

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.620 of 2018

Sheikh Shamsur Rahman and another
....Appellants

-Versus-

Sheikh Zia and others
.... Respondents

Mr. Pranesh Chandra Roy, Advocate with
Mr. Chitra Roy, Advocate

... For the appellants.

Mr. Sabya Sachi Mondal, Advocate with
Mr. Raju Sen, Advocate

... For the respondents.

Heard on 30.06.2026 and Judgment on 01.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 19.08.2018 passed by the learned Joint District Judge, 1st Court, Khulna in Title Suit No.32 of 2014.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 14 decimal land as described in the schedule to the plaint and for further declaration that auction sale of above land pursuant to Certificate Case No.137 of 1880-81 dated 23.09.1982 is fraudulent, collusive and not binding upon the plaintiffs alleging that above 14 decimal land belonged to Tajunnessa Begum, Sumati Bala

Nath, Promoth Nath , Binod Bihari and Onath Basu in separate shares who transferred the same to Sheikh Kashem father of the plaintiffs and the defendant by registered Kabla deed 19.10.1963 and delivered possession. Above Sheikh Kashem constructed two pakka home in above land and resided there along with the members of family and died leaving two sons and one daughter, plaintiffs and defendant No.1. Above sons and daughter of Sheikh Kashem used to live in a joint family and defendant being the eldest brother was the head of the family. Above property was not partitioned by meets and bounds and the defendants refused to effect an for amicable partition and disclosed that he has auction purchased above land.

Defendant No.1 contested above suit by filling written statement alleging that disputed 14 decimal land belonged to Tajunnessa Begum, Sumati Bala Nath, Promoth Nath , Binod Bihari and Onath Basu in separate shares and rent of above land fell due and the Certificate Officer of Daulatpur initiated Certificate Case no.137 of 1880-81 and above 14 decimal land was sold in auction which was purchased by defendant No.1 on 23.09.1981 and obtained sale certificate and delivery of possession. The defendant permitted the plaintiff to live in the ghars of the disputed land and they are mere permissive possessors in above land. Above land was not purchased by Sheikh Kashem by registered kabla deed dated 19.10.1963.

At trial plaintiffs and defendants examined three witnesses each and documents of the plaintiffs were marked as Exhibit Nos.1-3 and those of the defendants were marked as Exhibit Nos.“Ka” - “Ja” series.

On consideration of facts and circumstances of the case and evidence on record learned joint District Judge dismissed above suit.

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. Pranesh Chandra Roy, learned Advocate for the appellants submits that plaintiffs are younger brother and sister of defendant No.1 and they are live in the house which was constructed by their father in the disputed land in 1970. It is admitted that above 14 decimal land belonged to Jinat Ara and others and father of the plaintiffs and defendant namely Sheikh Kashem purchased above land from Tajunnessa and others by registered kabla deed dated 19.10.1963. As the eldest brother defendant No.1 was entrusted for mutation of name of the plaintiffs and defendants in above land on the basis of above kabla deed of their father and payment of rent but the defendant did not do that and to grab above property created false sale certificate and delivery of possession. In fact Certificate Case No.137 of 1980-81 is not related with Tajunnessa and others or disputed 14 decimals land. Above certificate proceeding relates to different persons and different land and the defendants did not acquire valid title and possession in

above land on the basis of above alleged auction purchase. The learned Joint District Judge has disbelieved the correctness and genuinity of registered kabla deed dated 19.10.1963 on consideration of copies of index of deed No.7721 of 1963. The learned Judge should have called for the volume book of above registered kabla deed from the concerned Sub-registry Office but the learned Judge most illegally arrived at an erroneous conclusion that kabla deed dated 19.10.1963 was a forged deed which is not tenable in law. The learned Advocate lastly submits that the appellants have procured a certified copy of above kabla deed dated 19.10.1963 from the relevant Sub-registry Office on 25.02.2026 which clearly shows the lawful existence and correctness of above kabla deed dated 19.10.1963 (Exhibit No.2). On consideration of above materials on record this Court may set aside the impugned judgment and decree of the trial Court and remand the suit for retrial after giving both parties an opportunities to amend the their respective pleadings and adduce further evidence.

Mr. Sabya Sachi Mondal, learned Advocate for the respondents submits that admittedly above 14 decimal land belonged to Tajunnessa and others. The rent of above land fell due and the same was sold in auction pursuant to Certificate Case No.137 of 1980-81 and purchased by the defendant on 21.12.1982. The defendant got certificate of sale and certificate of delivery of possession and mutated his name and paid rent to the Government. The father of the plaintiffs and the defendant did

not purchase above land from Tajunnessa and others and the registered kabla deed dated 19.10.1963 produced by the plaintiffs at trail and marked Exhibit No.2 is a forged document. The defendants produced two indexes of kabla deed No.7721 of 1963 of Khulna Sadar Sub-registry Office which show that above kabla deed relates to a different set of vendors and vendees and separate land and above deed was not related to the disputed land. The plaintiffs live in the ghars of the disputed land as permissive possessors of the defendants. On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge rightly dismissed above suit 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 is admitted that disputed 14 decimals land belonged to Tajunnessa Begum, Sumati Bala Nath, Promoth Nath , Binod Bihari and Onath Basu in separate shares and in above land a dwelling house is situated in which plaintiffs and defendants are residing. It is also admitted that plaintiffs are younger brothers and sister of the defendant and now deceased Sheik Kashem was their father.

It has been alleged by the plaintiff that Sheikh Kashem purchased above 14 decimals land from Tajunnessa and others by registered kabla deed dated 19.10.1963. While giving evidence as PW1 plaintiff No.1 Sheik Shamsur Rahman stated that his sister plaintiff No.2 grabbed

above kabla deed dated 19.10.1963 (Exhibit No.2) from a box in the house of the defendant. Above statement shows that plaintiffs were not custodians of above deed and they do not have any knowledge as to due execution of above kabla deed or the correctness of its contents. It is admitted that on the basis of above kabla deed dated 19.10.1963 (Exhibit No.2) no record of right was prepared in the name of Sheikh Kashem nor he or his heirs paid rents. The defendant did not admit that above document was in his custody nor he admits the correctness and genuinity of above kabla deed dated 19.10.1963 (Exhibit No.2). Defendants claimed that above kabla deed (Exhibit No.2) is a foged and concocted document. The plaintiffs were required to prove due execution of above kabla deed by examining witness of above kabla deed or any person who was present in above talk of sale but no such initiative was taken by the plaintiffs. On the contrary the defendants produced certified copy of Index No.(II) for R(O) 1963 and Index No.(I) for M(O) 1963 of kabla deed No.7721 which were marked as Exhibit Nos."Ja", and "Ja(1)". Above documents show that kabla deed No.7721 of 1963 of the Sadar Sub-registry Office, Khulna was for a different property of Terokhada of Khulna and the vendors of above deed was Monindra Nath Biswas and two others. Exhibit No."Gha" series shows that the registered kabla deed dated 19.10.1963 (Exhibit No.2) bearing serial No.7721 of 1963 was not a genuine document.

The learned Joint District Judge on examination of the above kabla deed held that the same was created on ancient stamp papers by recent writings and the signature of the Sub-registrar and some of the executants of the documents differed from one page to another. We are unable to find any illegality or contradictions in above findings of the learned Judge of the trial Court.

The defendants have on the other hand produced certified copies of certificate of sale and certificate of delivery of possession of the auction sale of above 14 decimals land pursuant to Certificate Case No.137 of 1980-81 which were marked as Exhibit No.“Cha” series which shows the auction purchase of above land by the defendant and delivery of possession. The plaintiffs have challenged the legality and propriety of above certificates, the certificate of sale and certificate of delivery of possession and claimed that those were forged documents. To prove above claim the plaintiffs produced and proved an information slip issued from the Office of Assistant Commissioner (Land), Dighalia, Khulna which was marked as Exhibit No.3. Above information slip affirms the correctness and genuinity of Certificate Case 137 of 1880-81 and sale of above 14 decimals land in auction pursuant to above Certificate Case.

As mentioned above there is a dwelling house in above 14 decimals land and the plaintiffs claimed that they are living in above house. The defendant has admitted above claim of the plaintiffs both in

the plaint and in his evidence as DW1. The defendant has claimed that plaintiffs were his permissive processors in above house but the defendant could not mention the date when plaintiffs sought permission and when defendant gave permission to the plaintiffs to live in above house nor the defendant adduced any evidence to substantiate above claim that the plaintiffs are his permissive possessors in above house. Plaintiffs joint possession in above house with the defendant stand proved but the plaintiff's claim that their father purchased above land by registered kabla deed dated 19.10.1963 remains not proved.

In above view of the facts and circumstances of the case and evidence on record we are unable to find any irregularity or illegality in the impugned judgment and decree nor we find any substance in this First Appeal which is liable to be dismissed.

In the result, this First Appeal is dismissed.

However, there is no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.