

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.345 of 2017***

Sekandar Ali Kha

... Appellant

-Versus-

Nasir Uddin Bepari and others

...for the respondents

Mr. Garib Newaz, Senior Advocate with

Mr. Rana Kawser, Advocate

... For the appellant

Mr. Anup Kumar Saha, Advocate

...For the respondent Nos.1-3, 6-7, 13-16, 39 & 53.

**Heard on:11.05.2026 & 14.05.2026.**

**Judgment on: 17.05.2026.**

**S M Kuddus Zaman, J**

This appeal is directed against the impugned judgment and decree dated 08.06.2015 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Madaripur in Title Suit No.60 of 2011 dismissing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title for 90 decimal land appertaining to P.S. khatian No.699 corresponding to S.A. khatian No.819 alleging that Momin Uddin Bepari had 8 ana share, Kalom Bepari 4 ana 13 gonda 2 kranti, Ayatunnessa had 10 gonda, Safura Khatun 2 ana 6 gonda 2 kora 2 kranti and Maju Bibi had 10 gonda share and accordingly above P.S. khatian was prepared. Above Ayatunnessa died leaving daughter Safura Khatun thus Safura Khatun became owner and possessor

in 76 decimal land and plaintiff No.1 purchased 14 decimal land from Khodeza Begum the successive heir of Kalom Bepary by registered kobla deed dated 18.09.2001 (Exhibit No.4). Plaintiffs are successive heirs of above Safura and Ayatunnessa and by way of successive inheritance they acquired title in 76 decimal land thus the plaintiffs are the owner and possessor of 90 decimal land. But the S.A .khatian was erroneously prepared in the names of the defendants and on the basis of the same they denied the title of above plaintiff in above property.

Defendants No.1-3, 6-7, 13-16, 39 & 53 and 29/33-37 contested above suit by filling two separate written statements. Defendants No.1-3, 6, 7, 13-17, 39 and 53 are successive heirs of above P.S. recorded tenants Momin Uddin Bepari who had 8 ana share. They do not claim the property of Safura or Ayatunnessa as stated above. But in their written statement it has been alleged that Kalom Bepari and Hasen Banu jointly transferred 40 decimal land by registered kobla deed dated 13.12.1979 to Aroz Ali Howlader and Hasen Banu was another name of Ayatunnessa. As such Ayatunnessa did not have any subsisting interest in above khatian and his daughter Sofura Bibi did not inherit any land from her.

On the other hand defendants No.29/35-37 stated that out of 4.24 acres land of P.S. khatian No.699 Kalom Bepari, Ayatunnessa, Maju Bibi and Safora Khatun gave settlement of 80 decimal land to Falan Shikder who is the predecessor of above defendants and on the basis above settlement relevant B.S. khatians were prepared in their names. Plaintiffs filed separate objection cases under Section 30 which were rejected. Plaintiffs do not have any possession in the above land.

At trial plaintiffs examined three witnesses defendant No.1-3 and others examined three witnesses and defendant Nos.29/35-37 examined one witness.

Document of the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit Nos.ka-cha series.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit.

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. Garib Newaz, learned senior Advocate for the appellant submits that admittedly Sofura Khatun had 2 ana 6 gonda 2 kora 2 kranti share and her mother Ayatunnessa had 10 gonda share in P.S. khatian No.699 and plaintiffs are their successive heirs. Admittedly Khodeza Begum successive heir of Kalom Bepari another P.S. recorded tenant transferred 14 decimal land to the plaintiff No.1 by registered kobla deed dated 18.09.2001 (Exhibit No.4). Defendants No. 1-3, 6-7, 13-16, 39 & 53 are the heirs of Momin Uddin who had 8 ana share in above P.S. khatian and they do not claim the property of Sofura Khatun and Aytunnessa. Plaintiffs also do not claim property of Mimon Uddin. In their written statement defendant No.1-3, 6-7, 13-16, 39 & 53 stated that Kalom Bapery and Hasen Bibi jointly transferred 14 decimal land on 13.12.1939 to Aroz Ali Talukder but above Hasen Bibi is not Ayatunnessa. Defendant No.29/35-37 has claimed that Kalom Baperi, Ayatunnessa, Maju Bibi and Safora jointly gave settlement of 80 decimal land. But they could not make a specific mention who gave settlement of what quantity of land let alone prove above settlement by legal evidence. DW No.1 Golam Mustafa while giving evidence for defendant No.1-3, 6, 7, 13-17, 39 & 53 admitted that plaintiffs have possession in 31 decimal land. D.W. No.4 while giving evidence for defendant No.29/35-37 admitted that plaintiffs have

possession in 14 decimal land. But due to serious error of the learned Advocate for the plaintiff P.W. No.4 Ranu Begum was not cross examined by the plaintiffs and her evidence remained uncontroverted. Plaintiffs and some defendants are co-sharers or successive heirs or purchasers of above mentioned P.S. khatian tenants. As such the plaintiffs need to make amendment of the plaint to establish their true claim and also need to cross examine D.W. No.4 Ranu Begum. As such the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial court for retrial.

