

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.42 of 2022***

Arju Akter (Nilu) and others

... Appellants

-Versus-

Md. Abdur Rahim and others

...for the respondents

Mr. Md. Mubarak Hossain, Advocates

... For the appellants

Mr. Md. Yadnan Rafique, Advocate

... For the respondent No.1

**Heard on:29.04.2026 & Judgment on: 14.05.2026.**

**S M Kuddus Zaman, J**

This appeal is directed against the impugned judgment and decree dated 27.01.2013 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Cumilla in Title Suit No.11 of 2004 decreeing the suit.

Facts in short are that the respondent as plaintiff instituted above suit for partition of .3406 acre land appertaining to C.S. khatian No.61 corresponding to S.A. khatian Nos.73 and 71 seeking a saham for  $5\frac{1}{4}$  decimal land alleging that Solim Uddin was the rightful owner and possessor of above land and in his name C.S. khatian No.61 was correctly recorded. Above Solim Uddin died leaving wife Sonabor Nessa and four sons Nurul Islam, Lutfor Rahman, Sofiqur Rahman and predecessor of defendant No.2 and 16 Moniur Rahman and one daughter

defendant No.16 as heirs and in their names S.A. khatian No.73 was correctly recorded. Sonabor Nessa died leaving above mentioned four sons and one daughter as heirs and above heirs of Solim Uddin and Sonabor Nessa executed and registered a deed a partition on 03.12.1984. Above Lutfor Rahman died leaving defendant Nos.7-11 and in above deed for partition they were allocated 5.25 decimal land which they transferred to Soriful Islam by registered kobla deed dated 19.02.1985 who in his turn transferred the same to the plaintiffs by registered deed of exchange dated 03.12.1995. On the basis of above exchange plaintiffs were in peaceful possession in above 5.25 decimal land but the defendants No.1 and 2 dispossessed the plaintiffs on 11.05.2001. Above land has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.1 and 2 contested above suit by filing joint written statement wherein they have denied all allegations and claims made in the plaint and alleged that the heirs of Solim Uddin by his second wife Sonabor Nessa namely heirs of Lutfor Rahman (defendant Nos.7-11), defendant No.2 Moniur Rahman, predecessor defendant Nos.3-6 namely Sofiqur Rahman, Moniur Rahman and defendant No.16 Firoza partitioned above land of Solim Uddin by registered deed of partition dated 03.12.1984. But Solim Uddin had another daughter namely Afia by his first wife who being aggrieved by above deed of partition filed Title Suit No.105 of 1985 in the court of Assistant Judge, Cumilla Sador. The heirs of above Afia transferred their 3 decimal land to defendant No.2 by two registered kobla deed dated 13.04.1985 and 20.04.1985. Defendant No.2 also acquired 8 decimal land from his mother Sonabor Nessa by registered deed of Heba bil ewaz dated 29.09.1980. The predecessors of the plaintiffs namely

Lutfor Rahman used to live in Dhaka and he did not possess disputed land and after his demise his heirs also did not possess above land and by way of purchase from the heirs of Lutfor Rahman plaintiffs did not get possession in above land.

Defendant Nos.3-6, 12-23 contested above suit by filing separate written statements alleging that they are the successive heirs of Nurul Islam and Sofiqur Rahman, two sons of Solim Uddin and their predecessors along with their other co-sharers amicably partitioned above land of Solim Uddin by meets and bounds by registered deed of partition dated 03.12.1984 and they were given separate saham. Above defendants sought separate saham for the land which were allocated to their predecessors by above deed of partition dated 03.12.1984.

At trial plaintiff examined one witness and defendant Nos.1 and 2 one witness and Defendant Nos.3-6, 12-23 one witness. Documents produced and proved by plaintiffs were marked as Exhibit Nos.1-9. But defendants did not produce any document.

On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit and granted saham for 5.25 decimal land to the plaintiffs and .15 acre to the defendant Nos. 3-6, 12-23.

Being aggrieved by and dissatisfied with above judgment and decree of the trial court defendant Nos.1 and 2 as appellants moved to this court and preferred this first appeal.

