

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

**Present:**

**Mr. Justice Md. Badruzzaman.**

**And**

**Ms. Justice Aynun Nahar Siddiqua**

**First Appeal No. 129 of 2018**

**Md. Sofiqul Islam and another**

...Appellant.

-Versus-

**Nilu Barua and others**

....Respondents.

Mr. Md. Ismail Hossain Bhuiya

... For the appellants

Mr. Pankaj Kumar Kundu with

Ms. Mukti Rani Kundu Advocates

... For respondent No.1.

**Heard on: 24.4.2026, 4.5.2026 and 14.6.2026.**

**Judgment on: 17.06.2026.**

**Md. Badruzzaman, J:**

This appeal is directed against the Judgment and Decree dated 12.06.2012, the decree having been signed on 17.06.2012, passed by the learned Joint District Judge, 2nd Court, Dhaka, in Title Suit No. 65 of 2008, decreeing the suit ex parte.

Facts relevant for the purpose of disposal of this appeal are that Respondent No. 1, as plaintiff, instituted Title Suit No. 65 of 2008 against Respondent Nos. 2 to 5, praying for a decree declaring title to the suit property and for another declaration that the impugned deeds are illegal, void, inoperative, and not binding upon the plaintiff, and also for recovery of khas possession of the suit property.

The case of the plaintiff, in brief, is that the erstwhile owners of the suit property were Kemoddin and others. After the death of Kemoddin, his son, namely Abdul Sattar, and his two daughters, namely Mojiran Nesa and Fazila Khatun, became the owners of the said property. During the S.A. operation, although the name of Abdul Sattar was recorded in the S.A. Khatian, the names of Mojiran Nesa and Fazila Khatun were not recorded therein. Subsequently, during the R.S. operation, the names of Mojiran Nesa and Fazila Khatun were correctly recorded in the R.S. Khatian. Thereafter, Mojiran Nesa and Fazila Khatun, by registered Deed of Sale No. 8548 dated 19.06.1979, transferred 1.5 kathas of land in favour of the plaintiff. On the same day, by another registered Deed of Sale No. 8549, they sold another 1.5 kathas of land in favour of the plaintiff's husband, namely Nirmal Borua. Accordingly, the plaintiff and her husband jointly acquired title to .0495 acre equivalent to 3 kathas of land. They subsequently obtained mutation of the suit property in their names and paid rents and taxes thereof. Thereafter, they constructed a two-storied building over the suit property. The plaintiff remained in possession of the ground floor, while her husband remained in possession of the upper floor. The plaintiff's husband died on 05.05.2008, and thereafter the plaintiff, along with her children, continued to possess and enjoy the suit property. The plaintiff further stated that on 30.05.2008, Defendant No. 1, accompanied by armed miscreants, forcibly entered into the suit property and dispossessed the plaintiff therefrom, claiming ownership on the basis of an alleged purchase from Nirmal Borua. Thereafter, the plaintiff appointed one Arun Borua as her constituted attorney by a registered Power of Attorney bearing No. 7332 dated 10.06.2008 for the supervision and protection of the suit property who upon

conducting a search in the concerned Sub-Registry Office, the said attorney obtained certified copy of Deed No. 7034 dated 19.05.1998 on 31.8.2008 and discovered that her husband, Nirmal Borua, had fraudulently created a forged Deed of Gift being No. 3010 dated 23.04.1982 by forging the signature and thumb impression of the plaintiff. On the basis of the said alleged forged deed, Nirmal Borua sold the suit property to defendant No. 1 and by another sale Deed No. 6446 dated 10.05.1998 he also sold the suit property to Defendant Nos. 2 and 3. Thereafter, the plaintiff instituted the present suit praying for a decree of declaration of title to the suit land and another declaration that Deed of Gift No. 3010 dated 23.04.1982 and the subsequent Deed Nos. 6446 dated 10.05.1998 and 7034 dated 19.05.1998 are illegal, void, inoperative and not binding upon her, and also for recovery of khas possession of the suit property.

Eventually, the suit was fixed for ex parte hearing and, in support of the plaintiff's case, Plaintiff No. 1 examined only her constituted attorney, Arun Borua, as P.W.1 and produced certified copies of certain deeds. The trial Court, upon considering the evidence on record, decreed the suit ex parte by the impugned Judgment and Decree. Against the said Judgment and Decree, the present appellants, claiming to be third parties affected thereby, have preferred this appeal.

