

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 1098 of 2003

Saleha Begum being dead her legal heirs:

1(a) Ekram Hossain and others

.....petitioners

-Versus-

Majed Khan being dead his legal heirs:

1(a) Khan Salim Ahmed and others

.....opposite parties

Mr. S.M. Obaidul Hoque, Advocate

.....for the petitioners

Mr. Mr. Sardar Alamgir Ahmed, Advocate

.....for the opposite parties

Heard on: 24.02.2026

Judgment on: 03.03.2026

In the instant revision Rule was issued on 24.02.2003 calling upon the opposite parties 1-3 to show cause as to why the impugned judgment and decree dated 16.11.1995 passed by the Subordinate Judge, 4th Court, Khulna in Title Appeal No. 253 of 1992 affirming the judgment and decree dated 30.05.1992 passed by the Assistant Judge, Additional Court No. 1, Khulna in Title Suit No. 109 of 1991 dismissing the suit should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The plaintiff instituted the present suit for partition before the Court of the First Munsif at Khulna on 22.02.1986 in respect of 3.55 acres of the suit land out of the total divisible land measuring 15.18 acres and the suit was subsequently transferred to the Court of the Assistant Judge, Additional Court No. 1, Khulna and was renumbered as Title Suit No. 109 of 1991.

The case of the plaintiff as set out in the plaint is that the suit land originally belonged to Korban Khan. Korban Khan had a son named Dagu Khan who died during the lifetime of his father leaving behind four sons namely Bazlu, Nazir, Nasim and Gopal Khan who was the predecessor of the present plaintiff.

It is stated that Korban Khan executed a registered deed of gift on 18.01.1915 in favour of the said four grandsons in respect of the suit property and delivered possession to them. Another son of Korban Khan namely Dhanu Khan also died during the lifetime of Korban Khan. After the death of Korban Khan he left behind one son Sobor Khan, three daughters namely Saburun, Guli Bibi and Shahana and one widow named Maju bibi as his heirs. Subsequently on 07.01.1925 Sobor Khan executed and registered a deed of gift

in favour of the heirs of his deceased brother Dhanu Khan and delivered possession to them. The plaintiffs claim that they have been possessing and enjoying the suit land by cultivating and residing thereon.

It is further contended that since the S.A. record was not correctly prepared in their names they faced difficulties in enjoying possession and when in the year 1985 they demanded partition from the defendants and the defendants refused the same they were compelled to institute the present suit.

Defendants 9, 14 and 28 contested the suit by filing a joint written statement. Their case in short is that as Dagu Khan and Dhanu Khan died during the lifetime of their father their descendants did not inherit any property and Sobor Khan became the sole heir of Korban Khan. It is further stated that Korban Khan had also gifted certain properties to Sobor Khan. Sobor Khan subsequently gifted three and a quarter kathas of land to the daughters of his deceased brother Dhanu Khan namely Nigar who is plaintiff 3, Saburunnessa, Fuli Bibi and Sakina Bibi. The defendants deny that Korban Khan executed any deed of gift in 1915 in favour of the heirs of his deceased son and allege that the alleged deed is forged, fabricated and inoperative and for such reason the C.S. record was not

prepared in the names of the alleged donees. It is further contended that several necessary parties were not impleaded in the suit. It is also stated that the predecessor of the plaintiffs namely Khotejan bibi had earlier instituted Title Suit No. 341 of 1958 against the predecessors of the present defendants and the said suit was compromised and decreed in her favour and the predecessors of the defendants relinquished their claim in favour of Khotejan Bibi. On the aforesaid grounds the defendants prayed for dismissal of the suit as being false.

During trial the trial Court framed four issues.

The plaintiff examined two witnesses and adduced documentary evidence in support of her case whereas the defendants did not examine any witness.

The trial Court by judgment dated 30.05.1992 dismissed the suit holding that although a certified copy of the deed dated 18.01.1915 marked as exhibit-2 was produced the plaintiffs did not explain in the plaint the non production of the original deed nor did they take any step to prove the same. The trial Court further held that although the said deed was allegedly executed prior to the C.S. record there was no explanation as to why the C.S. record was not prepared in the names of the alleged donees and as the C.S. record carries a

presumptive value it may be presumed that the alleged deed of 1915 was not acted upon. The trial Court also found that in view of exhibit-3 dated 16.03.1925 there was no clear picture regarding devolution of title upon the subsequent heirs and in absence of a clear determination of shares no decree for partition could be passed.

Being aggrieved the plaintiffs preferred Title Appeal No. 253 of 1992 before the Court of the District Judge, Khulna which was later transferred to the Court of the Subordinate Judge, Fourth Court. The Subordinate Judge dismissed the appeal affirming the findings and judgment of the trial Court thereby maintained the decree of dismissal. Feeling aggrieved by the concurrent judgments and decrees of the courts below the plaintiffs moved this Court in revision and obtained Rule on 24.02.2023.

Mr. S.M. Obaidul Haque, learned Advocate appearing for the plaintiff petitioner submits that the courts below failed to determine the entitlement of the plaintiffs on the basis of exhibits 2 and 3 and thereby committed error of law resulting to failure of justice. He further submits that the appellate court being the final court of fact ought to have noticed that the C.S. and R.S. records were not prepared in the name of Sobor Khan

on the basis of the deed dated 07.01.1925 and such omission clearly indicates that the records of right are erroneous. He also contends that on the basis of the deed of gift dated 18.01.1915 the C.S. record ought to have been prepared in the name of the donees and the C.S. record is therefore incorrect. He strenuously argues that since the deed dated 16.03.1925 marked as exhibit-3 has been found to be genuine the plaintiffs were entitled to partition in accordance therewith and the failure of the courts below to grant partition on the basis of the said deed has resulted in miscarriage of justice. At one stage he referred to two applications. One for amendment of the plaint and another for acceptance of additional evidence stating that there was deficiency in the pleadings regarding the claim of the plaintiff and the original deed dated 18.01.1915 has since been recovered and in view of the acceptance of the deed dated 07.01.1925 for ends of justice and for resolving the controversy once for all the suit may be remanded to the trial Court.

On the other hand Mr. Sardar Alamgir Ahmed, learned Advocate for the opposite parties initially supported the concurrent findings of the courts below but ultimately

concedes that if the matter is remanded for fresh adjudication he has no objection.

I have heard the learned Advocates of both sides and perused the materials on record including the judgments of the courts below and the applications for amendment and for additional evidence.

This is a suit for partition. The plaintiffs claim the suit land on the basis of two deeds of gift namely exhibit-2 dated 18.01.1915 and exhibit-3 dated 16.03.1925. It appears from the record that although a certified copy of exhibit-2 was filed no explanation was given in the plaint regarding non production of the original deed nor was any step taken to call for the original from the concerned registry office. It further appears from the Calcutta Gazette that the Cadastral Survey Record of the concerned area was finally published on 13.05.1927 under section 103B of the Bengal Tenancy Act. The plaintiff produced certain khatians marked as exhibit-4 series but the names of the alleged transferees under exhibits-2 and 3 do not appear therein. It is settled that record of rights does not create title though it carries a presumption of correctness until found to be incorrect. In respect of exhibit-3 which has been accepted as a genuine document it may be said

that the C.S. record is erroneous to the extent that it does not reflect the transfer.

During hearing the learned Advocate for the petitioners produced the original deed dated 18.01.1915 before this Court and submitted that the manner in which the said deed was obtained has been explained in the application dated 06.01.2009 for acceptance of additional evidence. Prima facie the document appears genuine but its legal validity and effect depend upon proper proof and upon determination of shares of the parties. Similarly the amended claim sought to be introduced by the application dated 24.03.2009 in respect of the share of the plaintiffs on the basis of exhibit-3 requires adjudication upon evidence. It is well settled that the right of a co-sharer is not extinguished unless ouster is proved. The plaint does not contain any clear genealogy explaining why the defendants have been impleaded as co-sharers. Although the plaint appears to have been drafted in an imperfect manner such defect cannot be a ground to defeat substantive rights in a partition suit. It is equally settled that remand cannot be ordered as a matter of course.

However in a suit for partition where determination of shares is essential and where material documents and

pleadings require proper consideration remand may be ordered in exercise of power under order XLI rules 23 and 25 read with Section 151 of the Code of Civil Procedure.

In the facts and circumstances of the case the judgments and decrees of the courts below are set aside and the suit is remanded to the trial Court for fresh hearing and disposal in accordance with law. The trial Court shall consider the applications dated 24.03.2009 for amendment of the plaint and dated 06.01.2009 for production of evidence and shall afford equal opportunity to both parties to amend the pleadings and adduce further evidence if so advised. The trial Court shall thereafter determine the shares of the parties in accordance with law and pass appropriate decree.

Since the suit is an old one the trial Court is directed to dispose of the same within 180 working days from the date of receipt of the record without granting unnecessary adjournments.

Accordingly the Rule is disposed of.

The office is directed to transmit the lower Courts' record along with the applications dated 24.03.2009 and 06.01.2009 to the trial court.

Communicate this judgment to the concerned Court at once.

Md. Ali Reza, J:

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