Mr. Md. Mubarak Hossain learned Advocate for the appellants submits that the defendants purchased 3 decimal land from the heirs of Afia who was a daughter of Solim Uddin by registered kobla deed dated 13.04.1985 and defendant No.2 acquired 8 decimal land from his mother Sonabor Nessa by

registered Heba bil ewaz dated 23.03.1980. But at trial due to error of the appointed Advocate for defendant Nos.1 and 2 above title deeds of the defendants could not be produced at trial and marked as Exhibited documents. The learned Advocate frankly concedes that defendant Nos.1 and 2 do not claim any property from Lutfor Rahman a son of Solim Uddin and predecessor of the plaintiff. Nor they have any claim over the saham claimed by the defendants on the basis of their registered deed of exchange. The learned Advocate submits that the quantity of total land of Solim Uddin is 29 decimal land in C.S. khatian No.61. But in the registered deed of partition dated 03.12.1984 total land has been stated to be 30.50 decimal land and in the schedule of above suit plaintiffs have claimed the total land of Solim Uddin was 34 decimal. The plaintiffs did not adduce any evidence at trial as to the quantum of total land of Solim Uddin nor the learned Judge has made any specific mention of the total land of Solim Uddin. But most illegally granted saham to the plaintiffs for 5.25 decimal land which is not tenable in law. The learned Advocate lastly submits that since the total land of Solim Uddin has been differently mentioned in C.S. khatian, above deed for partition and B.S. khatian and the defendants could not produce its title deed 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 after giving both the parties an opportunity to amended their respective pleadings and adduce further evidence.

Mr. Md. Yadnan Rafique learned Advocate for the respondents submits that above land belonged to Solim Uddin who died leaving one wife Sonabor Nessa and four sons namely Nurul Islam, Lutfor Rahman, Sofiqur Rahman and defendant No.2 Moniur Rahman and one daughter Firoza Begum as heirs. Lutfor died leaving defendant Nos.7-11 as heirs and Safiqur Rahman died leaving

defendant No.12-15 as heirs. Above Sonabor Nessa died leaving above sons and daughter as heirs and all above heirs of Solim Uddin partitioned above property amicably by meets and bounds by registered deed of partition dated 03.12.1984 and heirs of Lutfur Rahman defendant Nos.7-11 were allotted sham for 5.25 decimal land which they transferred to Soriful Islam by registered kobla deed dated 19.02.1985 (Exhibit No.5) who in his turn transfer the same to the plaintiffs by registered deed of exchange dated 03.12.1995 (Exhibit No.3). Plaintiffs were in possession in above land peacefully but defendant Nos.1 and 2 have forcibly dispossessed them from the same on 11.05.2001 and denied title of the plaintiffs. As far as the existence of Afia is concerned it has been stated by defendant Nos.1 and 2 that above Afia as plaintiff instituted Title Suit No.105 of 1985 in the court of Senior Assistant Judge, Cumilla which was dismissed for non prosecution and above defendants failed to prove the existence of above Afia by legal evidence. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge rightly decreed above suit and granted saham to the plaintiffs for 5.25 decimal land. But since the plaintiffs have admitted correctness and genuinity of registered deed of partition dated 03.12.1984 they cannot legally seek second partition for the same property. The plaintiffs should have filed a suit for declaration of title and recovery of possession since their title was denied by the defendants and they were dispossessed forcibly. 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 after giving both parties an opportunity to amend the pleadings and adduce further evidence, if any.

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

It is admitted that 29 decimal land belonged to Solim Uddin and the same was correctly recorded in his name in C.S. khatian No.61. Learned Advocate for the appellant and the respondents jointly submitted that above area of land subsequently increased and in the B.S. khatian the quantity of land has been recorded as 34 decimal and above Solim Ullah died leaving wife Sonabor Nessa, four sons namely Nurul Islam, Lutfor Rahman, Sofiqur Rahman and Moniur Rahman and one daughter Firoza Begum, predecessors of the plaintiffs and defendants. Plaintiffs claim 5.25 decimal land alleging that above saham was given to the heirs of Lutfor Rahman who were defendant Nos.7-11 in the registered deed of partition dated 03.12.1984 and they transferred above land by registered kobla deed dated 19.02.1985 who in his turn transferred the same to the plaintiffs by registered deed of exchange dated 03.12.1985.