During hearing this appeal, the appellants filed an application affirmed on 3.6.2026 praying for their addition as Defendant Nos. 5 and 6 in the original Title Suit No. 65 of 2007 and for allowing them to contest the suit by filing a written statement. In the said application, they contended, inter alia, that while Nilu Borua was in peaceful possession and enjoyment of her share of the property, namely 1.5 kathas of land, she, by registered Deed of Gift No. 3010 dated

23.04.1982, transferred her portion to her husband, Nirmal Borua. Accordingly, Nirmal Borua became the absolute owner of the said property and constructed a building thereon. Thereafter, Nirmal Borua transferred the suit property in favour of Defendant Nos. 2 and 3 by registered Deed of Sale No. 6446 dated 10.05.1998. Subsequently, by another registered Deed of Sale No. 7034 dated 19.05.1998, Nirmal Borua again sold the self-same property to Defendant No. 1. As such, Defendant Nos. 2 and 3, being prior purchasers for value, acquired title and possession over the suit property. While in peaceful possession and enjoyment of the property, Defendant Nos. 2 and 3 transferred the same to Md. Rafiqul Islam Khan by registered Deed of Exchange No. 4570 dated 24.02.2000. Thereafter, Rafiqul Islam Khan and the present appellants, along with other co-sharers, partitioned their ejmali property along with the suit property by Partition Deed No. 1340 dated 18.01.2001, and by virtue of the said Partition Deed, the present third-party appellants acquired title to the suit property. The appellants have been possessing and enjoying the suit property openly, peacefully and adversely to all concerned. During their possession, they demolished the old structure standing thereon and constructed a three-storeyed building and obtained various utility services, including gas, electricity and water connections. The appellants, along with their family members, have been residing therein continuously and peacefully. During the latest City Survey operation, Defendant No. 1 succeeded in recording the suit land in his name in City Survey Khatian No. 8689. Subsequently, upon being approached by the appellants along with the relevant title deeds and papers, Defendant No. 1, acknowledging the actual ownership and possession of the present appellants, relinquished his interest in their favour by executing a registered Deed of Declaration

being No. 4168 dated 23.04.2017. The appellants are third-party purchasers and have been owning and possessing the suit property for more than twelve years. However, without impleading them as parties to the suit, the plaintiff, by suppressing material facts, instituted the present suit and fraudulently obtained an ex parte decree. Therefore, the said Judgment and Decree are liable to be set aside. It is further contended that, since the appellants are third-party purchasers who acquired title to the suit property prior to the institution of the suit, they should be afforded an opportunity to contest the suit by being added as defendants and by filing written statements.

Mr. Md. Ismail Hossain Bhuiyan, the learned Advocate appearing for the appellants, submits that the appellants are third-party purchasers of the suit land and that they acquired title and possession thereto prior to the institution of the present suit. Accordingly, they were necessary parties to the suit. However, the plaintiff, without impleading the appellants as parties, impleaded certain persons who had no title or interest in the suit property and, by suppressing the true facts, fraudulently obtained an ex parte decree. Therefore, the impugned ex parte Judgment and Decree are liable to be set aside.

The learned Advocate finally submits that since the appellants are willing to contest the suit and had acquired title and interest in the suit property prior to the filing of the present suit, they should be afforded an opportunity to contest the suit by being added as defendants and by filing a written statement and adducing evidence in support of their case.

On the other hand, opposing the aforesaid submissions of the learned Advocate for the appellants, Mr. Pankaj Kumar Kundu, the learned Advocate appearing for the plaintiff-respondent, submits that

since the present appellants were not parties to the suit, they have no *locus standi* to prefer the present appeal challenging the ex parte Judgment and Decree passed by the trial Court.

The learned Advocate further submits that the deeds on the basis of which the appellants are claiming title to the suit property do not confer any valid title upon them. In the deed of partition relied upon by the appellants, it has been stated that only the inherited properties of the co-sharers were partitioned. However, the transferor of the appellants, namely Rafiqul Islam, allegedly purchased the suit property by registered Exchange Deed No. 4570 dated 24.02.2000. Therefore, according to the learned Advocate, the appellants could not acquire any lawful title or interest in the suit property by virtue of the said partition deed. Accordingly, the learned Advocate contends that the appellants should not be permitted to disturb the decree already obtained by the plaintiff-respondent and that the present appeal is liable to be dismissed.

We have heard the learned Advocates for the respective parties, perused the pleadings, the plaint of the Title Suit, the impugned Judgment and Decree, the application filed by the present appellants seeking addition as parties to the suit, and other relevant documents available on record.

It is the case of the plaintiff that her husband, Nirmal Borua, fraudulently created a Deed of Gift by forging her signature and thumb impression, being Deed of Gift No. 3010 dated 23.04.1982, and thereafter Nirmal Borua, by registered Sale Deed Nos. 6446 dated 10.05.1998 and 7034 dated 19.05.1998, transferred the suit property to Defendant Nos. 1, 2 and 3. The plaintiff, therefore, challenged the aforesaid three deeds in the instant suit.

On the other hand, the present appellants claim that by the said Deed of Gift dated 23.04.1982, Nirmal Borua lawfully acquired title to the suit property from his wife, Nilu Borua, and thereafter transferred the suit land to Defendant Nos. 2 and 3 by registered Sale Deed No. 6446 dated 10.05.1998. Thereafter, by another registered Deed of Sale being No. 7034 dated 19.05.1998, Nirmal Borua sold the self-same property to Defendant No. 1. It is further stated that Defendant No. 1 subsequently relinquished his title and interest in favour of the present appellants by executing a registered Deed of Declaration being No. 4168 dated 23.04.2017. It is further stated that Defendant Nos. 2 and 3 transferred the suit property to Rafiqul Islam by Deed of Exchange No. 4570 dated 24.02.2000 and, thereafter, through Partition Deed No. 1340 dated 18.01.2001, the present appellants obtained saham (share) in the suit property. Thereafter, they demolished the earlier structure standing thereon and constructed a three-storeyed building and obtained gas, electricity and water connections in 2003. They produced photocopies of the aforesaid deeds by way of a supplementary affidavit affirmed on 08.06.2026 as Annexures-A, A-1, B series and C series, from which it appears that the present appellants have, prima facie, acquired an interest in the suit property prior to the institution of the present suit. However, the plaintiff, without impleading them as defendants, impleaded the previous purchasers of the suit property and obtained an ex parte decree.

It is a settled principle of law that in appropriate cases, third-party purchasers who acquired title to the suit property prior to the institution of the suit may be allowed to challenge an ex parte decree in appeal and may also be permitted to contest the suit by being added as defendants and filing written statements.

**The principal grounds are:**

**1. They are necessary and proper parties to the suit.**

If a person had already acquired title and possession in the suit property before the institution of the suit, any decree passed concerning that property directly affects his or her rights. Therefore, an effective and complete adjudication of the dispute cannot be made in his or her absence.

**2. The suit suffers from defect of parties (non-joinder of necessary parties).**

Where the plaintiff knowingly omits persons having existing title and interest in the suit property and proceeds only against former owners or persons having no subsisting interest, the suit may be regarded as defective for non-joinder of necessary parties.

**3. The principles of natural justice require an opportunity of hearing.**

No person should be deprived of his or her property rights without being given an opportunity to be heard. If the appellants prima facie establish that they acquired interest in the property before the suit, denying them the opportunity to contest the case would offend the principle of *audi alteram partem* (hear the other side).

**4. An ex parte decree obtained by suppression of material facts may be set aside.**

If it appears that the plaintiff suppressed the existence of subsequent purchasers or persons in possession and obtained an ex parte decree without impleading them, the appellate court may interfere in the interest of justice.

**5. To secure the ends of justice and avoid multiplicity of proceedings.**

Instead of compelling the third-party purchasers to institute a separate suit, the appellate court may remand the suit, add them as defendants, and permit them to file written statements and adduce evidence so that all controversies relating to the suit property are decided in one proceeding.

Accordingly, we are of the view that where third-party purchasers prima facie prove that they acquired title and interest in the suit property prior to the institution of the suit and that the decree was passed in their absence, the appellate court may set aside the ex parte decree, remand the suit for fresh trial, direct that they be added as defendants, and permit them to file written statements and contest the suit on merits.

Admittedly, the appellants were not impleaded as parties in the suit, although the decree directly affects their alleged title and possession. They were excluded from the proceeding and an ex parte decree is obtained by respondent No.1 without affording them an opportunity of hearing. The appellants have prima facie established that they acquired interest in the suit property prior to the institution of the suit. Therefore, they were necessary parties to the proceeding. The suit, having been decided ex parte without impleading them, suffers from defect of parties. In our view, the ends of justice would be best served if the appellants are allowed to contest the suit by being added as defendants and by filing written statements.

Accordingly, the appeal is allowed, however without any order as to costs.

The impugned ex parte Judgment and Decree are set aside. The suit is remanded to the trial Court for fresh trial. The present appellants shall be added as Defendant Nos. 5 and 6 and shall be at liberty to file written statements. The plaintiff shall also be at liberty to amend the plaint, if so advised. The trial Court shall proceed with the suit in accordance with law in the light of the observations made hereinabove. The further proceeding of Title Execution Case No. 9 of 2012 be stayed till disposal of the suit.

The trial Court is further directed to dispose of the suit as expeditiously as possible, preferably within 6 (six) months from the date of receipt of a copy of this Judgment, without allowing any unnecessary adjournment to either party.

Let the Lower Court Records be sent down to the Court below at once along with a copy of this Judgment.

(Justice Md. Badruzzaman)

I agree

(Justice Aynun Nahar Siddiqua)