

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

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

FIRST APPEAL NO. 271 OF 2016

Sukur Ali being dead his heirs: 1(a) Md. Baccu
Mia and others

.....Appellants.

-Versus-

Adam Ali and others

.....Respondents.

Mr. Md. Shakhawat Hossain, Advocate

..... For the appellants

Mr. Md. Abdul Barik, Advocate

..... For respondent No. 1

Heard on: 17.05.2026, 18.05.2026, 07.06.2026
and 08.06.2026.

Judgment on: 14.06.2026.

Md. Badruzzaman, J.

This appeal is directed against judgment and decree dated 10.8.2016 (the decree having been signed on 16.08.2016) passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No. 50 of 2011 whereby the suit was decreed in preliminary form.

Facts necessary for the disposal of this appeal are that the plaintiff-respondent instituted the aforesaid suit for partition of the suit property measuring 3.48 acres of land, claiming a share of 1.50 acres therein. The plaintiff asserted that Rakhal Chandra owned and possessed 3.48 acres of land, among other properties, and after his death, his two sons, Gaurango and Nitai, inherited the said property

in equal shares. Upon an amicable partition, Gaurango was allotted the entire land of R.S. Plot Nos. 350 and 352 and 0.53 acre out of 0.55 acre of land in R.S. Plot No. 281, totaling 1.50 acres, while Nitai received the lands comprised in the other plots. Thereafter, Gaurango transferred the said 1.50 acres of land to the plaintiff by registered Sale Deed Nos. 15346 and 15396 dated 26.04.1980. He had mutated 1.50 acres of land through Mutation Case No. 1441 of 1984-1985. The plaintiff further contended that defendant Nos. 1 to 3 created forged deeds in respect of the plaintiff's purchased land and illegally obtained mutation in their names from the concerned Tahsil Office and the sale deeds through which defendant Nos. 1 to 3 claimed title from Gouranga and Nitai were forged and fraudulent documents and that, by virtue of those deeds, the defendants acquired no title to the 1.50 acres of land comprised in R.S. Plot Nos. 350, 352, and 281.

On the other hand, defendant Nos. 1 to 3 contested the suit by filing a written statement contending, inter alia, that Rakhil Chandra was the owner of 3.00 acres of land and, after his death, Gaurango inherited 1.50 acres and Nitai inherited the remaining 1.50 acres. Thereafter, Gaurango transferred a total of 1.35 acres of land, including 0.75 acre comprised in R.S. Plot Nos. 350, 352, and 281, by registered Sale Deed No. 18372 dated 23.05.1980 to defendant Nos. 1 and 2 and one Moniruddin. Subsequently, Moniruddin transferred his share measuring 0.06 acre to defendant No. 2 by registered Sale Deed No. 2700 dated 27.05.1993. Nitai transferred 0.75 acre of land, including 0.25 acre of R.S. Plot No. 350 and 0.13 acre of R.S. Plot No. 352, by registered Sale Deed No. 18753 dated 23.05.1980, and 0.83 acre of land, including 0.28 acre of R.S. Plot No. 281, by registered

Sale Deed No. 18674 dated 23.05.1980, in favour of defendant Nos. 1 to 3. Gaurango had no right, title, or interest to transfer the entire lands of R.S. Plot Nos. 350 and 352 and 0.53 acre out of 0.55 acre of land in R.S. Plot No. 281. According to the defendants, Gaurango was legally entitled to transfer only 0.75 acre of land comprised in R.S. Plot Nos. 350, 352, and 281. Consequently, the plaintiff acquired valid title to only 0.75 acre of land in the aforesaid plots by the Sale Deed dated 26.04.1980. After purchasing the suit land, they mutated their names in the records of the concerned Tahsil Office through Mutation Case No. 128 of 2008-2009.

Both parties adduced oral and documentary evidence in support of their respective cases. The defendants produced certified copies of Sale Deed Nos. 18672, 18673, and 18674, all dated 23.05.1980, marked as Exhibits Gha, Gha/1, and Gha/2 respectively, as well as the certified copy of Sale Deed No. 2700 dated 27.05.1993, marked as Exhibit Gha. On the other hand, the plaintiff produced the original Sale Deed No. 15346 dated 26.04.1980, marked as Exhibit 2/Ka, and Sale Deed No. 15396 dated 26.04.1980, marked as Exhibit 2.

