IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

***Present:***
***Mr. Justice S M Kuddus Zaman***
***And***
***Mr. Justice Sayed Jahed Mansur***

***First Appeal No. 169 of 2017***

Md. Shahin @ Hasan Ali Shahin and another
....Appellants
-Versus-
Ahmed Ali and others
... Opposite parties
Mr. Kazi Ahsan Habib, Advocate
... For the appellants.
Mr. A. S. M. Rahmatullah, Advocate
… For the respondent No.1.

***Heard on 01.09.2025 and 27.10.2025.***
***Judgment on 03.11.2025***

***S M Kuddus Zaman, J:***

This First Appeal is directed against the judgment and decree dated 22.05.2013 passed by the learned Joint District Judge, 3rd Court, Dhaka, in Title Suit No.162 of 2007 decreeing the suit in preliminary from, the above named defendants, begs to prefer this memorandum of appeal from the original decree to this Hon'able Court against the plaintiff respondent on the following amongst other.

Facts in short are that respondent No.1 as plaintiff instituted above suit for partition of "Ka" and "Kha" property as described in the schedule to the plaint seeking a saham for $104\frac{1}{2}$ ajutangsha land. It was alleged that "Ka" schedule property comprising a five storied building

belonged to Shawkat Ali and “Kha” schedule property belonged to the wife of above Shawkat Ali namely Nasima Begim and above Shawkat Ali and Nasima Begum died leaving two sons plaintiff and defendant No.1 and two daughters defendant Nos.2 and 3 as heirs. Above property has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Above suit was contested by defendant Nos.1-3 by filing a joint written statement alleging that defendant No.1 purchased a piece of land in Khilkhet for the plaintiff in lieu of his share in the disputed property. He paid medical expenses of Taka 10,00,000/- for their mother Nasima Begum and paying the mortgage installments for “Ka” schedule property of his deceased father. The plaintiff may get a saham for the disputed property upon payment of above money and return of Khilkhet land.

At trial plaintiff and defendant examined two witnesses each. Documents of the plaintiff were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos.”Ka”-“Jha” series.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit and allotted $140\frac{1}{2}$ ajutangsha land in the saham of the plaintiff.

Being aggrieved by above judgment and decree of the trial Court defendant Nos.1 and 3 as appellants moved to this Court and preferred this appeal.

Mr. Kazi Ahsan Habib, learned Advocate for the appellants submits that appellant was defendant No.1 of above suit. He purchased a land in Khilkhet with his money in the name of the plaintiff on an agreement that the plaintiff would relinquish his claim in the disputed property in favour of defendant No.1. Defendant paid the medical expenses of their mother Nasima Begum amounting to Taka 10,00,000/-. It was further stated that the five storied building of "Ka" schedule property was mortgaged by Shawkat Ali to House Building Finance Corporation and defendant No.1 paid the installments of above loan. As such the plaintiff did not have any right, title, interest and possession in the disputed property.

The learned Advocate for the appellants has submitted a Supplementary Affidavit today stating that the appellants do not have any grievance against the preliminary decree and he admits the correctness of the saham allotted by the trial Court to the plaintiff and the defendants. The appellant has been aggrieved by the final decree. The learned Advocate for the defendants should have submitted an objection against the Advocate Commissioner's report and the final decree passed on the basis of above report. But the appointed Advocate of the defendants instead of preferring an appeal against the final decree erroneously preferred the instant appeal against the preliminary decree. The learned Advocate submits that the impugned judgment and decree may be set aside and the suit may be remanded to the trial Court for retrial so that the defendants can submit an objection against the

Advocate Commissioner's report and also prefer an appeal against the final decree.

On the other hand Mr. A. S. M. Rahmatullah, learned Advocate for respondent No.1 submits that admittedly "Ka" schedule the property belonged to Shawkat Ali and "Kha" schedule property belonged to Nasima Begum and above Shawkat Ali and Nasima Begum died leaving two sons appellant No.1 and respondent No.1 and two daughters appellant No.2 and respondent No.3 Shaila Parvin. As such each son inherited $140\frac{1}{2}$ Ajutangsha land and structure of above property of their parents and the learned Judge of the trial Court on correct appreciation of materials on record rightly decreed above suit in preliminary form which calls for no interference. After demise of Shawkat Ali and Nasima Begum their succession opened and plaintiff and defendants inherited their property in above shares. There is no claim by the defendants that the plaintiff transferred any party of above property which he inherited from his parents the learned Judge of the trial Court rightly found that the claims of the defendants against above share was unfounded and without any legal basis. The appellants want to challenges the Advocate Commissioner's report which has been incorporated in the final decree and the final decree is not before this Court.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that Shawkat Ali was the rightful owner and possessor of "Ka" schedule land and his wife Nasima Begum was the rightful owner and possessor of "Kha" schedule land and they died leaving two sons plaintiff and defendant No.1 and two daughters defendant Nos.2-3 as heirs. Defendant No.1 claimed to have purchase a property in Khilkhet in the name of the plaintiff in lieu of share in the disputed property. Defendant No.1 may established his above claim and recover above land or money from the plaintiff by filing an appropriate suit in a competent Civil Court. But he cannot deprive the plaintiff from his legitimate share in the property of his parents. Similarly the defendants claimed that they paid mortgaged installments of the house of "Ka" schedule or paid the medical expenses of their mother Nasima Begum cannot disentitle the plaintiff from his legitimate share in above property. The learned Advocate for the appellants realizing above deficiencies in the claims of the defendants concedes that the appellant does not any grievance in the impugned judgment and preliminary decree and the defendant accepts the share allocated by the trial Court to the plaintiffs and defendants.

On consideration of above materials on record and submissions of the learned Advocate of the appellants we are unable to find any substance in this appeal which is an outcome of misconception of facts and law.

As mentioned above the learned Advocate for the appellants has submitted a Supplementary Affidavit on 2nd November 2015 alleging

that the appellants have serious grievance against the final decree which has been passed on the basis of an erroneous Advocate Commissioner's report. Above Advocate Commissioner's report does not reflect the actual possession and position of the plaintiff and defendants in the above multi storied building and land. Due to inexperience and lack of skill of the appointed Advocate of the defendants no objection was filed against above Advocate Commissioner's report. The defendants were not aware as to the passing of the final report nor they were advised by their appointed Advocate for preferring an appeal against above final decree. The learned Advocate submits that this Court may provide an opportunity to the appellant so that they can prefer an appeal against the final decree.

In this regard the learned Advocate for the respondents repeatedly submitted that the appellants were fully aware as to the submission of report by the Advocate Commissioner and passing of the final report on the basis of the same. Since the Advocate Commissioner's report did not affect the interest of the appellant he did not submit any objection against above report nor they preferred any appeal against the final decree.

As mentioned above the instant appeal before us was filed challenging the legality and propriety of the preliminary decree passed on 30.06.2013. The appellants did not prefer any objection against the Advocate Commissioner's report nor they have prefer any appeal

against the final decree. As such we are not in a position to determine the contentious submissions made by the learned Advocates for the respective parties as mentioned above.

In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in this appeal which is liable to be dismissed.

In the result, the First Appeal is dismissed on contest against respondent No.1 with cost and ex-parte against the rest without cost. The impugned judgment and decree dated 22.05.2013 passed by the learned Joint District Judge, 3rd Court, Dhaka, in Title Suit No.162 of 2007 is hereby affirmed.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Court's record immediately.

***Sayed Jahed Mansur, J:***

I agree.

*MD. MASUDUR RAHMAN*
*BENCH OFFICER*