While giving evidence as P.W.1 the plaintiff No.1 reiterated above claims of the plaint and produced above deed of partition dated 03.12.1984 sale deed of Soriful Islam and deed of exchange of the plaintiffs which were marked as Exhibit Nos.2, 3 & 5 respectively). As mentioned above the learned Advocate for the appellants did not claim above 5.25 decimal land of the plaintiffs nor they have any claim over the share of plaintiff's predecessor Lutfor Rahman. Defendant No.1(Umo) while giving evidence as D.W.1 has stated in his evidence that the heirs of Solim Uddin by his second wife Sonabor Nessa including his father Moniur Rahman and all his brothers or their heirs and sister amicably partitioned properties of Solim Uddin by registered deed of partition dated 03.12.1984. The plaintiffs or defendant Nos.1 and 2 and defendant Nos.3-6, 12-23

have mentioned in their respective plaint and evidence as to the correctness and genuinity of registered deed of partition dated 03.12.1984 and none of them has challenged the legality and genuinity or effectiveness of above deed of partition. It has been admitted that all co-sharers and total property of Solim Uddin were incorporated in above registered deed of partition.

A property can be partitioned by meets and bounds either by registered deed of partition comprising all co-sharers and all pieces of joint property or by decree of a suit for partition. Once a property has been partitioned by meets and bounds the same cannot be partitioned on a second time. The plaintiffs or defendants could partition above property of Solim Uddin had they succeeded to prove that above deed of partition was neither a lawful document nor all co-sharers and all joint properties were incorporated in above deed but no such endeavor were made by a plaintiff or the defendants. In above view of the materials on record we are unable to understand as to why the plaintiffs sought second partition of the properties of the Solim Uddin.

As mentioned above now deceased defendant No.2 Moniur Rahman is a signatory to above deed of partition dated 03.12.1984 which clearly mention that Solim Uddin died leaving one wife Sonabor Nessa, four sons Nurul Islam, Lutfor Rahman, Sofiqur Rahman and Moniur Rahman and one daughter Firoza Begum. In above deed there is no mention that Solim Uddin had another daughter namely Afia or she also inherited the property of Solim Uddin. As such the claim of defendant No.1 and 2 that Solim Uddin had a daughter namely Afia by his previous wife and she also inherited property of Solim Uddin goes against the written terms of above registered document to which defendant No.2 is a signatory. It has been stated by D.W.1 Arifur Rahman in his evidence that after

execution and registration of above deed of partition dated 03.12.1984 Afia filed Title Suit No.105 of 1985 in the Court of Assistant Judge, Cumilla but it is admitted that above suit was dismissed for non prosecution and above Afia did not again come up with a claim of inheritance. Defendants also could not establish the existence of Afia by legal evidence.

As far as the acquisition of 8 decimal land of Sonabor Nessa by Moniur Rahman by registered deed of Heba bil ewaz in concerned if above partition deed dated 03.12.1984 it has been specially mentioned that on the demise of above Sonabor Nessa her share in the property of her husband devolved upon her all four sons and one daughter. The claim of acquisition of share of Sonabor Nessa by defendant Nos.1 and 2 on the basis of transfer is contrary to above terms of above registered deed of partition which is not tenable in law.

It has been stated in the plaint that the cause of auction of the suit arose when the defendants forcibly dispossessed the plaintiffs from their 5.25 decimal land on 10.05.2001.

On consideration of above facts and circumstances of the case and submissions of the learned Advocate for the respective parties 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 after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence, if any.

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

In the result, the appeal is allowed.

The impugned judgment and decree dated 27.01.2013 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Cumilla in Title Suit No.11 of 2004 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 conclude above retrial within 01 (one) year 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.