7 ALR(AD) 205; A.K.M. Fazlul Haq and others Vs. Bozlur Rahman and others, 2016(1) LNJ(AD) 56 and prays that the Rule be made absolute.

On the other hand learned Advocate Mr. Md. Moniruzzaman along with Mr. Md. Ershad Ali Gazi appearing on behalf of the opposite parties submits that the appellate Court upon due consideration and proper appreciation of the evidence on record rightly allowed the appeal and decreed the

suit by reversing the findings of the trial Court and as such the impugned judgment calls for no interference by this Court in revisional jurisdiction. On question of possession he refers to the oral evidence adduced by the plaintiffs and further submits that an Advocate Commissioner upon local investigation submitted a report on 12.05.1984 stating that plaintiffs are in possession of the suit land but the trial Court failed to consider the said report and wrongly dismissed the suit upon erroneous consideration thereby committed error of law occasioning failure of justice.

Referring to Exhibits 2, 4, 5 and 8 he very candidly submits that those material documents were not at all considered by the trial Court although the same clearly demonstrate that the plaintiffs have been maintaining their title and possession in the suit land for over 40(forty) years. He also refers to exhibits 7, 32(ka), 9, 6 and submits that the plaintiffs produced a bundle of documents in support of their title which constitute material evidence and the appellate Court upon proper appreciation thereof correctly found that the plaintiffs have acquired title and possession in the suit land and therefore the judgment of the trial Court being devoid of legal basis and evidentiary support cannot be sustained.

He further draws the attention of the Court to the fact that the plaintiffs had obtained an order of injunction in the suit wherein the Court found *prima facie* title and possession in their favour which was also affirmed by this Court earlier and as such the trial Court committed a serious error of law in disregarding such findings and disbelieving the plaintiffs' possession.

He further submits that Exhibit-8 being a deed of acknowledgment or relinquishment clearly shows that the predecessor of defendant 1 relinquished his title in favour of the plaintiffs and thus the defendants are estopped from denying the plaintiffs' title in the suit land but the trial Court failed to consider this material evidence and dismissed the suit upon misconception of law. He also contends that since the right, title and interest of defendant 1 have already been transferred by Exhibit-8 the applications filed by the present petitioners 1-12 claiming under defendant 1 are devoid of substance and the appellate Court having duly considered this aspect rightly rejected those applications. Moreover the petitioners 1-12 being third parties to the suit have no *locus standi* to prefer the present revision and the same is not maintainable in law.

He further submits that PW 1 was recalled in appeal and a certified copy of the amalnama was duly tendered and marked as Exhibit-52 and upon consideration thereof the appellate Court rightly found title in favour of the plaintiffs. He further emphasizes that defendant 1 named Begum Rezia Khatun executed a registered kabala deed number 1921 in February 1996 in favour of Sheikh Abu Naser wherein she herself stated that she had obtained settlement of 19.15 acres of land from the District Collector, Khulna on 18.09.1946 in Miscellaneous Case 54 of 1946-47 but by *virtue* of orders dated 15.11.1954 passed in Miscellaneous Case 43 of 1953-54 and dated 15.05.1969 passed by the Additional Deputy Commissioner (Revenue) in Miscellaneous Appeal 10 of 1955-56 and by virtue of the order dated 25.05.1969 passed by the Secretary, Ministry of Land Reforms all such settlement deeds were cancelled and as such defendant 1 has no valid title or possession in the suit land and the Government had no authority to settle the same in her favour. Consequently the appellate Court rightly rejected the applications for addition of party filed by the present petitioners claiming through her. In support of his submission learned Adovate has referred to the cases of Md. Miksar Ali Dewan and others Vs. Dares Ali

Mondal and others, 13 MLR(AD) 105; Lakshan Chandra Mandal Vs. Takim Dhali and others, 28 CWN 1033; Ahmed Bepari and others Vs. Toki Mahomed and others, 8 CLJ 538; Bangladesh Vs. Md. Salam and others, 5 BCR(AD) 366; ADC Revenue Vs. Md. Riazuddin, 5 BLC(AD) 76; Sher Mohammad Vs. Sarada Bala Sen, 45 DLR 527; Adamjee Sons Ltd. Vs. Jiban Bima Corporation, 45 DLR 89; Chairman RAJUK and others Vs. A. Rouf Chowdhury and others, 8 BLT(AD) 279 and finally submits that the rule having no merit may be discharged.

The learned Deputy Attorney General Mr. Md. Yousuf Ali referring to Order 27 of the Code of Civil Procedure along with the Bangladesh Law Officers Order, 1972 (President's Order Number 6 of 1972) and the Gazette Notification dated 23.03.1973 issued by the Law Division of the Ministry of Law and Parliamentary Affairs submits that although he has not filed any formal power he is legally entitled to defend the interest of the Government.

The learned Deputy Attorney General while generally concurring with the submissions advanced by the learned Advocate for the petitioners further submits that R.S. record

number 1 prepared in the name of defendant 122 (Government) having not been rebutted by any cogent, reliable and admissible evidence carries a presumption of correctness under Section 144A of the State Acquisition and Tenancy Act. Since the plaintiffs failed to establish their title and possession in the suit land the suit was rightly dismissed by the trial Court and he prays for making the Rule absolute.

Heard the learned Advocates of both sides and perused the materials on record.

In this revision Rule was issued on the following terms:

> "Let a Rule be issued calling upon the opposite parties 1-179 to show cause as to why the impugned Order 36 dated 16.06.2014 passed by the learned Additional District Judge, 3rd Court, Khulna in Title Appeal No. 11 of 2012 rejecting applications for addition of party and adjournment thereby allowing the appeal by judgment and decree dated 16.06.2014 after setting aside the judgment and decree dated 02.10.2011 passed by the learned Joint District Judge, 1st Court, Khulna in Title Suit No. 687 of 1978 should not be set

aside and/or pass such other or further order or orders as to this Court may seem fit and proper."

It appears that petitioners 1-12 are subsequent transferees from defendant 1 who is now opposite party number 180 named Rezia Khatun and petitioner number 13 namely Halim Beg is defendant number 74 in the suit. Admittedly petitioners 1-12 were not parties to the suit. The record further reveals that the instant Title Suit 687 of 1978 was dismissed on 16.07.1994 in presence of defendants 1, 74, 78, 122 and 131 and decree was drawn up on 23.07.1994. The plaintiffs thereafter preferred First Appeal 317 of 1994 before the High Court Division and upon hearing a Division Bench set aside the judgment and decree of the trial Court and remanded the suit by judgment and decree 07.03.2010. After remand the Trial Court received the record on 11.07.2010 and restored the suit to its original file and number and fixed on 27.07.2010 for taking necessary steps with a direction to inform the learned Advocates of both sides. However from the certified copy of the order dated 11.07.2010 Annexure-D read with the order sheet it appears that the office of the Court informed only the Government pleader representing defendant number 122 while the learned Advocates representing the

other contesting defendants were not notified as a result of which they failed to contest the suit despite having filed written statements. Consequently the suit proceeded practically against defendant number 122 alone and was ultimately dismissed by judgment and decree dated 02.10.2011. The plaintiffs then preferred Title Appeal 11 of 2012 which was registered on 23.01.2012. On the same date the plaintiffs filed an application for dispensing with the service of notice upon defendant-respondents 2-131 which was allowed by Order Number 3 dated 26.01.2012. Thus it is evident that the defendants particularly those who had earlier contested the suit remained completely unaware of both the suit proceedings after remand and the appeal.

It further appears that petitioners 1-12 upon coming to know of the appeal filed applications on 10.06.2014 and 16.06.2014 for being added as parties in the appeal relying upon *inter alia* the decision reported in 44 DLR 465 (Padmabati case) as apparent from Annexure-G series and H series. However the appellate Court without assigning any reason whatsoever rejected those applications and on the same day proceeded to allow the appeal by passing the impugned judgment and decree on 16.06.2014.

It is also found that defendant number 74 who is now petitioner number 13 filed an application on 11.06.2014 in the appeal stating that after remand he was kept in the dark and was not informed of the proceedings which is evident from Annexure “I” to the revisional application. The appellate Court however rejected the said application without assigning any cogent reason merely observing that the contention was not satisfactory. This Court is constrained to observe that such conduct of the appellate Court particulaly Order Number 36 dated 16.06.2014 strikes at the very root of the principles of natural justice. The appellate Court failed to appreciate that when a suit is remanded it is incumbent upon the trial Court to issue fresh notice to the parties or their engaged Advocates and to ensure their participation in the proceedings. The failure to serve notice upon the contesting defendants after remand is a fatal irregularity vitiating the entire proceeding. In this regard the provisions of Order 3 Rule 4 of the Code of Civil Procedure read with Rules 63, 93, 388 of the Civil Rules and Orders and Rule 466(2) of the erstwhile High Court Civil Rules and Orders mandate proper communication with the learned Advocates. This principle has been affirmed in the cases of M.A. Wahab and another Vs. Abul Kalam and

another reported in 11 BLD(AD) 274 and Kashaituli Jame Mosque Wakf Estate Vs. Md. Abdus Salam Bepari and others reported in 1 LM(AD) 239=7 ALR(AD) 204. The omission to notify the learned Advocates of the contesting defendants is thus a gross violation of settled procedure and has resulted in serious miscarriage of justice. Moreover it is particularly noteworthy again that in the appeal by order 3 dated 26.01.2012 service of notice upon this defendant was dispensed with upon prayer by the plaintiffs and the same was allowed. Accordingly this defendant had no prior knowledge of the appeal.

As regards the objection raised by the opposite parties that petitioners 1-12 being third parties are not competent to maintain the present revisional application it appears that in the peculiar facts and circumstances of the case no effective alternative remedy has been shown to be available to them. Moreover petitioner number 13 is admittedly a party to the suit. Therefore this Rule is maintainable at least at his instance and in the facts of the case can also proceed at the instance of petitioners 1-12. This view finds support from the decisions in Ismail Hossain Vs. Shakhina and others, 17 BLC 320 and

Abdul Jalil and others Vs. Shah Alam and others, 16 BLC 492.

Turning now to the merits of the case it appears that the plaintiffs numbering as many as 148 claimed declaration of title over 680 acres of land. However the plaint does not clearly disclose from which landlord or under which specific plot numbers the alleged 129 acres of land were settled in the year 1338 B.S. The subsequent claims of settlement of further 129 acres in 1348 B.S. and 203 acres in 1352 B.S. are also vague and uncertain lacking any specific particulars.

The plaintiffs have thus failed to establish with clarity and certainty the source of their title. There is no reliable oral or documentary evidence to show that any identifiable landlord settled the land in their favour. The evidence adduced by the plaintiffs is vague, inconsistent and devoid of probative value.

Although numerous documents were produced and marked as exhibits but none of them either individually or collectively is sufficient to prove the plaintiffs' title to the suit land measuring 680 acres. The alleged amalnama (Exhibit-52) which is claimed to be the principal document of title has not

been proved in accordance with law. The claim that the original was lost is not substantiated by reliable evidence and the so called General Diary Exhibit-2 was not properly proved. Moreover it appears from the record that an amalnama as indicated by the learned Advocate for the plaintiffs is still available in the case file though blurred which casts serious doubt on the alleged loss of the original. Therefore the authenticity of Exhibit-52 becomes highly questionable.

The appellate Court erred in treating Exhibit-52 as a certified copy whereas it does not bear the essential legal characteristics of a certified copy as required under sections 75, 76, 77 and 79 of the Evidence Act. In absence of proper proof of the original document or a legally admissible certified copy Exhibit-52 is inadmissible in evidence and has no evidentiary value according to Sections 61, 63, 65, 67, 68, 75, 76, 77 and 79 of the Evidence Act. A certified copy must contain a clear endorsement that it is true copy of the original and must also bear the signature and official seal of the authorised officer and the date of issuance. Under Section 57 of the Registration Act only the Registrar or Sub-Registrar is legally empowered to grant certified copies of registered instruments. Similarly in the case of Court documents only the

Copying Department of the concerned Court under the supervision of authorised officer is competent to issue certified copies of records forming part of the judicial file. In the present case the alleged amalnama is admittedly an unregistered private document. Therefore Exhibit-52 itself is never a certified copy and the same is fabricated.

Similarly Exhibit-8 being a deed of relinquishment cannot by itself confer title. It is at best a corroborative document and in absence of a valid primary source of title it cannot sustain the plaintiffs' claim. Moreover Exhibit-8 never shows as to how the predecessor of defendant 1 became owner of the entire 680 acres of land as claimed by the plaintiffs. On the other hand the primary source of title Exhibit-52 has in no manner been proved in evidence. Furthermore the evidence of P.W. 2 who purportedly witnessed Exhibit-8 is inherently unreliable as his age indicates that he could not have witnessed a document executed in 1962. This renders the document highly suspicious.

It also appears that no rent receipts were ever filed although the appellate Court placed reliance upon them out of thin air. Exhibit-4 being merely an order of a revenue officer

does not establish title over the entire suit land. Exhibit-4 does not mention or include the entire 680 acres of suit property. From paragraph 6 of the plaint it transpires that as many as 63 kabalas executed from the year 1967 to 1975 have been alleged to have been relied upon by the defendants but plaintiffs did not seek any relief in respect of those documents. Since the said documents have remained outstanding and subsisting and continue to operate as a legal bar against the plaintiffs' claim of title the instant suit is clearly barred under Section 42 of the Specific Relief Act.

The plaintiffs have also failed to implead necessary parties including recorded tenants and the Mutawalli of the Waqf property thereby rendering the suit defective for non-joinder of necessary parties.

Upon consideration of the submissions of the learned Advocates for the respective parties and on perusal of the evidence on record it appears that Exhibit-52 being devoid of any legal basis and evidentiary value fails to challenge or weaken the presumption attached to Exhibit-Ka. Although the plaintiffs have claimed that they obtained settlement of the suit land since 1338 B.S. it is evident that in none of the

subsequent surveys was the suit land recorded in their names. No rent receipt in respect of the suit land in the names of the plaintiffs has been produced or proved before the Court. Therefore it transpires that there is no documentary evidence whatsoever in support of the alleged possession of the plaintiffs over the suit property.

P.W. 2 in his deposition claimed that the plaintiffs had been possessing the suit land for the last 50-60 years but in cross-examination he admitted that he did not know the total number of plaintiffs nor did he know all of them personally and he could not specify who was in possession of which portion of the land nor even the total area of the suit land. Similarly P.W. 3 in his cross-examination admitted that out of 148 plaintiffs he was unable to state who was in possession of what extent of land. Such admission seriously undermines the claim of possession made by the plaintiffs. P.W. 4 in his cross-examination stated that he was merely a Mohorar and his work was limited to pulling the chain rope and he could not produce any document to show that he had worked under Ashraf or Ahad. His evidence therefore does not support the case of the plaintiffs in any material particular.

The appellate Court however while deciding the question of possession observed that P.W. 1 had given detailed supporting evidence and P.W. 2 Jamal Ghazi along with P.W. 3 Bilal Mazi and P.W. 4 Manohar Chandra Roy had all supported the claim of the plaintiffs' possession over the suit land. But upon careful scrutiny of their depositions it is found that their statements are inconsistent, uncertain and fail to establish actual, continuous and specific possession of the plaintiffs over any definite portion of the suit property.

It is an undisputed fact on record that despite the plaintiffs' assertion of holding the land since 1338 B.S. the suit land was never recorded in their names in any subsequent official survey. No record-of-right or survey entry has been produced to show that either title or possession of the land was ever reflected in their favour. The findings on possession arrived at by the trial Court were not properly confronted or reversed by the appellate Court in accordance with the provisions of Order 41 Rule 31 of the Code of Civil Procedure. The appellate Court failed to advert to and reappraise the trial Court's crucial findings regarding the credibility and cogency of the evidence. Upon a comprehensive evaluation of the entire evidence on record it

appears that plaintiffs have failed to produce any reliable documentary or convincing oral evidence identifying specific possession establishing a chain of settlement or proving continuous, uninterrupted and exclusive possession so as to sustain a valid claim of title.

Furthermore P.W. 1 in his cross-examination admitted that the entire suit land is situated in one compact block. P.W. 3 also admitted that the suit land lies in one single compact area. However the schedule to the plaint clearly describes the suit land as comprising three separate and distinct boundaries. This material inconsistency between the oral evidence and the description in the plaint renders the identity of the suit land uncertain and vague. Consequently the suit is liable to be dismissed for want of proper specification and identification of the suit land.

The contention of the plaintiffs that their possession stands proved by the report of the Advocate Commissioner and by the order passed by this Court in matter of temporary injunction is also devoid of merit. It is a settled proposition of law that an Advocate Commissioner has no authority to determine possession of any party. Such determination must

be made by the Court itself upon proper appreciation of the evidence on record. It is also a settled principle that any observation made in an interlocutory or incidental proceeding does not have any binding effect at the time of final adjudication of the suit on merits.

In view of the foregoing discussions it appears that the appellate Court committed error of law resulting in an error in such decree occasioning failure of justice in decreeing the suit upon fanciful consideration. Accordingly the judgment and decree passed by the Court of appeal below cannot be sustained in law.

In the result the Rule is made absolute.

The order of stay passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Court concerned forthwith and the Lower Court Records be sent down immediately.

Md. Ali Reza, J: