

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.16 of 2014

Md. Shiraj Ullah

... Appellant

-Versus-

Md. Mominullah and others

...Respondents

Mr. Abul Khair, Advocate

... For the appellants

Mr. Md. Abdul Halim Biswas with

Mr. M. Ataul Gani, Advocates

.....For the respondent Nos.1-2 & 9 (kha)

Heard on:19.04.2026.

Judgment on: 28.04.2026.

S M Kuddus Zaman, J

This appeal is directed against the judgment and decree passed on 13.11.2013 and 20.11.2013 respectively in Title Suit No.24 of 2009 by the learned Joint District Judge, 1st Court, Noakhali in decreeing the suit in part.

Facts in short are that the respondent as plaintiff instituted above suit for $41\frac{13}{18}$ decimal land seeking a separate saham for 13.93 decimal alleging that above $41\frac{13}{18}$ decimal land belonged to Amin Ullah who transferred 6 decimal land to defendant No.5 and 1 decimal land defendant Nos.6-9 and thereafter transferred 7 decimal land to the plaintiff by deed of gift dated 16.03.2005 (Exhibit No.Gha). While owning and possessing remaining $27\frac{13}{18}$ decimal land above Amin Ullah died leaving three sons plaintiff and defendant Nos.1 and 2, one wife defendant

No.3 and one daughter defendant No.4. Thus the plaintiff became owner and possessor of 13.93 decimal land by purchase and inheritance but above property has not been partitioned by meets and bounds and the defendants denied to effect an amicable partition.

Defendant Nos.1-4 and 10 contested above suit by filing a joint written statement alleging that while owning and possessing 32 decimal land above Amin Ullah transferred above land to his wife, daughter and three sons and an adopted daughter by registered deed of osiyatnama (Exhibit No.Kha) dated 22.04.2003 and delivered possession. Plaintiff used to ill treat his father and out of despair and dissatisfaction Amin Ullah cancelled 7 decimal land of the plaintiff in above osiyatnama by registered deed dated 06.02.2005 (Exhibit No.Ga). As such plaintiff is lawful owner and possessor of $7\frac{13}{18}$ decimal land by purchase and defendants are owning and possessing 31.50 decimal land and they seek separate saham for the same.

At trial plaintiff examined four witnesses and defendant examined two. Documents of the plaintiffs were marked as Exhibit Nos.1-7 series and those of the defendants were marked as Exhibit Nos.Ka-Cha series.

On consideration of facts and circumstances of the case and materials on record the learned Joint District Judge decreed above suit in part and granted saham for to the plaintiff for 8.5852 decimal land and defendants were granted saham for 24.1370 decimal land.

Being aggrieved by and dissatisfied with above judgment and decree of the trial court above plaintiff as appellant moved to this court and preferred this first appeal.

Mr. Abul Khair learned Advocate for the appellant submits that admittedly Amin Ullah was the lawful owner and possessor of $27\frac{13}{18}$ decimal land and he

transferred the same by registered deed of osiyatnama dated 22.04.2003 (Exhibit No.Kha) to his heirs namely three sons, one daughter and one wife, plaintiffs and defendants. But subsequently above Amin Ullah amended above deed of osiyatnama and excluded the plaintiff from above deed. He subsequently transferred 7 decimal land to the plaintiff by registered deed of gift dated 06.02.2005). Once above Amin Ullah transferred his property by osiyatnama to the plaintiff and the defendants he had no legal right to cancel above deed in part and exclude the plaintiff from his legitimate share in above deed which already vested in him. Plaintiff is entitled to get his share in above deed of osiyatnama as well as 7 decimal land by gift from his father. But the learned Judge of the trial court failed to appreciate above materials on record and most illegally deprived the plaintiff from his share in above deed of osiyatnama and decreed the suit in part which is not tenable in law.

On the other hand Mr. Md. Abdul Halim Biswas learned Advocate for the respondents submits that the suit suffers from defect of parties and bad for hotchpotch for not incorporating all properties belonged to Amin Ullah. The learned Advocate further submits that Amin Ullah was the lawful owner and possessor of above property and he transferred $27\frac{13}{18}$ decimal land by registered deed of osiyatnama to his all heirs including the plaintiff. But due to plaintiff's abusive behavior and disrespect Amin Ullah amended above deed of osiyatnama by another registered document and excluded the plaintiff. The plaintiff never got title and possession in 7 decimal land of above osiyatnama. As far as the deed of gift dated 16.02.2005 (Exhibit No.Kha) is concerned that is a forged document which was never acted upon and Amin Ullah did not hand over possession of above land to the plaintiff. But the learned Judge of the trial court most illegally held that above deed of gift was a genuine and effective document which is not

tenable in law. The learned Advocate lastly submits that the subsequent modification or cancellation of registered deed of osiyatnama by Amin Ullah and excluding the name of the plaintiff from above document was unlawful. But the learned Judge of the trial court failed to appreciate above materials on record and most illegally decreed the suit in part which is not tenable in law. The learned Judge should have partitioned above properties of Amin Ullah on the basis of the registered deed of osiyatnama and since this is a suit for partition and parties are co-sharers the impugned defective judgment and decree may be set aside and the suit may be remanded to the trial court for retrial after giving the parties an opportunity to amend their respective pleadings and adduce further evidence, concluded the learned Advocates.

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

It is admitted that Amin Ullah was lawful owner and possessor of $41\frac{13}{18}$ decimal land and after selling out 6 decimal land he had ownership in remaining $35\frac{13}{18}$ decimal land and he transferred his above total land by registered deed of osiyatnama dated 22.04.2003 (Exhibit No.Kha) to his heirs namely three sons, one daughter and one wife and an adopted daughter, the plaintiff and defendants No.1-10 respectively.

It turns out from the impugned judgment the learned Joint District Judge accepted above deed of osiyatnama as a lawful and effective document and on the basis of above document partition the properties of Amin Ullah among his co-sharers.

But the Sharia Law as to property imposes two restrictions on a Muslim in transferring his property by osiyatnama or Will. Firstly a muslim can transfer only one-third of his total property by osiyatnama and secondly if such a transfer is

made to any heir of the testator then the transfer shall not be effective unless all heirs of the testator give consent to above transfer after his demise.

It turns out from the plaint and evidence of P.W.1 that the plaintiff a heir of Amin Ullah did not give consent to above deed of osiyatnama and he claimed title on the basis of registered deed of gift dated 06.02.2005 and by inheritance. Moreover by above deed of osiyatnama Amun Ullah transferred his total land not one-third of his total land. As such the above deed of osiyatnama (Exhibit No.kha) could not pass the legal test and becomes a lawful and effective deed of transfer of property of Amin Ullah.

The learned Advocate for the respondent submits that by above deed of osiyatnama Samsun Nahar an adopted daughter of Amin Ullah was also given 3 decimal land and since she is not a legal heir of Amin Ullah and the total quantity of land transferred to her was less than one-third of the total property of Amin Ullah her share may not be affected due to above illegality of above document. The learned Advocate has also raised the question of defect of parties and further stated that some properties which did not belong to Amin Ullah was also brought into the hotchpotch of above suit for partition. Adoption of child is not available in Sharia Law but a Muslim may transfer one-third of his total property to any person not related to him.

Admittedly plaintiff and defendant Nos.1-9 are co-sharers. If it is found by the trial court that transfer of 3 decimal land to defendant No.10 by above deed of osiyatnama was lawful then defendant No.10 would also become a co-sharer. In a suit for partition all disputes between the co-sharers as to title or possession or genuinity or correctness of any document can be conclusively determined.

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 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 first appeal is allowed.

The impugned judgment and decree passed on 13.11.2013 and 20.11.2013 respectively in Title Suit No.24 of 2009 by the learned Joint District Judge, 1st Court, Noakhali is set aside and above suit is remanded to the trial court for retrial after giving the plaintiff and defendants an opportunity to amend their respective pleadings and adduce further evidence, if any.

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

Tamanna Rahman Khalidi, J

I agree.