

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.356 OF 2017

Syed Ahmed and others

...Appellants

-Versus-

Samsu Uddin and others

... Respondents

Mr. Md. Mainul Islam, Advocate

... For the appellants.

None appears

... For the respondents.

Heard on 19.07.2026 and Judgment on 20.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 27.08.2017 passed by the learned Joint District Judge, 2nd Court, Sunamgonj in Title Suit No.8 of 2007 dismissing the same..

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 71 acre land appertaining to S. A. Khatian Nos.142, 77 and 93 seeking a separate saham for 3.50 decimal land alleging that the plaintiffs purchased above land by successive transfer by registered kabla deed from co-sharers of above S. A. recorded tenants and possessing the same by constructing shops. Above land has not been

partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant No.1 contested above suit by filing written statement alleging that the suit is bad for defect of parties and for not incorporating all ejmali properties into the hotchpotch of the suit. It was further stated that the plaintiffs did not acquire any valid title and possession the disputed land by alleged purchase by registered kabla deeds.

At trial plaintiffs examined four witnesses and defendants examined three. Documents of the plaintiffs were marked as Exhibit Nos.1-8 series and those of the defendants were marked as Exhibit Nos. "Ka" to "Cha" series.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit holding that the suit was bad for defect of parties.

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

Mr. Md. Mainul Islam, learned Advocate for the appellants submits that in above suit for partition the plaintiffs and contesting defendant Nos.1 both adduce evidence oral and documentary and the learned Joint District Judge on a detailed analysis and comparison of the evidence rightly held that the plaintiffs succeeded to prove his

lawful title and possession in disputed 3.50 decimal land but erroneously dismissed the suit holding that the same was bad for defect of parties which is not tenable in law. The learned Advocate further submits that the learned Joint District Judge held that the plaintiffs did not brought into the hotchpotch of the suit total ejmali property and filed above suit for partial properties but the learned Judge did not mention as to which properties were left out from the plaint. As far as non impleading of all co-sharers are concerned the learned Advocate concedes that the plaintiffs have impleaded Orshini Kumar as a defendants in above suit who is Malik of S. A. Khatian No.93 but there are other Maliks in above khatian who were not erroneously impleaded in the suit and the learned Judge of the trial Court should have given the plaintiffs an opportunity to impleade above co-sharers of S. A. Khatian No.93 instead of dismissing above suit on above procedural deficiency. The learned Advocate lastly submits 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 the plaintiffs an opportunity to amend the plaint and adduce further evidence.

No one appears on behalf of the respondents at the time of hearing of this First Appeal although this matter appeared in the list for hearing on several dates.

We have considered the submissions of the learned Advocate for the appellants and carefully examined the plaint, written statement, impugned judgment and decree and other materials on record.

As mentioned above the plaintiffs filed above suit for partition of land of S. A. Khatian No.142, 77 and 93 and seeking a saham for 3.50 decimal land. The plaintiffs examined four witnesses and defendants examined three witnesses and both parties adduced a bunch of documents which were also marked exhibits. On a detailed analysis of above evidence on record the learned Joint District Judge held that the plaintiffs succeeded to prove their lawful title and possession in 3.50 decimal land but dismissed above suit holding that the plaintiffs did not bring into hotchpotch total joint properties nor they have impleaded all co-sharers as defendants in above suit. The learned Joint District Judge specifically mentioned that S. A. Khatian No.93 stands in the name of Orshini Kumar and other 13 persons but the plaintiffs impleaded the heirs of Orshini Kuamr in above suit for partition but did not implead the heirs of other 13 tenants of S. A. Khatian No.93. In a suit for partition it is mandatory for the plaintiffs to implead each and every co-sharer and brought into the hotchpotch each and every piece of joint property to make an effective partition of the joint properties among all the co-sharers. The shares of each co-sharer in a joint property cannot be determined conclusively unless every piece of joint

property is brought before the Court and all co-sharers are impleaded in the suit.

The learned Advocate for the appellants concedes that due to lack professional skill of the appointed Advocate of the plaintiffs in the trial Court there were deficiencies in impleading all co-sharers and bringing into hotchpotch each and every piece of the joint properties and the learned Advocate seeks remand of the suit for retrial.

The cause of action of a suit for partition is recurring and continues until the ejmali properties partitioned by meets and bounds. As such the ends of justice demands that such a suit be not dismissed on procedural grounds such as defect of parties or for not bringing into hotchpotch each and every piece of the ejmaly property but the plaintiffs should be given an opportunity to make up above procedural deficiencies so that the suit for partition is adjudicated upon on merit in accordance with law.

In above view of the facts and circumstances of the case and evidence 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 the result, this First Appeal is allowed.

The impugned judgment and decree dated 27.08.2017 passed by the learned Joint District Judge, 2nd Court, Sunamgonj in Title Suit No.8

of 2007 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

The learned Joint District Judge is directed to conclude the retrial of the suit within a period of six months from the date of receipt of this order.

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**