

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 85 of 2001

Abdul Mannan appellant

-Versus-

Abdur Rashid being died his heirs:

1(a)Faizar Banu and others

..... respondents

with

Civil Rule No.557(F) of 2010

Abdul Mannan petitioner

-Versus-

Abdur Rashid being died his heirs:

1(a)Faizar Banu and others

..... opposite parties

Mr. Iqbal Kalam Chowdhury, Advocate

.... for the appellant

No one appears for the respondents

Judgment on 20.07.2025

Bhishmadev Chakrabortty, J:

Since the civil rule has arisen out of the aforesaid appeal, both have been heard together and are being disposed of by this judgment.

This appeal at the instance of the plaintiff is directed against the judgment and decree of the Subordinate Judge, Court 2, Chandpur passed on 15.03.2000 in Title Suit No.13 of 1997 dismissing the suit for declaration and partition.

Facts relevant for disposal of the appeal, in brief, are that the plaintiff instituted the suit stating that original owners of the suit land were Kamaruddin, Rajjab Ali and Tamijuddin all sons of late Baksha Mahmud in equal shares. Tamijuddin keeping one anna from his share

with him sold out the remaining share to his brothers Kamaruddin and Rajjab Ali through registered kabala dated 04.03.1907. Thus Kamaruddin and Rajjab Ali each became owner 7 annas and 10 gandas share measuring 3.6 acres in the suit schedule. The plaintiff claimed that name of Tamijuddin was wrongly recorded as Tamiduddin son of Ahmud Gazi instead of Baksha Mahmud. Kamaruddin died leaving behind 2 wives Maleka Banu and Nesa Banu, 1 daughter Kulsum Banu and brother Rajjab Ali. Thus Rajjab Ali got 6 annas share of his deceased brother Kamaruddin measuring an area of 1.36 acres. Rajjab Ali and 7 others sold out 2.96 acres to Ibrahim Bepari through registered kabala dated 28.03.1929. He sold out another .37 acres through registered kabala. Thus he became owner of 3.62 acres of his own and 1.36 acres by inheritance from his brother. In this way his total share stands at 4.61 acres. Rajjab Ali died leaving behind one son Abul Hashem who inherited the paternal property. During his possession and enjoyment he purchased .10 acres from Ibrahim Bepari through a registered kabala dated 21.03.1940. Thus he became owner and possessor of total 4.71 acres and died leaving behind the plaintiff as sole heir. Rajjab Ali was a non educated simple village man who could put his signature only. Abdul Hamid and their maternal uncle Ibrahim taking the advantage of simplicity of Rajjab Ali and the female family members of Karam Ali collusively prepared a partition deed showing Rajjab Ali as 1st party, Kulsum Banu and others as 2nd party, Ibrahim Bepary as 3rd

party, Hamid and others as 4th party and Ashwani Kumar as 5th party in respect 3.04 acres of land of plot 144 which was registered on 28.03.1929. But Rajjab Ali and others had homestead on that plot. Rajjab Ali, his son Hashem and grandson, the plaintiff sold some land from their share, purchased some land from others and exchanged some land and finally it remains 4.4475 acres to the plaintiff in the suit schedule. On demand the defendants refused to partition the suit land showing reason of the partition deed. Hence the suit praying for declaration that the partition deed dated 28.03.1929 where the plaintiff's grandfather was a party is fraudulent, ineffective and not binding upon him with further prayer claiming *saham* of 4.4475 acres out of 7.72 acres described in the schedule to the plaint.

Defendants 1-10, 11, 12, 20, 21, 24, 42, 43-47, 49, 54 and 55 and 25-33, 48, 65, 67 and 68 contested the suit denying the statements made in the plaint. They admitted that Baksha Mahmud was the original owner of the suit land measuring 7.72 acres. He died leaving behind 3 sons Kamaruddin, Rajjab Ali and Tamijuddin and a daughter Manikjan Bibi. Tamijuddin and Kamaruddin sold out 4 annas share (2 annas each) to their brother-in-law Tamijuddin alias Samaruddin and Azim Uddin through registered kabala dated 13.11.1985. After Tamijuddin's death Abdul Hamid, Abdul Aziz and Abdur Rahman became heirs and remaining 2 annas share was owned and possessed by Azim Uddin. But CS record was erroneously prepared the name of Kamaruddin and Rajjab Ali showing excess

land to them and father's name Tamijuddin was written erroneously as Ahmud Gazi. Moreover, the record in the names of Abdul Hamid and Azim Uddin was prepared showing 2 annas share each and no share was shown for Manikjan Bibi daughter of Baksha Mahmud. Kamaruddin, Rajjab Ali and others took loan from one Aditya Poddar and to repay the amount they took decision to sell out 2.96 acres and mutual partition of the land. Accordingly, a partition deed was executed and registered on 28.03.1929. At the same day a deed of sale was executed and registered. In the partition deed Ashwini Kumar was a party but he did neither put his signature on it nor did ever claim any part of the suit land. Rajjab Ali's son Abdul Hasem alias Abul Hasem admitted the partition deed and purchased .10 acres from Ibrahim Bepari on 28.03.1940. On the same day these defendants' predecessor purchased .52 acres from plot 144 and Aswini Kumar and Rajjab Ali put their signature in the said deed as witnesses. The aforesaid .10 acres of land was exchanged with defendants 11 and 12 through registered deed dated 22.09.1992. In the aforesaid deed the plaintiff also admitted the partition deed executed and registered on 28.03.1929. Aswini Kumar Dutta, a party to the partition deed sold out .965 acres through registered kabala dated 24.05.1929 to Zahiruddin and Azimuddin. Since the plaintiff admitted the partition deed and transferred some shares to others relying on it, hence the suit in the present form challenging the

validity of the deed is not maintainable and he is not entitle to get share in the suit land.

Defendants 60-64 filed written statement admitting the facts as stated by the plaintiff. They claimed *saham* for .43 acres by purchase from the plaintiff through a kabala dated 12.03.1995.

On pleadings, the trial Court framed 7 issues. In the trial the plaintiff examined 2 witnesses and produced their documents exhibits 1-3. On the other hand, the contesting defendants 1-10, 11, 12, 20, 21, 24, 43-47, 49-50 and 43 examined 1 witness DW 1 and produced their documents exhibits Ka-1 to Rra-1. Defendant 25-33, 48, 65-68 examined 1 witness DW 2 and produced their documents exhibits Ka-3 to Neo-3. Defendants 60-64 examined 1 witness DW 3 and produced their document exhibit Ka-2. However, the trial Court dismissed the suit deciding all the material issues against the plaintiff giving rise to this appeal.

Mr. Iqbal Kalam Chowdhury, learned Advocate for the appellant taking us through the materials on record very candidly submits that the validity of the registered deed of amicable partition dated 28.03.1929 has been challenged in the suit. But it is found that the plaintiff and his predecessors in interest admitted the deed and it has been acted upon, therefore, he does not want to make any submission questioning the genuineness and validity of the aforesaid partition deed. He then submits that this appellant admittedly is the grandson of Rajjab Ali who had share in the schedule suit land. The

defendants also admitted plaintiff's possession in a part of the suit land, therefore, the original suit would have been a suit for declaration of title and partition or simple partition claiming his share in the suit land. He further submits that in the schedule of the plaint there are 7.72 acres of land consisting of 6 CS plots. Rajjab Ali had 7 annas and 10 gondas share therein, he also inherited land from his brother Kamaruddin and further purchased some land. Abul Hasem was his son and the plaintiff is the son of Abul Hashem. Thus, the plaintiff is entitled to 1.14 acres as heir of Rajjab Ali and .10 acres through purchase total measuring 1.24 acres of plot 144. He is also entitled to 1.24 acres from plot 143 as heir of Rajjab Ali directly and .24 acres which Rajjab got as heirs of his brother, i.e., in total of 1.48 acres. In plot 142 he will get .13 acres out of .26 acres and in plot 145 of .19 acres. Thus the plaintiff in total is entitled to the share of 3.04 acres in the suit schedule. In the premises above, this Court can allocate him *saham* to the aforesaid extend or the suit may be sent on remand to the trial Court for trial afresh to settle the claim of the plaintiff with liberty to amend the plaint and adduce evidence, if required.

No one appears for the respondents to contest the appeal, although the matter has been appearing in the daily cause list for a couple of days with the name of the learned Advocate for the respondents 1(a)-1(h), 12(a)-12(f)(j).

We have considered the submissions of the learned Advocate for the appellant and gone through the materials on record. It is

admitted facts that Baksha Mahmud was the original owner of the suit land. The plaintiff claimed that he died leaving behind his 3 sons Rajjab Ali, Tamijuddin and Kamaruddin who inherited the paternal property in equal shares. The contesting defendants admitted that Baksha Mahmud died leaving behind 3 sons but added that he had also one daughter Manikjan Bibi and in CS *Khatian* her name was not included. Therefore, it is admitted position that Rajjab Ali, Tamijuddin and Kamaruddin were the sons of Baksha Mahmud. The plaintiff claimed the land by way of inheritance as grandson of Rajjab Ali which he acquired by inheritance and purchase. In the written statement the contesting defendants did not disown that Rajjab Ali inherited a part of suit land as son of Baksha Mahmud. It has also come out in the evidence of witnesses that the plaintiff has homestead in plot 144. Since in the evidence and other materials on record it has come out that Rajjab Ali, his son Abul Hashem and the plaintiff transferred some part of the suit schedule and also purchased land admitting the partition deed dated 28.03.2029 exhibit Gha-1, the submissions of the learned Advocate for the appellant merits consideration that the partition deed is valid and acted upon. Therefore, the prayer made in the suit, so far it was related to declaration that the partition deed was prepared fraudulently and not binding upon the plaintiff was not a fair prayer. But it is found that this appellant is a co-sharer in the suit land by way of inheritance and his predecessors in interest and he himself purchased and disposed of

some lands and as such he is entitle to get *saham* in the suit land on calculation of purchase and sale by him and his predecessors in interest. But since the respondent did not appear to contest the appeal it will be very risky for us to allocate *saham* to the appellant as claimed by the learned Advocate for the appellant. The suit ought to have been filed for simple partition or for declaration of title and partition. In such suit he could have claimed *saham* in the suit land left by his predecessors in interest, purchased by them after deducting the share they have already transferred and disposed of. The trial Court could have decreed the suit only for partition allocating *saham* to the appellant.

In view of the aforesaid premises, we find that justice would be best served, if the suit is sent on remand to the trial Court to dispose of it on merit giving the opportunity to the parties to amend the pleadings, if desire so. If the plaintiff file an application for amendment of plaint and the plaint is so amended, the defendant would be at liberty to file additional written statement. The parties will also be at liberty to adduce oral evidence to support their respective claims.

Therefore, we find merit in this appeal. Accordingly, the appeal is allowed. No order as to cost. The interim order, if any, stands vacated. The judgment and decree dated 15.03.2000 passed by the Subordinate Judge, Court 2, Chandpur in Title Suit No.13 of 1997 is hereby set aside. The suit is remanded to the trial Court for trial afresh

in the light of the observation and direction given in the body of the judgment. However, the trial Court is directed to dispose of the suit expeditiously.

The Rule issued in Civil Rule No.557(F) of 2010 is accordingly disposed of.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.