

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.308 OF 2016

Haji Md. Din Islam

.... Appellant

-Versus-

Moynakali and others

.... Respondents

Mr. Muhammad Salahuddin, Advocate with

Mr. Mohammad Mosaraf Hossain, Advocate

Mr. Mahmudul Hasan, Advocate

.... For the appellant.

Mr. A.K.M. Shamsul Hoque, Advocate with

Mr. Mohammad Kamruzzaman, Advocate

.... For the respondents.

Heard on 02.07.2026.

Judgment on 05.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 31.08.2016 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No.223 of 2006 dismissing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title for 1.04 acres land appertaining to C. S. Khatian No.262 corresponding to S. A. Khatian Nos.269 and 263 and R. S. Khtian Nos.1025 and 1476 and R. S. Plot No.2617 and for further

declaration that R. S. Khatian prepared for above land in the names of the defendants is erroneous alleging that Tokani Proshad was the lawful owner and processor of land of C. S. Khatian No.262 and Younus Sarker took settlement of 52 decimals land and transferred the same to his wife Azibunnessa by registered deed of Heba-bil-ewaz dated 14.10.1952 who got her name mutated for above land. Above land having not been recorded in her name in relevant S. A. Khatian above Azibunnessa filed an objection to the Settlement Officer and got her name recorded in S. A. Khatian No.269. Above Azibunness died leaving three daughters namely Parula Begum, Torula Begum and Tasura Begum who transferred above land to Hazi Abdul Khaleq and Hazi Md. Khorshed.

Abdul Halim father of above Hazi Abdul Khaleq and Hazi Md. Khorshed obtained settlement of 52 decimal land from Brozolal Paul the heir of Tokani Prashad by settlement and died leaving two sons Hazi Khaleq and Hazi Md. Khorshed who transferred above 1.04 acres land to the plaintiff by two registered kabla deed dated 08.01.1985. Defendants do not have any right, title and possession in above land but on 25.05.2006 they claimed title on the basis of erroneous R. S. Khatian.

Defendant Nos.14-20 contested above suit by filling joint written statement alleging that Tokani Prashad was the rightful owner or processor of 10.91 acres land including 6.57 acres land of C. S. and S. A.

Plot No.2220 and C. S. Khatian No.262 was rightly recorded. Above superior landlords Babu Lal Paul and others gave settlement of 2 acre land to Sonadar Bepari by registered Kabuliyat dated 07.08.1945 who was in possession in above land and died leaving three sons namely Sekandar, Elem Chand and Mohiuddin as heirs in whose names R. S. Khatian No.1025 was rightly prepared. Above Sekandar while owning and possessing above land died leaving the defendants as heirs who are in possessing above land.

At trial plaintiffs examined four witnesses and defendant examined three. Documents of the plaintiff were marked as Exhibit No.1-15 series and those of the defendants were marked as Exhibit Nos. "Ka"-"Gha".

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

Being aggrieved by and the dissatisfied with above judgment and decree of the trial Court above plaintiff as appellant moved to this Court and preferred this First Appeal.

Mr. Muhammad Salahuddin, learned Advocate for the appellant submits that admittedly 10.91 acres land originally belonged to Tokani Prashad and the same was correctly recorded in C. S. Khatian No.262 and after his demise above property devolved upon his heirs Brozalal Paul and others. Plaintiff claims that Younus Sarker obtained settlement

of 52 decimal land from Tokani Proshad by two registered deed of Kabuliyat dated 07.11.1927 and 29.03.1950. It was further stated that Abdul Halim father of plaintiff's predecessors Hazi Khaleq and Hazi Khorshed obtained settlement of 52 decimals land from Brozalal Paul and others by one registered Kabuliyat on 29.03.1945. Plaintiff acquired title and possession in above 1.04 acres land by purchase by two registered kabla deeds from Hazi Khaleq and Hazi Khorshed on 08.01.1985. Due to lack of legal skill of the appointed Advocate of the plaintiff at trial Court above three registered Kabuliyats executed by Younus Miah and Abdul Halim could not be produced at trial. The plaintiff has procured certified copies of above three registered Kabuliyats and submitted the same to this Court. 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 the plaintiff an opportunity to adduce further evidence. The learned Advocate lastly submits that plaintiff claims title and possession for 1.04 acres land and defendants Nos.14-20 claim 2 acres. As such there is sufficient land in the disputed plot to satisfy the claims of the plaintiff and the defendant and the plaintiff should have filed a suit for partition bringing into the hotchpotch the total land of above C. S. Khatian and impleading all co-sharers. The time and money of both the parties will be minimized if the plaintiff is allowed to convert above suit into a suit for partition by necessary amendment to the plaint.

Mr. A. K. M. Shamsul Hoque, learned Advocate for respondent Nos.14-20 submits that Tokani Sarder was the rightful owner and processor of 10.91 acres land of C. S. Khatian No.262 and after his demise above property devolved upon his heirs Brozalal Paul and others. Defendant's predecessor Sonadhar Bepari obtained settlement of 2 acres land from above Sree Babu Lal Paul and others by registered Kobuliyat dated 07.08.1945 and was in possession of the same. Above Sonadhar died leaving three sons Sekandar, Elem Chand and Mohiuddin and in their names R. S. Khatian No.1025 was rightly prepared. The plaintiff while giving evidence as PW1 has admitted title and possession of above Sekandar, Elem Chand and Mohiuddin and preparation of relevant S. A. Khatian and R. S. Khatian in their names. The learned Advocate further submits that in the names of Abdul Khaleq and Hazi Khorshed, predecessors of the plaintiffs S. A. Khatian Nos.263/2 and 263/1 and separate R. S. Khatian have been prepared for different land out of land of C. S. Khatian No.262 but the plaintiff did not bring into hotchpotch above land and most illegally challenged the lawful title and possession of the defendants in the disputed land. On consideration of above facts and circumstances of the case and evidence on record the learned Judge of the trial Court rightly dismissed above suit 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 10.91 acres land appertaining to C. S. Khatian No.262 belonged to Tokani Proshad Paul and after his demise the same devolved upon Sree Babu Lal Paul and others. It is also admitted that disputed 1.04 acres land were recorded in R. S. Khatian No.1025 in the names of the predecessors of defendant Nos.14-20 and in the names of plaintiff's predecessor Hazi Khorshed and Hazi Khaleq different land out of C. S. Khatian No.262 was recorded in S. A. Khatian Nos.263/1 and 263/2 and other R. S. Khatians. Plaintiff claims 1.04 acres land by purchase by two registered kabla deed dated 08.01.1985 from Hazi Khaleq and Hazi Khorshed. Plaintiff produced and proved above two deeds which were marked as Exhibit No.14. Plaintiff's claims that above Hazi Khaleq and Hazi Khorshed acquired 52 decimals land from Tokani Proshad by Kabuliyat but did not mention the date of above Kabuliyat nor produced above Kabuliyat at trial. The further claim of the plaintiff is Abdul Halim father of above Hazi Khorshed and Hazi Khaleq acquired 52 decimal land from Babu Lal Paul and others by registered Kabuliyat and after demise of above Abdul Halim above land devolved upon his two sons Hazi Khaleq and Hazi Khorshed. But the plaintiff could not produce above Kabuliyat deed of Abdul Halim at trial. It has been further claimed by the plaintiff that Younus Sarker who acquired 52 decimals land from Tokani Sarder transferred the same to his wife Azibunnessa by registered deed of Heba-bil-eawaz dated 14.10.1952. Plaintiff produced a certified copy of above deed

which was marked as Exhibit No.13 but the learned Judge most erroneously held that the plaintiff could not produce and prove above document.

As mentioned above the defendant has claimed that their predecessor Sonadhor acquired 2 acres land from Babu Lal Paul and others by registered deed of Kabuliyat dated 07.08.1945 and on the basis of above deed relevant S. A. and R. S. Khatians were prepared. But the defendant could not produce and prove above deed of Kabuliyat at trial.

Plaintiff has further claimed that relevant S. A. Khatian was not prepared in the name of their predecessor Azibunnessa who acquired 52 decimals land from her husband Younus Sarker by a registered deed of Heba-bill-ewaz and she filed an objection case to the Settlement Officer under section 19(1) of the State Acquisition and Tenancy Act, 1950 and got her name mutated for above 52 decimal land. But after final publication of the Khatian the Settlement Officer did not have any legal authority to make corrections under Section 19(1) of the State Acquisition and Tenancy Act, 1950.

The plaintiff has challenged the legality and propriety of R. S. Khatian No.1025 which stands in the name of the defendant's predecessor. The defendants should have produced the registered deed of Kabuliyat dated 07.08.1945 executed by Sonadhar Bepary to Sree Babu Lal and others to show the basis of above khatian. But the

defendants did not produce and prove above Kabuliyat in the trial Court. The plaintiff while giving evidence as PW1 has admitted that relevant R. S. Khatian which stands in the names of the defendant's predecessor was for their portion of the land. He expressed his ignorance as to whether defendant predecessor Sonadhar Bepary obtained settlement of 2 acre land from Babu Lal Paul and others by a registered Kabuliyat dated 07.08.1945. He admitted that sons of Sonadhar namely Sekandar, Elem Chand and Mohiuddin are in possession in the land of the disputed plot. He claimed that in the names of above sons of Sonadhar excessive land was recorded in S. A. Khatian No.262 and R. S. Khatian No.1025. He lastly stated that defendant Nos.14-20 are in possession in the land of the disputed plot by inheritance but they are not in possession of in the land of the plaintiffs.

On consideration of above materials on record and submissions of the learned Advocate for the respective parties we hold that the ends of justice will be met if the plaintiffs are given an opportunity to institute a suit for partition bringing into the hotchpotch total land of C. S. Khatian No.262 and corresponding S. A and R. S. Khatians impleading all co-sharers as defendants.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Joint District

Judge nor we find any substance in this First Appeal which is liable to be dismissed.

In the result, this First Appeal is dismissed.

Plaintiffs be at liberty to institute a suit for partition for the total property of C. S. Khatian No.262 impleading all the co-sharers as defendants.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER