

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

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Tamanna Rahman Khalidi

First Appeal No. 71 of 2017

Md. Kazimuddin

...Appellant

-Versus-

Tozimuddin and others

... Opposite parties

None appears

.... For both the sides.

Heard on 19.04.2026 and Judgment on 20.04.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 17.01.2017 passed by the learned Joint District Judge, 1st Court, Manikgonj, in Title Suit No.263 of 2012 dismissing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title for 7.875 decimal land and for further declaration that registered deed of Heba dated 21.03.2012 executed by defendant Nos.1-2 is not binding upon the plaintiff alleging that Emarat Bauwal was the owner and possessor of 34 decimal land including above land which was rightly recorded in his name in relevant C. S. Khatian who transferred above land by registered deed of Heba-bil-ewaz dated 02.10.1958 to his grand sons namely Sheikh

Nazimuddin and Sheikh Sakhimuddin and delivered possession. Above Nazimuddin died unmarried and his land devolved upon his parents Jamsher Ali and Diljan who transferred above land to Tajimuddin and Kazimuddin. Plaintiff and defendants are full brothers and by above transfer plaintiff acquired title in 8.5 decimal land. Plaintiff and defendant transferred $2\frac{1}{2}$ decimal land to Nasimuddin by registered kabla deed and are in possession 7.875 decimal land which has not been partitioned by meets and bounds and the defendant denied plaintiff's title in above land.

Defendant No.1 contested above suit by filing a joint written statement alleging that Emarat Bauwal grandfather of plaintiff and defendant No.1 was rightful owner and possessor of 34 decimal land of Plot No.86. Plaintiff and defendant are in joint possession in above property and above property has not been partitioned by meets and bounds. The location specified by the plaintiff in the index of the plaint is in possession of the defendant and the plaintiff does not have any possession in above land. Plaintiff has filed this false suit to get possession of the land of the defendant which is contiguous to a public road.

At trial plaintiff examined five witnesses and defendants examined three. Documents of the plaintiff were marked as Exhibit Nos.1-3 series and 4 and those of the defendants were marked as Exhibit Nos."Ka", "Kha", "Ga" "Gha" and "Uma" series.

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

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.

No one appears on behalf of the appellant or respondents when the First Appeal was taken upon for hearing despite the fact that above appeal appeared in the list for hearing on several dates and this Court took up the First Appeal for disposal on merit pursuant to Order 41 Rule 30(2) of the Code of Civil Procedure, 1908.

We have carefully scrutinized the case record and the perused the pleadings, judgment of the Courts below and other materials on record.

It is admitted that 34 decimal land including disputed land belonged to Emarat Bauwal and the same was correctly recorded in relevant C. S. Khatian. It is also admitted that Emarat Bauwal transferred above 34 decimal land equally to his two grandsons Sakhimuddin and Nazimuddin by registered deed of heba dated 02.10.1958 and delivered possession and Nazimuddin died leaving his parents Jomsher Ali and Diljan as heirs who acquired 17 decimal and transferred the same to the plaintiff and defendant by registered deed of heba. 29.04.1968.

The plaintiff while giving evidence as PW1 reiterated above claims and allegations as set out in the plaint and produced certified copy of C. S. Khatian No.86, S. A. Khatian No.100(86), R. S. Khatian No.161 and certified copies of Heba-bil-ewaz deeds dated 02.10.1958, 29.04.1968 and 21.03.2012 which was marked Exhibit Nos.1-4 respectively. Defendant Tazimuddin while giving evidence as DW1 admitted in his evidence that 34 decimal land of C. S. Khatian No.86 belonged to Emarat Bauwal who transferred the same to Sheikh Sakhimuddin and Sheikh Nazimuddin by a registered deed of Heba-bil-ewaz dated 02.10.1958 and after demise of Nazimuddin his land was inherited by his father Jomsher Ali and mother Diljan who in their turn transferred above land to his two sons plaintiff Kazimuddin and defendant Tazimuddin by deed of heba dated 29.04.1968 and delivered possession.

From above pleadings and evidence adduced by the plaintiff and defendant it is crystal clear that they do not dispute lawful title of plaintiff and defendant No.1 in above land of Emarat Bauwal but the defendant has denied the location and manner of possession of the plaintiff in the disputed land. Plaintiff and defendant have acquired title in the above land from Emarat Bauwal and they are co-sharers in above land. It has been admitted by both the parties that above property has not been partitioned by meets and bounds and the plaintiff and defendant claim to be in possession in above land on the

basis of amicable partition. Possession of one co-sharer in a portion of the joint property by amicable partition does not give rise to title to the possessor nor does such possession extinguish lawful title of the other co-sharers. The legal status of co-sharers for undivided joint property is equal and all the co-sharers are lawful owners of the joint property irrespective of the fact that on their behalf another co-sharer is in possession of the same. As such a co-sharer cannot get a decree for title in respect of a part of the joint and undivided property against the other co-sharers and the lawful remedy available for any co-sharer is to proceed with a suit for partition. A joint property can be partitioned by a decree of a suit for partition or by a registered deed of partition involving all the co-sharers and each and every segment of the joint property.

Since admittedly above property of the plaintiff and the defendants was not partitioned by meets and bounds and the same is still a joint property and the learned Joint District Judge on correct appreciation of materials on record rightly dismissed above suit holding that the suit is not tenable in law in the absence of a remedy for partition which calls for no interference.

However, the plaintiff will be at liberty to file a fresh suit for partition of above land 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 and the instant First Appeal is devoid of any substance and 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.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER