

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

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Md. Saiful Islam

First Appeal No.391 of 2017

Md. Mahbub Hossan and others

....Appellants

-Versus-

Md. Sanowar Hossain Bhutto and others

....Respondents

Mr. Md. Abul Kalam Patwary with

Mr. Sanowar Rahman, Advocate

.... For the appellants.

Mr. A.S.M. Rahmatullah, Advocate

.... For the respondent No.1.

Heard on 26.10.2025 and 16.11.2025.

Judgment on 17.11.2025

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 27.07.2017 passed by the learned Joint District Judge, Additional Court, Narayangonj in Title Suit No.94 of 2012 dismissing the suit.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title and recovery of possession by evicting dwelling huts from two decimal land of their licensee defendant Nos.1 and 2 land alleging that above property and other properties belonged to Surotunnessa who died leaving daughter Rizia Khatun and son Sirajul. Sirajul died leaving 1 daughter Fazilatunnessa. Rizia acquired above 2 decimal land by deed of gift from her mother Surotunnessa and constructed a dwelling house and transferred above property to the defendants by registered deed of gift dated 05.11.1985 and delivered possession. The father of defendant Nos.1 and 2, namely Anwar Hossain, was nephew of above Rizia Khatun who gave licence to above

Anwar Hossain to reside in a ground floor room of above house and after his demise defendants are continuing their possession in above room.

Defendant Nos.1 and 2 contested above suit by filling a joint written statement denying all material claims and allegations made in the plaint and alleging that Surotonnessa transferred above two decimal land to her grand daughter Fazilatunnessa by registered deed of heba dated 28.07.1956 and in her name relevant S. A. and R. S. khatians were prepared. Above Fazilatunnessa died leaving four sons Motiur Rahman and others and five daughters Zahanara and others and above Matiur and others transferred above two decimal land to the defendants by registered kabla deed dated 03.05.1999 and defendants are living in above house by paying rent to the Government and holding tax to the municipality and they are not licensee of the plaintiffs.

At trial plaintiffs examined 3 witnesses and defendants examined 4 and documents of the plaintiffs were marked Exhibit Nos.1-10 and those of the defendants were marked as Exhibit No.'Ka' series to 'Uma' series.

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 plaintiffs as appellants moved to this Court and preferred this appeal.

Mr. Md. Abul Kalam Patwary, learned Advocate for the appellants submits that there are formal defects in the plaint and the plaintiffs could not produced all relevant documents and examine relevant and necessary witnesses at trial. The plaintiffs and defendants are co-shares in the above property and instead of filling above suit for

partition erroneously a decree for declaration of title and recovery of possession were sought. The appellants do not want to prosecute this appeal and wants permission to withdraw above suit with permission to file a fresh suit for partition. In support of above submission the learned Advocate has submitted an application under Order 23 Rule 1 of the Code of Civil Procedure for withdrawal of above suit with liberty to sue a fresh suit for the same cause.

Mr. A. S. M. Rahmatullah, learned Advocate for the respondent No.1 frankly concedes that the plaintiffs and defendants are co-sharer in above joma and filling of above suit for declaration of title and recovery of possession against co-shares was misconceived and not tenable in law. The learned Advocate frankly concedes that he does not have any objection if the plaintiff files a fresh suit for partition for the same cause provided they pay adequate cost.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above learned Advocates for both sides concurred that the parties to this suit are co-sharers for above property disputed of all types between co-sharers may be fairly and justly resolved by a suit for partitioned.

In above view of the facts and circumstances of the case and submissions of the learned Advocates for the respective parties and the petition filed by the appellants under order 23 rule 1 of the Code of Civil Procedure we are of the view that the ends of the justice will be met if the instant appeal is disposed of and the plaintiff is permitted to withdraw above suit with liberty to file a fresh suit for partition for the same cause.

Accordingly, the appellants are permitted to withdraw above suit with liberty to file a fresh suit for partition within 60 days from the

dated of receipt of this order on payment of cost of tk.10,000/- to respondent No.1 and 2.

Above appeal is accordingly disposed of.

Send down the lower Court's records immediately.

Md. Saiful Islam, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER