

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

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Tamanna Rahman Khalidi

First Appeal No. 25 of 2001

Bangladesh Shilpa Bank, Head Office, Shilpa Bank
Bhaban, Dhaka

...Appellant

-Versus-

Al-haj Sayedur Nessa and others

... Opposite parties

Mr. Sheikh Habib-ul Alam, Advocate

... For the appellants.

None appears

... For the respondents.

Heard on 05.01.2026 and Judgment on 06.01.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 06.07.2000 passed by the learned Sub-ordinate Judge, 1st Court, Cumilla in Title Suit No.22 of 1998.

Facts in short are that respondent No.1 as plaintiff instituted above suit for declaration of title for 4.48 acres land as described in the schedule to the plaint and for further declaration that order dated 11.03.1992 passed by defendant No.2 in Certificate Case No.44BSB/87 is unlawful, ineffective and not binding upon the plaintiff alleging that above property belonged to Moulvi Azizur Rahman who transferred above land to his wife, the plaintiff, by oral

gift in presence of his defendant No.9 and other relatives and delivered possession. Plaintiff is in possession in above land pursuant to above oral gift for more than 12 years and defendant No.9 did not have any right, title, interest and possession in above land. Defendant No.9 obtained loan from defendant No.1 and set up an industry namely M/S. Altex Limited. Plaintiff and defendant Nos.3-7 were not related with above industry or business of defendant No.9. Defendant No.1 for recovery of outstanding loan of defendant No.9 most illegally instituted above Certificate Case for sale of above land treating the same as personal property of defendant No.9.

Defendant No.1 contested above suit by filing written statement alleging that defendant Nos.9-11 obtained loan from defendant No.1 and set up M/S. Altex Limited. Besides giving mortgage to secure above loan defendant No.9 also executed personal bond for payment of above loan. Above land was shown in above personal guarantee as personal property of defendant No.9. The concerned Officer of defendant No.1 found above land in the possession of defendant No.9. On fulfillment of all necessary procedure defendant No.1 filed above Certificate Case for realization of loan by selling out above property. Plaintiff was not the owner and possessor of above property nor she acquired the same from her husband by oral gift.

At trial plaintiff examined three witnesses and defendant examined 1. The plaintiff did not produce and prove any document and the document produced and proved by the defendants was marked as Exhibit No.“Ka”.

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

Being aggrieved by and dissatisfied with above judgment and decree of the learned Joint District Judge defendant No.1 as appellant moved to this Court and preferred this First Appeal.

Mr. Sheikh Habib-ul Alam, learned Advocate for the appellant submits that plaintiff did not acquire any title and possession in the disputed property on the basis of alleged oral gift. The plaintiff could not substantiate her claim of oral gift from her husband of above property by any oral or documentary evidence. It is admitted by the plaintiff that her son defendant No.9 and other defendants established an industrial enterprise namely M/S. Altex Limited on obtaining loan from defendant No.1. As a security of above loan defendant No.9 executed a personal bond incorporating above property claiming that the same was his own acquired property and for realization of above loan defendant No.1 instituted Certificate Case No.44BSB/87 against defendant No.9. Defendant No.9 did not enter appearance in above

suit nor contest the claim of defendant No.1 by filing written statement nor he gave evidence in above suit in support of his mother, the plaintiff. On consideration above facts and circumstances of the case and materials on record the learned Joint District Judge should have dismissed above suit. But the learned Joint District Judge utterly failed to appreciate the legal and evidential value of the materials on record and most illegally decreed above suit which is not tenable in law.

No respondent entered appearance in this appeal nor anyone was found available for any respondent at the time of hearing of this First Appeal although this First Appeal appeared in the list for hearing on several dates.

We have considered the submissions of the learned Advocate for the appellant and carefully examined all materials on record.

It is admitted that disputed 4.48 acres land belonged to Azizur Rahman who died leaving one wife, four sons and one daughter, plaintiff and defendant No.2-9 as heirs.

It is also admitted that defendant No.9 a son of above Moulvi Azizur Rahman jointly with defendant Nos.10-11 established an industrial enterprise namely M/S. Altex Limited on obtaining loan from defendant No.1 and as a security of above loan defendant No.9 executed a personal guarantee bond (Exhibit No.“Ka”).

Plaintiff claims that her husband Moulvi Azizur Rahman transferred total 4.48 acres land to her by oral gift. In the plaint no mention has been made as to the place, date and time of giving of above oral gift by Azizur Rahman to the plaintiff. At Paragraph No.2 of the plaint it has been merely stated that Moulvi Azizur Rahman gave above oral gift to the plaintiff in presence of defendant No.9 and other relatives. Plaintiff herself did not give evidence in this suit. On behalf of the plaintiff, Md. Manik Siraji, her constituted attorney, gave evidence in this suit. In corss examination above PW1 stated that the plaintiff was not his relative. Above witness did not mention his capacity or knowledge to give evidence about above oral gift by Moulvi Azizur Rahman to the plaintiff. PW3 Aklibur Rahman a son of the plaintiff has given evidence in support of above oral gift. In cross examination he stated that at the time of giving of above oral gift his father, mother and elder brother were present but he was not present. PW2 Momtaz gave evidence as to possession of above property and he did not speak anything about above oral gift. The plaintiff could not produce a single documentary evidence to substantiate her claim that on the basis of above oral gift she is in continuous possession of above property on payment of rent. On consideration of above facts and circumstances of the case and evidence on record we hold that the plaintiff has utterly failed to

substantiate her claim that Moulvi Azizur Rahman transferred above 4.48 acres land by oral gift.

Defendant No.9 did not claim to have acquired title and possession in total 4.48 acres land from his father. Defendant No.1 merely stated that defendant No.9 executed a personal bond for 4.48 acres land for satisfying above loan. Defendant No.1 did not claim that defendant No.9 alone was the lawful owner and possessor of above 4.48 acres land which was owned and held by his father Azizur Rahman. As such defendant No.1 could proceed against the share of defendant No.9 in above 4.48 acres land which he inherited from his father but defendant No.1 initiated above certificate case for total 4.48 acres land which was unlawful and not tenable in law.

Plaintiff has sought a decree for declaration of title for total 4.48 acres land. As mentioned above her claim of oral gift remains not proved by legal evidence but as the wife of Azizur Rahman she inherited 2 ana share of above property of Azizur Rahman. But above part of the disputed property which was inherited by the plaintiff has not been specifically demarcated in the schedule of the plaint and a decree for declaration of title cannot be passed in respect of an unspecified land.

In above view of the facts and circumstances of the case and materials on record we hold that the ends of justice will be better

served if the impugned judgment and decree passed by the learned Sub-ordinate Judge 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 in the light of observations made above.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 06.07.2000 passed by the learned Sub-ordinate Judge, 1st Court, Cumilla in Title Suit No.22 of 1998 is hereby set side 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 in the light of observations made above.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER