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.295 OF 2018

Singair Bilateral High School and another
.... Appellants
-Versus-
Md. Ismail Hossain and others
.... Respondents
Mr. Md. Nurul Islam, Advocate
…. For the appellants.
Mr. Sumon Ali, Advocate with
Mr. Selim Hossain, Advocate
…. For the respondents.
Heard on 07.07.2026 and 08.07.2026.
Judgment on 09.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 29.08.2004 passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No.1 of 2024 decreeing the same.

Facts in short are that respondent No.1-4 as plaintiffs instituted above suit for declaration of title, recovery of possession and partition of 46 decimal land appertaining to C. S. Khatian Nos.1427, 1428 and 1437 and Plot Nos.2104, 2105, 2106 and 2113 corresponding to R. S. Khatian No.6, Plot No.5209 and for further declaration that R. S.

Khatian No.6 prepared for above land in the name of the defendants was erroneous and not binding upon the plaintiffs alleging that plaintiff's predecessor Ibrahim was lawful owner and possessor of 69 decimals land and he transferred 23 decimal land to defendant No.1 Singair Bilateral High School and delivered possession. Above Ibrahim Miah further transferred 29 decimal land to above defendant. Above Ibrahim Miah was in possession in disputed 46 decimal land and died leaving the plaintiffs as heirs who were in possession in above land. Above 69 decimal land has been erroneously recorded in the name of defendant No.1 in above R. S. and S. A. Khatians and the defendants dispossessed the plaintiffs from above land on the 1st part of Mag 1410 B.S.

Defendant Nos.1 and 2 contested above suit by filling a joint written statement alleging that 3.67 acres land including disputed land has been rightly recorded in the name of above School in S. A. Khtian No.$\frac{1438}{1362}$ and R. S. Khatian No.6 and 2.85 acres land of Plot No.2509 has been rightly recorded as play ground of above School. Father of plaintiff Nos.1 and 2 transferred above land to the School by registered deed.

At trial plaintiffs examined five witnesses and defendants examined four. Documents of the plaintiffs were marked as Exhibit Nos.1-4 series and those of the defendants were marked as Exhibit Nos."Ka" to "Uma".

The learned Joint District Judge decreed above suit by impugned judgment and decree dated 29.08.2004.

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

Mr. Md. Nurul Islam, learned Advocate for the appellants submits that the plaintiffs have filed above suit for declaration of title and recovery of possession for 46 decimals land alleging that S. A. and R. S. Khatians of above land has been erroneously recorded in the name of the appellant. There is no cause of action in the plaint as to seeking partition. Nor total properties of C. S. Khatian Nos.1427, 1428 and 1437 were brought into the hotchpotch of above suit and all co-shares of above khatians were not impleaded as defendants. Respondent's predecessor Ibrahim Miah was the owner or possessor of 69 decimals land of above Khatians and the plaintiffs have admitted at Paragraph No.1 of the plaint that above Ibrahim Miah transferred 52 decimal land to the appellants but the plaintiffs sought title and possession for 46 decimal land as heirs of Ibrahim Miah which is not tenable in law. The plaintiffs have claimed that they were in possession in disputed 46 decimals land and the defendants dispossessed him in Mag 1410 B.S. but the plaintiff could not prove above claim by legal evidence. It has been stated in the plaint and in evidence of plaintiff witnesses that disputed land comprises the play ground of above School and the same is surrounded by a boundary wall. PW2 Mozammel Haque stated in

cross examination on 14.07.2004 stated that above play ground was very old. PW3 Abdul Kader stated in cross examination that he passed S.S.C in 1969 and above play ground was before that. PW1 has stated in cross examination that his father was an educated, rich and influential person who died in 1970. As such it is not possible for the School to get the land of Ibrahim Miah recorded in the S. A. Khtaian without his consent. But the learned Joint District Judge totally failed to appreciate above facts and circumstance of the case and evidence on record and most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Sumon Ali, learned Advocate for respondents submits that the plaintiffs admit that their father transferred 23 decimals land from the disputed Khatians to above School and he was in possession in disputed 46 decimals land. As such plaintiffs and the School became co-sharers and the plaintiffs filed above suit for partition in which possession or dispossession is not insignificant. The defendants admit that disputed 46 decimal land belonged to the predecessor of the respondents namely Ibrahim Miah but they could not produce any document showing that Ibrahim Miah transferred above land to the defendant. It is true that relevant S. A. Khatian and R. S. Khatian of above land has been prepared in the name of above School but the defendants could not produce any legal document to substantiate above record of right. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge rightly declared plaintiff's title in above 46

decimal land and passed a decree for partition and recovery of possession which calls for no interference.

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

It turns out from the plaint that 46 decimal land appertaining to C. S. Khatian Nos.1427, 1428 and 1437 and Plot Nos.2103-2106 has been brought into the hotchpotch of the suit and mentioned as disputed land and declaration of title was sought for above land. As to the cause of action of above suit it has been stated at Paragraph No.1 of the plaint that relevant S. A. and R. S. Khatians of above land were erroneously recorded in the name of above School and the defendants were interested to claim title on the basis of above erroneous records.

On 29.05.2004 the plaint was amended and recovery of possession for above land was sought alleging that the defendants dispossessed the plaintiffs from above land on the 1st of Mag 1410 B.S. On analyzing the plaint it appears that above suit was for declaration of title and recovery of possession and not a suit for partition. In a suit for partition the total property of the disputed C. S. Khatians were required to be incorporated in the plaint along with corresponding R. S. and S. A. Khatians and all co-shares of above Khatians were needed to be impleaded as defendants but those were not done in above suit. In a suit for partition there is no necessity for seeking recovery of possession.

It is admitted that Ibrahaim Miah predecessor of the defendants was the lawful owner and possessor of 69 decimals land. PW1 Ismail Hossain has stated in cross examination that Ismail Hossain was an educated, rich and influential person in the locality. At paragraph No.1 of the plaint plaintiffs have stated that while Ibrahim Miah was owning and possessing 69 decimal land he transferred 23 decimal land to the Singair Bilateral High School by gift and delivered possession. It was further stated that above Ibrahim Miah further transferred 29 decimal land outside of the disputed Plots and in total Ibrahim Miah transferred 52 decimal land by same gift deed to above School. If out of 69 decimal land Ibrahim Miah had transferred 52 decimal by gift to above School then how the plaintiffs can claim title in 46 decimal land of the disputed Khatians as heirs of Ibrahim Miah ?

In a Civil Suit admission may made in the pleadings or in evidence or under Order XI or XII of the Code of Civil Procedure, 1908. The statement or evidence which goes against the interest of the party making statement or giving the evidence may be designated as admission. An admission is the greatest evidence against its maker and an admitted fact does not require further prove by other legal evidence. Since the plaintiffs have admitted in plaint that out of 69 decimal land Ibrahim Miah transferred 52 decimal to defendant No.1 Singair Bilateral High School by gift above admission is binding upon the plaintiffs and they have no legal right to claim title in disputed 46 decimal land as heir of Ibrahim Miah.

In a suit for declaration of title and recovery of possession the plaintiffs besides proving lawful title are required to prove their previous possession and subsequent dispossession from the disputed land by legal evidence. In the plaint the plaintiffs did not mention the manner of their previous possession in disputed 46 decimal or the mode of dispossession by the defendants. The plaintiffs have claimed that they have been dispossessed from the disputed land by the defendants on 1st part of Mag 1410 B.S. The plaintiffs did not mention the specific date and time or the persons who witnessed above occurrence of dispossession.

It is admitted that disputed 46 decimals land comprises the play ground of defendant No.1 and relevant S. A. Khatian and R. S. Khatian of above land were prepared in the name of above School. PW2 Mozammel Haque stated in cross examination on 14.07.2004 that the disputed land comprises the play ground which is too old and surrounded by a wall. PW3 Abdul Kader stated in cross examination that he passed S.S.C. examination in 1969 and above play ground of defendant No.1 was in existence before his above examination and above play ground is secured by a boundary wall. PW4 Nitai Chand Bashak stated that the disputed land is situated in the middle of the play ground of defendant No.1. PW5 Raton Chakraborty could not mention the quantity of land of the disputed Plots and stated that the disputed land is situated in the eastern side of the play ground of the School. On consideration of above evidence on record we hold that the

plaintiffs could not prove their previous possession in the disputed 46 decimals land and alleged dispossession by the defendants in 1st Part of Magh of 1410 B.S. by legal evidence.

On consideration of above facts and circumstance of the case and evidence on record we hold that the learned Joint District Judge utterly failed to appreciate the facts and circumstance of the case and evidence on record and most illegally decreed above suit which is not tenable in law.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed. The impugned judgment and decree dated 29.08.2004 passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No.1 of 2024 is set aside and above suit is dismissed on contest against defendant No.1 and 2.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER