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

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice Md. Saiful Islam

First Appeal No. 28 of 2013

Milton Miah and others
....Appellants
-Versus-
Md. Abul Kashem and others
... Opposite parties
Mr. Md. Abdul Haque, Advocate
... For the appellants.
Mr. Uzzal Bhowmick, Advocate with
Mr. Sultan Uddin, Advocate
… For the respondent No.44.

Heard on 24.11.2025 and 25.11.2025
Judgment on 26.11.2025.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 15.10.2012 passed by the learned Joint District Judge, 1st Court, Mymensingh, in Partition Suit No.51 of 1999.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 57 decimal land appertaining to C. S. Khatian No.13 corresponding to S. A. Khatian Nos.74, 75 and 89 seeking a saham for 23 decimal land alleging that above property belonged to Mamud Jan who died before C. S. record leaving two sons Adu Sheikh and Rejat Sheikh and one wife Morom Bewa as

heirs. Above Morom Bewa died leaving above two sons as heirs and C. S. Khatian was rightly prepared. By amicable partition Adu Sheikh was possessed 21 decimal land of C. S. Plot No.14 and Rejat Sheikh given 36 decimal land of C. S. Plot No.16 and they constructed their respective dwelling houses in above land. Rejat Sheikh died leaving defendants Nos.44-65 as heirs. Above Adu sheikh died leaving one son Hanif Sheikh and two daughters Goljan and Manikjan. Above Guljan and Manikjan by amicable partition possessed $6\frac{1}{2}$ decimal land and abandoned remaining $29\frac{1}{2}$ decimal land to their brother Hanif Sheikh. Above Guljan and Manikjan transferred above $6\frac{1}{2}$ decimal land to Abid Ali Bepari by registered kabla deed dated 30.03.1943. Above Manikjan died leaving defendants Nos.1-23 as heirs and Guljan died leaving Hanif Sheikh as only heir. Hanif Sheikh transferred 11 decimal land to his wife Nurjahan by registered kabinnama dated 21.02.1940 who in her turn transferred $6\frac{1}{2}$ decimal land to Mohammad Ali and Arfan Ali, predecessors of defendant Nos.31-40. Above Nurjahan and Hanif jointly transferred 9 decimal land to Chan Miah by registered kabla deed dated 10.03.1973 and who died leaving defendants Nos.41-43 as heirs and plaintiff Nos.3-5 and 8 purchased above 9 decimal land

from above defendants Nos.1-43 by registered kabla deed dated 10.01.1996. Thus by purchase and inheritance plaintiffs are in possession in 23 decimal land but above property has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.1-23 heirs of Manikjan a daughter of Adu Sheikh and sister of plaintiff's predecessor Hanif Sheikh contested above suit by filling a joint written statement alleging that property of C. S. khatian No.13 belonged to Mamud Jan who died leaving two sons Adu Sheikh and Rejat Sheikh and one daughter Mirjan and wife Morom Bewa. But in C. S. Khatian the name of Mirjan was erroneously omitted but above property of Mamud Jan was inherited and possessed by his above two sons and daughter Mirjan. Adu Sheikh by amicable partition was in possession in 22 decimal land and died leaving one son Hanif Sheikh and two daughters Manikjan and Guljan. Above Manikjan and Guljan transferred $6\frac{1}{2}$ decimal land to Abir Bepari. Guljan died leaving one sister Manikjan and one brother Hanif Sheikh as heirs and Manikjan inherited 3 decimal land. Thus Manik Jan had remaining 3 decimal land in above joma which was inherited by these defendants and they seek saham for above 3 decimal land.

Defendant No.65 contested above suit by filling a written statement alleging that Mirjan was a daughter of Mamud Jan and she inherited $\frac{1}{5}^{th}$ share in above joma and after her demise her property was inherited by two sons Mohamamd Ali and Arfan Ali and one daughter Motijan. Above defendant acquired 6 decimal land by inheritance and purchase and seeks separate saham for above land.

Defendant No.31(Ka) and 31(Ja) are heirs of now deceased Karim who was son of Mohammad Ali a son of Mirjan and they seek separate saham for $4\frac{1}{2}$ decimal land which they acquired by inheritance and purchase. Defendant Nos.30 and 34 are two grandsons of Mirjan and they contested above suit by filling two separate written statements seeking separate saham for $5\frac{1}{2}$ decimal and $4\frac{1}{5}$ decimal land respectively.

At trial plaintiffs examined 4 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-6 series. Defendant No.33, 31(Ka)-31(Ja) and 36(Ka)-36(Uma) examined 1 witness each and their documents were marked as Exhibit Nos.Ka/1-Ta/1. Defendant No.65 examined 1 witness and his documents were marked as Exhibit Nos.“Ka”-“Cha2”.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit and granted plaintiffs saham for 9 decimal land and $4\frac{1}{5}$ decimal land was given to defendant No.31(Ka)-31(Ja), $5\frac{1}{2}$ decimal land for defendant No.33, $3\frac{1}{5}$ decimal land for defendant Nos.36(Ka)-36(Uma) and 6 decimal land to defendant No.65.

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 appeal.

Mr. Md. Abdul Haque, learned Advocate for the appellants submits that Mamud Jan was the owner and possessor of 57 decimal land who died leaving two sons namely Rejot Sheikh and Adu Sheikh and one wife Morom Bewa and C. S. Khatian No.13 was rightly recorded in their names. It is admitted that the plaintiffs are heirs of above Adu Sheikh and defendant Nos.42-65 are heirs of Rejat Sheikh. It is also admitted that Adu Sheikh died leaving one son Hanif Sheikh and two daughters Nurjahan and Guljan. Above Rejat Sheikh and Adu Sheikh amicably partitioned above 57 decimal land and Rajat Sheikh was allotted 21 decimal land of Plot No.14 and the heirs of Rejat Sheikh are still in joint possession of above 21

decimal land of Plot No.14. Defendants claimed that Mamud Jan had a daughter namely Mirjan but defendants could not produce any evidence whatsoever to prove the existence of Mirjan. Excepting defendant Nos.1-23 all defendants claimed title and possession in above property from the heirs of Mirjan. Since above defendants could not prove that Mamud Jan had a daughter namely Mirjan the learned Judge of the trial Court committed serious illegality in allotting sahams for above defendants which is not tenable in law. The learned Judge of the trial Court also failed to appreciate that plaintiff Nos.3-5 had purchased 9 decimal land from defendants Nos.41-43 who were heirs of Chan Miah by registered kabla deed dated 10.01.1973 (Exhibit No.6) and excluded above 9 decimal land from the share of the plaintiffs. The learned Advocate lastly submits that two daughters of Adu Shiekh namely Manikjan and Guljan transferred $6\frac{1}{5}$ decimal land to Abir sheik and they abandoned their remaining land to their only brother Hanif Sheikh but the learned Judge has failed to allocate the remaining share of Manikjan and Guljan to the plaintiffs. On consideration of above facts and circumstances of the case and evidence on record the saham granted to the plaintiffs may be enhanced to 23 decimal land.

On the other hand Mr. Uzzal Bhowmick, learned Advocate for the respondent No.44 submits that above property belonged to Mamud Jan who died leaving two sons Rejat Sheikh, Adu Sheikh and one daughter Mirjan. Adu Sheikh died leaving one son Hanif Sheikh and two daughters Manikjan and Guljan as heirs. Defendants Nos.1-23 are heirs of Manikjan and they have submitted a written statement and cross examined PWs. Above defendants admitted that Mamud Jan had two sons Rejat Sheikh and Adu Sheikh and one daughter Mirjan. It is not disputed that above Mirjan died leaving two sons Mohammad Ali and Arfan Ali and one daughter Motijan and contesting defendants excepting defendant Nos.1-23 claim share in above joma as successive heirs of Mirjan. It is admitted that Hanif Sheikh transferred 11 decimal land to his wife Nurjahan who transferred $6\frac{1}{5}$ decimal land to two sons of Mirjan namely Mohammad Ali and Arfan Ali by registered kabla deed dated 19.11.1951 and above land has been recorded in their names in S. A. Khatian No.74 with Hanif Sheikh. It is also admitted that S. A. Khatian No.75 was prepared separately and exclusively for 13 decimal land in the names of heirs of Mirjan. She inherited above land from her father.