Mr. Anup Kumar Saha learned advocate for the respondent No.1-3, 6, 7, 13, 14, 15, 16 submits that above respondents do not claim property of Safura Khatun. The learned advocate submits that Hasen Bibi and Kalom Bepari jointly transferred 40 decimal land by registered kobla deed by 13.12.1939 to Aroz Ali Howlader predecessor of respondent No.53 and above Hasen Bibi was another name of Ayatunnessa. As such Ayatunnessa did not have any subsisting in above property and Safura Begum did not inherit any land from her mother Ayatunnessa. The plaintiffs have possession in 31 decimal land and the learned Judge of the trial court rightly gave partial decree for above land to the plaintiff.

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

It is admitted that predecessor of defendant Nos.1-3, 6, 7, 13-17 and 39 & 53 namely Momin Uddin had 8 ana share, plaintiff's predecessors Safura Khatun had 2 ana 6 gonda 2 kora 2 kranti and Ayatunnessa had 10 gonda share in P.S. khatian No.699. Plaintiffs claimed 14 decimal land by purchase from Khodeza Begum, successive heir of another P.S. recorded tenant Kalom Bepari by registered kobla deed dated 18.09.2001 (Exhibit No.4). Defendants No.1-3, 6, 7,

13-17, 39, 53 & defendant Nos.29/35-37 admit title and possession of plaintiff No.1 in above 14 decimal land on the basis of his purchase by above registered kobla deed dated 18.09.2001 (Exhibit No.4).

It is not disputed that Ayatunnessa was the mother of Safura Khatun and after demise of Ayatunness Safura khatun inherited her property. It has been alleged by defendant Nos.1-3, 6,7, 13-17, 39, 53 & defendant No.29/35-37 that Hasen Bibi jointly with Kalom Bepari transferred 40 decimal land by registered kobla deed dated 13.12.1939 to the predecessor of respondent No.53 namely Aroz Ali Howlader. As mentioned above in the relevant P.S. khatian the name of the mother of Safura Khatun has been mentioned as Ayatunnessa. In their written statement defendant Nos.1-3, 6,7, 13-17, 39, 53 & defendant No.29/35-37 did not mention that Ayatunnessa had another name or Ayatunnessa and Hasen Bibi were identical woman, nor there is any evidence in this regard. As such the claim of above defendants that Hasen Bibi was Ayatunnessa does not have any legal basis at all and the findings of the learned judge of the trial court that Ayatunness and Hasen Bibi were same person is groundless and not tenable in law.

It has been alleged by defendant Nos.29/35-37 that Kalom Baperyi , Ayatunnessa, Safura Bibi and Maju Bibi jointly gave settlement of 40 decimal land of above khatian to their predecessor Falan Shikder. But no specific mention has been made in there written statement as to what quantity of land was given settlement by each of above P.S. recorded tenant nor specific mention was made as to the date and mode of above settlement. D.W. No.4 Ranu Begum while giving evidence for defendant No.29/35-37 reiterated above claim of settlement of 40 decimal land by Kalom Bepari, Ayatunnessa, Safura Bibi and Maju Bibi in her evidence but the plaintiffs did not cross examine her. As such her above

evidence remained uncontroverted which destroys the claim of title by the plaintiffs as heirs of Ayatunnessa and Safura Khatun.

The learned advocate for the appellants submits that the plaintiff should have cross examined D.W.1 Ranu Begum but due to lake professional skill and legal knowledge the appointed advocate at trial court abstained from cross examination of above witness which has caused irreparable loss to the plaintiff. The learned advocate further submits that the plaint also requires some amendments in order to establish the true claim of the plaintiffs and sought remand of above suit for retrial after setting aside above judgment and decree of the trial court.

Learned advocate for the respondent No.1-3, 6-7, 13-16, 39 & 53 submits that the defendant required to prove by legal evidence that Hasen Bibi and Ayatunnessa are identical woman and he also submits for retrial of the suit after giving both parties an opportunity to amend their respective pleading and adduce further evidence.

On consideration of fact and circumstances of the case and evidence on record we hold that the ends of justice will be met if above judgment and decree of the trial court is set aside and the 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.

In above view of the materials of the record we find substance in this first appeal which deserves to be allowed.

In the result first appeal is allowed.

The impugned judgment and decree dated 08.06.2015 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Madaripur in Title Suit No.60 of 2011 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. The learned Joint District Judge is directed to dispose of above suit on merit in accordance with law within a period of 01 (one) year months from the date of receipt of this order.

Let the lower Court's record be transmitted down to the Court concerned at once.

**Tamanna Rahman Khalidi, J**

I agree.

*Md. Kamrul Islam  
Assistant Bench Officer*