Upon consideration of the oral and documentary evidence adduced by the parties, the trial Court accepted the case of the plaintiff and held that, by virtue of the Sale Deed dated 26.04.1980, the plaintiff acquired title to 1.50 acres of land comprising 0.50 acre of R.S. Plot No. 350, 0.47 acre of R.S. Plot No. 352, and 0.53 acre out of 0.55 acre of land in R.S. Plot No. 281. The trial Court further held that the defendants failed to acquire any valid title to the lands comprised in R.S. Plot Nos. 350, 352, and 281 through their respective purchase deeds because Gauranga earlier transferred the

said land to the plaintiff. Accordingly, the suit was decreed in preliminary form by the impugned judgment and decree, allotting 1.50 acres of land to the share of the plaintiff. No portion of the suit land was allotted to the defendants. Being aggrieved by the said judgment and decree, the contesting defendants preferred this appeal.

Mr. Md. Shakhawat Hossain, the learned Advocate appearing for the defendant-appellants, submits that complicated questions of title are involved in the present partition suit, inasmuch as both the plaintiff and the defendants purchased the same land from the heirs of the original owner and claim to be co-sharers by purchase in the suit property. He further submits that the plaintiff claimed entire lands R.S. Plot Nos. 350 and 352 and 0.53 acre out of 0.55 acre of land in R.S. Plot No. 281 on the assertion that Gaurango had obtained those lands upon amicable partition and that Nitai had received other lands. The learned Advocate further submits that the defendants also claimed title to a total of 1.26 acres of land, out of which they purchased 0.75 acre of R.S Plot Nos. 350, 352 and 281 from Gaurango by registered Sale Deed No. 18672 dated 23.05.1980, 0.38 acre from Nitai comprising portions of R.S. Plot Nos. 350 and 352 by registered Sale Deed No. 18673 dated 23.05.1980, and 0.28 acre of R.S. Plot No. 281 by registered Sale Deed No. 18674 dated 23.05.1980. He further argues that the lands purchased by the plaintiff and the defendants through their respective registered sale deeds overlap and conflict with each other. According to the defendants, there was no amicable partition between Gaurango and Nitai, and they inherited the lands according to their respective shares. Consequently, the plaintiff acquired title to only 0.75 acre of

land in the said three plots. In view of the above, the learned Advocate submits that a serious and complicated question of title is involved in the present suit, but the trial Court, without deciding the said issue, merely observed that the suit was maintainable as there was no defect of parties or hotchpotch.

The learned Advocate finally submits that, since the suit was not maintainable in its present form without seeking a declaration of title to the suit property, it was liable to be dismissed. However, the trial Court, upon a misconception of law and beyond its jurisdiction, proceeded to adjudicate the title deeds of the parties and allot shares to the plaintiff. Accordingly, interference by this Court is warranted.

Mr. Md. Abdul Barik, the learned Advocate appearing for the plaintiff-respondent, submits that upon amicable partition, Gaurango obtained the suit land measuring 1.50 acres and that the plaintiff's sale deeds are prior in time to the deeds relied upon by the defendants. He further submits that after transferring the suit land to the plaintiff, Gaurango retained no transferable interest therein. Moreover, since Nitai accepted the amicable partition and acted as an attesting witness to the deed by which Gaurango transferred the suit land to the plaintiff, Nitai was estopped from transferring any land comprised in R.S. Plot Nos. 350, 352, and 281. The learned Advocate further submits that the trial Court, upon proper consideration of the oral and documentary evidence adduced by the parties, rightly decreed the suit in favour of the plaintiff.

We have heard the learned Advocates, perused the pleadings of the parties, the impugned judgment, and the other materials available on record.

Upon a perusal of the pleadings of the parties and the evidence adduced on record, it appears that although Gouranga inherited a share of 0.75 acre of land in R.S. Plot Nos. 350, 352, and 281 under the Mohammedan Law of Inheritance, he transferred 1.50 acres of land to the plaintiff by registered Sale Deed Nos. 15396 and 15336, both dated 26.04.1980 (Exhibits 2 and 2/Ka, respectively). On that basis, the plaintiff claims a 1.50 acre share in the suit land. On the other hand, according to the defendants, Gouranga again transferred a further 0.75 acre of land from the aforesaid R.S. Plot Nos. 350, 352, and 281 to Defendant Nos. 1 and 2 and one Moniruddin by registered Sale Deed No. 18672 dated 23.05.1980 (Exhibit Ga). It is also their case that Nitai alone transferred 0.66 acre of land from the said plots to Defendant Nos. 1 to 3 by registered Sale Deed Nos. 18673 and 18674, both dated 23.05.1980 (Exhibits Ga/1 and Ga/2, respectively). The total area of R.S. Plot Nos. 350, 352, and 281 is 1.52 acres. However, Gouranga and Nitai together purportedly transferred a total of 2.91 acres of land from said three plots. In such circumstances, the respective entitlements of the plaintiff and Defendant Nos. 1 to 3 to shares in the suit property cannot be determined without first adjudicating upon the validity, nature, and legal effect of the transfer deeds executed by Gouranga and Nitai. Accordingly, a serious and complicated question of title is involved in respect of the suit property. The rival claims advanced by the parties give rise to substantial disputes regarding ownership and the validity of the various transfers relied upon by them.

The question that now arises is whether the present suit for partition is maintainable in the absence of a prayer for declaration of title.

A suit for partition presupposes the existence of co-sharership among the parties. In such a suit, the Court may incidentally examine questions of title for the limited purpose of determining whether the parties are co-sharers, the extent of their respective shares, and whether any transfer, gift, inheritance, or settlement has affected the quantum of such shares. Such an inquiry is merely ancillary to the principal relief of partition. The Court does not undertake a comprehensive adjudication of title as against competing claims; rather, it examines questions of title only to the extent necessary for determining and allotting the shares of the parties. Accordingly, in a suit founded upon joint ownership, questions relating to title or the validity of transactions may arise and be decided incidentally while determining the respective shares of the co-sharers.

The position, however, is different where the very foundation of the plaintiff's title is in serious dispute. Such cases include situations where the defendant denies that the plaintiff is a co-sharer; where the record-of-rights stands exclusively in the defendant's name; where rival title deeds are asserted; where the plaintiff's title is clouded by adverse claims; or where the determination of title requires the cancellation of documents, a declaration of title, or the resolution of complicated questions relating to succession, inheritance, or transfer. In such circumstances, partition cannot effectively be effected without first adjudicating upon the parties' title. Consequently, a mere suit for partition is not

maintainable, and the plaintiff must seek an appropriate declaration of title in a properly constituted suit before seeking partition.

In *Rezaul Karim and others vs. Md. Shamsuzzoha and others*, 49 DLR (AD) 68 = 17 BLD (AD) 179 = 2 MLR (AD) 16, the Appellate Division held that although a court may incidentally examine questions of title in a partition suit, it cannot adjudicate serious, complicated, or fundamental disputes of title in a suit framed solely for partition. The Court further observed that a partition proceeding cannot be converted into a full-fledged title suit for determining the respective titles of the parties. Applying the principle laid down in *Rezaul Karim*, the High Court Division in *Jyotirmoy Datta and others vs. Mritunjoy Datta and others*, 16 BLT (HCD) 446, held that a complicated question of title involved in a partition suit cannot be resolved without seeking a declaration of title.

Thus, we are of the considered view that although a Court, in a simple suit for partition, may incidentally examine questions of title for the limited purpose of determining the shares of the co-sharers, it cannot adjudicate serious and complicated disputes relating to title in a suit framed merely for partition. Where the plaintiff's title is under a cloud and partition cannot be effected without first determining such title, the suit must be appropriately framed with a prayer for declaration of title. In the absence of such a prayer, a simple suit for partition is not maintainable.

The plaintiff instituted the present suit as a simple suit for partition without seeking any consequential relief by way of a declaration of title to the suit property. Since serious and complicated questions of title lie at the very foundation of the

dispute, such issues cannot be effectively adjudicated in a suit framed merely for partition. In the absence of an appropriate prayer for declaration of title, the suit, as framed, is not maintainable in law.

It appears from the judgment of the trial Court that, without first deciding the issue relating to the maintainability of the suit it proceeded to entertain the suit and ultimately decreed the same in preliminary form. We are of the considered view that the trial Court committed an error of law in doing so. Before passing a preliminary decree in a partition suit, the Court was under a legal obligation to determine whether the suit, as framed, was maintainable. The failure to decide this fundamental issue has vitiated the impugned judgment and decree, rendering the same unsustainable in law.

In view of the discussions made hereinabove and the findings arrived at, we find merit in this appeal.

Accordingly, the appeal succeeds. The impugned judgment and preliminary decree are set aside, and the suit is dismissed as not maintainable. However, there shall be no order as to costs.

Send down the Lower Court Records (LCR) along with a copy of the judgment to the concerned Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)