Plaintiffs claim 9 decimal land on the basis of purchase from defendant Nos.41-43 the heirs of Chan Miah by registered kabla deed dated 10.01.1996. Admittedly the predecessor of defendant Nos.41-43 namely Chan Mia purchased above 9 decimal land from plaintiffs predecessor Hanif Sheikh and Nurjahan by registered kabla deed dated 10.03.1973. As such plaintiffs repurchased above 9 decimal land which was sold by their predecessors Hanif and Nurjahan and above purchase did not change or enhance the saham of above Hanif and Nurjahan.

Manikjan and Guljan did not transfer any land to Hanif Sheikh or the plaintiffs. The plaintiffs could not prove by legal evidence that above two sisterd of Hanif Sheikh transferred their remaining land to their brother Hanif Sheikh 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 in part which calls for no interference.

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

It is admitted that above 57 decimal land belonged to Mahmud Jan and plaintiff's predecessors Adu Sheikh and defendant's predecessor Rejat Sheikh were his two sons. Defendants claim that

Mahmud Jan also had a daughter namely Mirjan who inherited $\frac{1}{5}$ share of above property.

In their written statement defendant Nos.1-23 who are the heirs of Manikjan a daughter of Adu Sheikh have admitted that Mirjan was a daughter of Mamudjan. In view of above claims of the defendants the plaintiffs did not amend the plaint and make any specific denial. While giving evidence as PW1 plaintiff No.5 did not mention anything about above claim of the defendants that Mamud Jan had a daughter namely Mirjan. The plaintiffs did not mention anything as to recording of 13 decimal land of Mahmud Jan separately in the name of two sons of Mirjan in S. A. Khatian No.75. On consideration of above materials on record the learned Judge of the trial Court rightly held that Mirjan was a daughter and heir of Mahmud Jan which calls for no interference.

It is admitted that plaintiff Nos.3-5 and 8 purchased 9 decimal land from the heirs of Chan Miah by registered kabla deed dated 10.01.1996 (Exhibit No.6). It is also admitted that above 9 decimal land was by Chan Miah from Hanif Sheikh and his wife Nurjahan by registered Kabla deed dated 10.03.1973. As such plaintiff Nos.3-5 and 8 repurchased the land which was transferred by their predecessor. As such above purchase did not make any change in the

quantum share of plaintiff's predecessors Hanif Sheikh and Nur Jahan in above joma. The claim of additional 9 decimal land by the plaintiffs on the basis of above purchase is misconceived and without any lawful basis.

It is admitted that Adu Sheikh died leaving one son Hanif Sheikh and two daughters Manikjan and Gulja who jointly transferred $6\frac{1}{2}$ decimal land to Abir Ali by registered kabla deed dated 30.03.1943. At paragraph No.4 of the plaint the plaintiffs have made two contradictory claims as to the remaining land of Manikjan and Guljan. It has been stated that above Guljan and Manikjan abandoned their remaining $29\frac{1}{5}$ decimal land in favour of their brother Hanif Sheikh. In the next breath it has been claimed that Manikjan died leaving defendant Nos.1-23 as heirs and Guljan died leaving brother Hanif Sheikh as only heir.There is no mention as to when Manikjan and Guljan abandoned their claim in favor of Hanif Sheikh nor any evidence was adduced by the plaintiffs to substantiate above claim. Transfer of ownership in immovable property valued over Taka 100/- requires a written and registered deed of transfer. On the other hand heirs of Manikjan defendant Nos.1-23 claim that Guljan died leaving one sister Manikjan and one brothers Hanif

Sheikh as heirs. The plaintiff could not prove that Manikjan predeceased Guljan by legal evidence.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality in the judgment and decree of the trial Court nor we find any substance in above in this First Appeal which is liable to be dismissed.

In the result, the First Appeal is dismissed.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Md. Saiful Islam, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER