

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No.635 of 2018

Mohammad Ali Sikder being dead his heirs- Abul
Basar Sikder and others

... Appellants

-Versus-

Badsha Sheikh and others

... Respondents

Mr. Ranjan Chakravorty, Advocate

... For the appellants.

Mr. Minhajul Hoque Chowdhury, Advocate

... For the Respondent

Nos.24, 24(Ka), 24(Kha), 41, 43-46, 54, 68-69, 77, 79,
81, 83, 89, 92, 94-95, 111, 115, 131, 134, 150- 151, 168-
171, 175, 178, 186, 189, 197, 209-211, 213, 217-219, 220
and 214.

Heard on 18.01.2026 and Judgment on 15.02.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 27.02.2018 passed by the learned Joint District Judge, 1st Court, Shariatpur, in Title Suit No.08 of 2001 dismissing the same.

Facts in short are that the respondent as plaintiff instituted above suit for declaration of title and partition of 22 acre land seeking saham for 4.535 decimal alleging that above land belonged to Abdul Karim Dewan and others and the same was rightly recorded in the relevant R. S. and S. A. Khatians. Above recorded tenant Yousuf Khan transferred 2.60 acre land to Abdul Karim Dewan @ Monai Dewan by registered kabla deed dated 12.06.1963 and he again purchased $1.04\frac{1}{2}$ decimal land from above Abdul Karim Dewan by a registered kabla deed dated 09.07.1963. Above Abdul Karim Dewan @ Monai Dewan while owning and possessing 6.12 acre land died leaving wife Ranu Begum, two sons namely Joynal and Juboraj and four daughters namely Taslima, Nasima, Masuma and Manju as heirs. Above Taslima acquired 6.70 acres land by inheritance and purchased 59 decimal land from Abdul Wahed Khan by registered kabla deed dated 08.10.1959, 32 decimal land from Lundu Kha by registered kabla deed dated 08.10.1958 and 67 decimal land from Yousab Kha by registered kabla deed dated 08.10.1958. Mustaque Ahmed son of Lundu Kha transferred 2.34 decimal land to Taslima by a registered kabla deed dated 19.06.1962. Thus Taslima while owning and possessing 6.29 acres land transferred $3.28\frac{1}{2}$ acres land to the plaintiffs by registered kabla deed dated 02.10.1998 and 1.09 acres land to the plaintiffs by registered kabla deed dated 02.10.1998. Thus

the plaintiffs acquired $4.36\frac{1}{2}$ decimal land by purchased from Taslima. Above property has not been partitioned by meets and bound and the defendants refused to effect an amicable partition.

Defendants contested above suit by filing 29 separate written statements wherein they have denied the title and possession of the plaintiffs and alleged that some of the disputed property comprises Government road, bazaar, madrasha, WAPDA barrage and Heliport. Defendants acquired above property by registered kabla deeds from S. A. recorded tenants Yousuf Kha and others. It was further stated that 3.60 acre land went into the river and reappeared which is being possessed by the local people and above suit is bad for defect of parties and for not incorporating all ejmali properties in hotchpotch of the suit. All above defendants sought separate saham for their respective land purchased by registered kabla deed.

At trial plaintiffs examined two witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-2 series. Defendants examined 32 witnesses and documents of those defendants are marked as Exhibit Nos."Ka" to "Murdonna".

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit holding that the suit was bad for not bringing into hotchpotch all joint properties and for not impleading all co-sharers as defendants.

Being aggrieved by and dissatisfied with above judgment and decree of the trial court above plaintiffs as appellants moved to this Court and preferred this First Appeal.

Mr. Ranjan Chakravorty, learned Advocate for the appellants submits that the learned Judge of the trial Court rightly held that both the defendants and plaintiffs have right, title and possession in some land of the disputed khatians but all the disputed plots of all khatians having not been incorporated in the suit and all co-sharers being not impleaded as defendants above suit for partition was not tenable in law. The learned Joint District Judge rightly found that both the plaintiffs and defendants have title and possession in some land and all the defendants sought separate saham in above undivided property. Defendant Nos.131 and 132 the Deputy Commissioner and Executive Engineer of WAPDA have stated in their written statement that excepting 0.50 decimal land all lands of Plot Nos.26, 99, 216, 75 has been acquired by the Government vide L. A. Case No.26/67-68. Above defendants are not co-sharers of the plaintiffs and the land acquired by above defendants have been excluded from above joint property but they were erroneously incorporated in the plaint and saham was sought for above mentioned property of the Government. The plaintiffs shall amend of plaint and exclude above defendants and their properties from the plaint. The learned Advocate further submits that the plaintiffs

produced two original kabla deed Nos.2280 and 2281 dated 02.10.1982 executed by Taslima Begum at trial. Above Taslima Begum purchased land by registered kabla deeds from other co-sharers and the plaintiffs submitted certified copies of above kabla deeds but those certified copies were not marked as Exhibits. It is true that in some part of above land there are public road, heliport, bridge, bazaar and other public infrastructures which need to be excluded from the plaint. Since above suit for partition was not disposed of on merit the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence.

On the other hand Mr. Minhajul Hoque Chowdhury, learned Advocate for the Respondent Nos.24, 24(Ka), 24(Kha), 41, 43-46, 54, 68-69, 77, 79, 81, 83, 89, 92, 94-95, 111, 115, 131, 134, 150- 151, 168-171, 175, 178, 186, 189, 197, 209-211, 213, 217-219, 220 and 214 submits that this is a false and frivolous case filed by the plaintiffs on ineffective and collusive kabla deeds to grab the Government property and harass innocent defendants. The learned Judge of the trial most illegally held that the plaintiffs have title in some land which is groundless without any evidence on record. The learned Advocate for the appellants has admitted that land of all plots of the disputed khatians were brought into the hotchpotch of above suit nor owners

of above joint property were impleaded as defendants. The plaintiffs produced two registered kabla deeds of Taslima Begum showing transfer of 4.36 acres land to the plaintiffs but above documents having not been proved in accordance with law the learned Judge of the trial Court rightly excluded those documents from consideration. The plaintiffs had serious laches in the prosecution of above suit and they cannot be rewarded for willful laches by ordering a retrial at the expenses of unnecessary harassment of the respondents. The learned Advocate lastly submits that the appeal may be dismissed out right and the plaintiffs be permitted to file a fresh suit for partition.

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

As mentioned above the appellants as plaintiffs filed above suit for declaration of title and partition for 22 acre land claiming saham for $4.53\frac{1}{2}$ acre land by purchase from Taslima Begum. It turns out from record that the plaintiff produced two registered kabla deeds executed by Taslima Begum on 02.10.1998 but the learned Joint District Judge for unknown reasons did not mark above documents as exhibits. Similarly the plaintiffs produced certified copies of the registered kabla deeds by which Taslima Begum allegedly purchased

land in above khatians but those were also not marked as Exhibits. But the learned Joint District Judge held that the plaintiffs have title and possession in some land of the disputed khatians.

While giving evidence as PW1 Abdul Ali Sikder and PW2 Fakhruddin Munshi have admitted in their respective evidence that the properties of disputed khatians comprise heliport, WAPDA, barrage, public road, municipal market and Edgah. As soon as the Government acquires any property by acquisition that property becomes totally separated. from the previous khatians and plot numbers. The learned Advocate for the appellants concedes that impleading the Deputy Commissioner and Executive Engineer as defendants and incorporating the acquisitioned land of the Government were erroneous and above defendants and their land will be excluded from the plaint by way of amendment of the plaint.

All the defendants have paid Court fees and sought separate saham. In a suit for partition when the defendants pay court fees and seek separate saham their status becomes same as that of the plaintiffs and even if it is proved that the plaintiffs do not have any subsisting interest in the ejmali property the Court may grant separate saham to the defendants, if proved by legal evidence.

It turns out from the cross-examination of DW1Mahbubul Alam defendant No.47 that he has admitted that Taslima Begum is a daughter of Abdul Karim Dewan and she acquired property by

inheritance and purchase and Taslima Begum does not possess above land nor he knows who possesses above land of Taslima Begum. The learned Advocate for the respondents submits that respondent purchased land from Taslima Begum before the alleged purchase of the plaintiffs and Taslima Begum having no subsisting interest in above jama and by alleged purchase the plaintiff did not acquire any title and possession in above property.

A suit for partition has recurring cause of action. As such the ends of justice is better served if a suit for partition is disposed of on merit on consideration of evidence on record. As mentioned above the learned Judge of the trial Court did not dispose of above suit for partition on merit but the same has been dismissed on procedural defects.

On consideration of above facts and circumstances of the case and materials on record we hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial so that the plaintiff can amend the plaint and seeks partition only for the property of Taslim Begum excluding the property of the Deputy Commission and the Executive Engineer and others.

As mentioned above the plaintiffs have filed above erroneous and defective suit in 2001 and defendants have suffered in terms of

money and time to protect their interest in above property. As such the respondents are entitled to get cost of Taka 20,000/-.

In the result, this First Appeal is allowed on contest against the respondents with cost of Taka 20,000/-.

The impugned judgment and decree dated 27.02.2018 passed by the learned Joint District Judge, 1st Court, Shariatpur, in Title Suit No.08 of 2001 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER