

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. 339 of 2018.

Mohammad Ali and others

...Appellants.

-Versus-

Abdul Jabber alias Vatesh and others

....Respondents.

Mr. AHM Kamruzzaman, Advocate with
Ms. Shamima Sultana Dipti, Advocate with
Mr. Tanvir Prodhan, Advocate with
Ms. Anika Tabassum, Advocate with
Mr. Junaed Hossain Khan, Advocates

... For the appellants.

Mr. Md. Taherul Islam, Advocate

... For the plaintiff-respondents.

Heard 20.08.2026 Judgment on: 25.08.2026.

Md. Badruzzaman, J:

This appeal is directed against the judgment and decree dated 14.01.2015 (decree signed on 21.01.2015) passed by the learned Joint District Judge, Panchagarh, in Title Suit No. 25 of 2011, whereby the suit was decreed in terms of a compromise.

The facts relevant for disposal of the appeal, in brief, are that respondent Nos. 1–5, as plaintiffs, instituted the aforesaid suit seeking a decree declaring their title to 5.8650 acres of land out of 14.64 acres of land described in the schedule to the plaint. Their case, inter alia, was that 14.64 acres including the suit land comprised in C.S. Khatian No. 2808, was originally owned and possessed by Anibullah, who died

issueless, whereupon his property devolved upon his brother, Nasibullah. After the death of Nasibullah, his son, Imarat Ali, inherited the said property. Upon the death of Imarat Ali, his son Shababuddin inherited 5.86 acres, while his three daughters, namely, Jumarun Nesa, Jamila Khatun and Isharan Nesa, inherited 2.93 acres each. Isharan Nesa subsequently died leaving behind her only daughter, Jhori Bewa, who inherited her share of 2.93 acres. After the death of Jumarun Nesa, her share devolved upon her three sons and one daughter, namely, defendant Nos. 1–4, who inherited a total of 2.93 acres. S.A. Khatian No. 90 was prepared in the name of Jumarun Nesa in respect of her one-fifth share measuring 2.93 acres. After the death of Jamila Khatun, her only son, plaintiff No. 1, Abdul Jabbar, inherited her share. Upon the death of Jhori Bewa, her two sons, namely, Dabirul Islam and Jahirul Islam, and two daughters, namely, Arzina Begum and Azima Begum, being plaintiff Nos. 2–5, inherited her share of 2.93 acres. Thus, the plaintiffs claimed to have acquired title to total 5.86 acres of land comprised in C.S. Khatian No. 2808, corresponding to S.A. Khatian No. 90.

On the basis of the erroneous records prepared in S.A. Khatian No. 90 in the names of Nozir Uddin, Agrim Uddin, Mohir Uddin and Taufiz Uddin, along with Jamila Khatun, the defendants, after the death of their respective predecessors-in-interest, namely, Nozir Uddin and others, claimed title to the suit land on the strength of the said erroneous records, although neither their predecessors-in-interest nor the defendants themselves had or have any right, title or possession in respect of the suit land. On 01.04.2011, the defendants denied the plaintiffs' title and disclosed that the suit land had been recorded in S.A. Khatian No. 90 in the names of their predecessors-in-interest.

Thereafter, on 13.04.2011, the plaintiffs obtained a certified copy of the said S.A. Khatian and, upon coming to know of the erroneous record, instituted the suit.

The plaintiffs also stated that they had no dispute with defendant Nos. 1–4 and that the suit was instituted for declaration of title on the ground that the relevant record had erroneously been prepared in the names of the predecessors-in-interest of defendant Nos. 5–8 and 38–41.

Defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 filed a joint written statement admitting the case of the plaintiffs and prayed for a decree in their favour.

Defendant Nos. 11–22, including the present appellant Nos. 1–8, who were defendant Nos. 12–19 in the suit, had entered appearance and obtained adjournments for filing their written statements. When the suit was fixed for framing of issues, they filed their written statements on 27.05.2014 along with an application seeking acceptance thereof. In their written statements, the said defendants denied the material averments of the plaint and contended that the suit was not maintainable in its present form, was barred by limitation, was undervalued and was barred by the principle of res judicata. They further contended that the plaintiffs had/have no right, title or interest in the suit property. Their case was that the entire 14.64 acres of land originally belonged to Anibulla, who died issueless. Upon his death, his nephew Imarat Ali inherited the property. Imarat Ali subsequently died leaving behind one son, Shababuddin, and three daughters, namely, Jumarun Nesa, Jamila Khatun and Isharan Nessa. Defendant Nos. 11–22 claimed 6.27 acres of land appertaining to C.S. Khatian No. 2808, corresponding to S.A. Khatian No. 90, from the heirs of Imarat Ali by

several registered deeds executed from 1964 onwards and thereby acquired title thereto by purchase. S.A Khatian No. 90 was rightly prepared and finally published in the name of their predecessors.

It was further contended that the present appellants and others, as plaintiffs, had earlier instituted Partition Suit No. 5 of 2004 seeking partition of 14.64 acre land and declaration of their respective title and shares. In that suit, the present plaintiffs or their predecessors-in-interest were impleaded as defendants, summons was duly served upon them but they did not contest the suit but some of the defendants contested the suit. Ultimately, the suit was decreed in preliminary form in favour of the present appellants and others allotting 6.2150 acres land, which was subsequently made final. Being aggrieved by the judgment and decree passed in Partition Suit No. 5 of 2004, some of the defendants of that suit preferred Partition Appeal No. 51 of 2007. In the said appeal, the present plaintiffs or their predecessors-in-interest were impleaded as respondent Nos. 29, 52, 53, 54, 55, 30, 31, 32 and 46, while the present appellant Nos. 1–8 were also impleaded as respondents. The appeal was contested and, upon hearing, was dismissed by judgment and decree dated 06.11.2008, thereby affirming the judgment and decree of the trial Court. On the aforesaid grounds, the defendant Nos. 11-22 prayed for dismissal of the suit.

The trial Court, upon considering the written statement and the application for its acceptance, fixed 14.07.2014 for framing of issues and hearing of the application. On that date, although the defendants filed hazira, neither they nor their learned Advocate pressed the application or made any submission in support thereof. Accordingly, by

order dated 14.07.2014, the trial Court rejected the written statement and framed the issues, fixing 07.09.2014 for taking steps under section 30 of the Code of Civil Procedure.

Thereafter, the plaintiffs and defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 jointly filed an application seeking a decree on compromise in terms of the compromise petition. Upon considering the compromise petition and recording the depositions of the respective parties, the trial Court allowed the application and decreed the suit in terms of the compromise.

By the said compromise decree, the plaintiffs obtained a declaration of their title to 5.86 acres of land, while they admitted the title of defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 to the remaining 8.78 acres of land out of the total 14.64 acres.

Being aggrieved by the said judgment and decree dated 14.01.2015, defendant Nos. 12–19, as appellants, have preferred the instant appeal.

During the pendency of the appeal, upon an application filed by Md. Nur Islam and 9 others, they were added as appellant Nos. 9–18 by order dated 19.05.2019. It was claimed that appellant Nos. 9–13 had acquired title to a share in the 6.27 acres of land out of the share of defendant No. 11, Hafizuddin, by registered Heba Deed Nos. 687 dated 23.02.2011 and 1722 dated 21.05.2011, while appellant Nos. 14–18 had acquired title to a share therein from the recorded tenants by registered Sale Deed Nos. 137 dated 19.01.2014 and 284 dated 07.01.2015. Upon consideration of their claim of subsisting interest in the subject matter of the suit, they were accordingly added as appellant Nos. 9–18.

During the hearing of the appeal, the appellants filed an application under Order XLI, Rule 23 read with section 151 of the Code of Civil Procedure, supported by a supplementary affidavit, praying for remand of the suit to the trial Court so as to afford them an opportunity to contest the suit by adducing evidence on the basis of the written statements already filed or, alternatively, by filing fresh written statements. It was, inter alia, contended that defendant Nos. 11–22 had filed a joint written statement at a belated stage along with an application seeking acceptance thereof, but the learned Advocate engaged by them did not appear when the application was taken up for hearing. It was further contended that they ought not to suffer for the fault or omission of their engaged learned Advocate.

The plaintiff-respondents opposed the application for remand by filing a counter-affidavit and a supplementary counter-affidavit. It was contended that the appellants had been afforded ample opportunity to file their written statements but failed to avail themselves thereof. Although the written statement was subsequently filed at the stage of framing of issues, the application seeking acceptance thereof was not pressed, and consequently the trial Court rightly rejected the written statement and proceeded with the suit in accordance with law.

Upon hearing the learned Advocates and considering the said application, this Court, by order dated 20.08.2026, directed that the application for remand be considered at the time of pronouncement of judgment on the merits of the appeal.

Mr. AHM Kamruzzaman, learned Advocate appearing with Mr. Md. Tanvir Prodhan, learned Advocate for the appellants, taking us through the memorandum of appeal, the impugned judgment and decree, the application for remand and the documents annexed

thereto, submits that the present appellants or their predecessors-in-interest acquired title to the suit land by virtue of several registered sale deeds commencing from 1964. He further submits that their title was also recognized in Partition Suit No. 5 of 2004, in which the present plaintiffs or their predecessors-in-interest were parties but did not contest said suit.

Learned Advocate further submits that, while passing the compromise decree, the trial Court failed to take into consideration the earlier judgment and decree passed in Partition Suit No. 5 of 2004 and thereby committed an illegality in passing the impugned decree in the absence of the present appellants or their predecessors-in-interest.

He next submits that the appellants had handed over all relevant documents to their engaged learned Advocate and instructed him to file the written statements. The learned Advocate, however, failed to file the written statements within the time fixed by the trial Court and subsequently filed them belatedly along with an application seeking acceptance thereof. The learned Advocate did not appear or participate in the hearing of the application, resulting in rejection of the written statement and that the appellants or their predecessors-in-interest were not informed of the said development. Accordingly, he submits that the appellants ought not to be made to suffer for the fault or omission of their engaged learned Advocate of the trial Court and should be afforded an opportunity to contest the suit by adducing evidence.

On the other hand, Mr. Md. Taherul Islam, learned Advocate appearing for plaintiff-respondents submits that summons of the suit was duly served upon the present appellants or their predecessors-in-interest, but they failed to file their written statements within the time

prescribed by the trial Court. Although a written statement was subsequently filed at the stage of framing of issues, the learned Advocate engaged by the defendants did not press the application seeking acceptance thereof. Consequently, the trial Court rightly rejected the written statement and thereafter passed the compromise decree in accordance with law. He, therefore, submits that the trial Court committed no illegality warranting interference by this Court.

We have heard the learned Advocates for the respective parties and perused the memorandum of appeal, the impugned judgment and decree, the application for remand and the other materials and documents available on record, including those placed before us by the parties at the time of hearing.

It is well settled that an order of remand is not to be made as a matter of course. Remand should not be ordered merely to enable a party to fill up a lacuna caused by his own negligence or laches. At the same time, where the Court is satisfied that a party was prevented from effectively contesting the suit for reasons not attributable to deliberate or culpable conduct on his part, and that denial of an opportunity to contest would cause substantial prejudice, the Court may, in the interest of justice, exercise its discretion to remand the matter.

In the present case, defendant Nos. 11–22 were not completely inactive. They entered appearance, obtained time for filing their written statements and ultimately filed written statement along with an application seeking acceptance thereof. The written statement was not rejected on its merits; rather, it was rejected because, on the date fixed for hearing of the application for acceptance, the defendants or their learned Advocate did not appear to press the application.

The appellants' case is that they had engaged a learned Advocate, supplied him with the necessary papers and instructed him to conduct the case, but he failed to appear on the date fixed for hearing of the application and did not inform them of the subsequent order. In the circumstances before us, the consequence of rejecting the written statement was serious, as the suit involved declaration of title to immovable property and the defendants claimed an independent and adverse title thereto.

More importantly, the claim of defendant Nos. 11–22 was not merely a collateral or insignificant claim. They asserted title to a substantial portion of the property on the basis of several registered deeds and also relied upon the judgment and decree passed in Partition Suit No. 5 of 2004. Their claim, therefore, required consideration before any decree affecting the same property could properly be passed. The compromise entered into between the plaintiffs and defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 could not, by itself, amount to an adjudication of the independent claim of defendant Nos. 11–22, who were not parties to the compromise.

A compromise between some of the parties cannot, in law, operate to extinguish or adversely affect the independent rights claimed by non-consenting parties without adjudication of their claims.

There is another significant aspect of the matter. Upon perusal of the terms of the compromise petition, it appears that defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 relinquished their claim to 5.86 acres of land and admitted the title of the plaintiffs thereto. Conversely, the plaintiffs admitted the title of defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 to the remaining 8.78 acres. Thus, the compromise purported to account for

the entire 14.64 acres of land and divide the same between the plaintiffs and defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4.

It further appears from the judgment and decree passed in Partition Suit No. 5 of 2004 by the learned Assistant Judge, Tetulia, Panchagarh (Annexure D to the application for remand), that the said suit was instituted by the present appellants or their predecessors-in-interest against the present plaintiffs or their predecessors-in-interest and others, seeking partition of 14.64 acres of land. In that suit, present defendant Nos. 11–22 or their predecessors-in-interest claimed 6.2750 acres of land, and the suit was decreed by judgment and decree dated 17.04.2007, whereby 6.2150 acres of land was allotted in their favour. It also appears that the land involved in the said partition suit is wholly covered by the suit land of the present suit. The said decree has also upheld in Partition Appeal No. 51 of 2007 (Annexure D1 to the application for remand). Despite the existence of the aforesaid judgment and decree, the trial Court passed the impugned compromise decree, which directly affects and is inconsistent with the decree passed in the earlier partition suit.

It also appears from record that, at the time of entering into the compromise and obtaining the compromise decree, the present plaintiff-respondents did not bring the aforesaid judgment and decree passed in the earlier partition suit to the notice of the trial Court. In the circumstances, the compromise decree, insofar as it purports to determine or affect rights in respect of selfsame property already dealt with by a decree of a competent Court, cannot be sustained.

We are, therefore, of the view that the plaintiffs and defendant Nos. 1, 2(Ka)-2(Niyo), 3 and 4 and by suppressing material facts, entered into a compromise, and the trial Court disposed of the entire

suit on the basis of such compromise without considering the subsisting rights claimed by defendant Nos. 11–22 under the earlier decree and the registered deeds relied upon by them. Accordingly, we are satisfied that defendant Nos. 11–22 ought not to be non-suited merely because their learned Advocate failed to appear on the date fixed for hearing of the application for acceptance of their written statement. Considering the nature of the dispute and the serious consequences that would follow from depriving them of an opportunity to establish their independent claim of title, we are inclined to accept the explanation offered on their behalf, subject to payment of reasonable costs.

As regards the added appellant Nos. 9–18, they were impleaded in the present appeal upon consideration of their claim of subsisting interest in the subject matter of the suit. Since they claim to have acquired interest in the property through registered deeds, and since the decree under challenge affects the property in which they assert an interest, they should also be afforded an opportunity to place their claim before the trial Court. They should, therefore, be impleaded as defendants in the original suit and be permitted to file their written statements.

In view of the discussions and findings made hereinbefore, we find substantial merit in the appeal.

In the result,

1. The appeal is allowed. The impugned judgment and decree dated 14.01.2015 passed by the learned Joint District Judge, Panchagarh, in Title Suit No. 25 of 2011 is hereby set aside.
2. The suit is remanded to the trial Court for fresh disposal in accordance with law.

3. The order dated 14.07.2014, whereby the written statement filed by defendant Nos. 11–22 was rejected, is hereby set aside. The written statement already filed by defendant Nos. 11–22 shall be taken on record subject to payment of costs of Tk. 10,000/- (Taka ten thousand) by them to the plaintiffs within the period to be fixed by the trial Court. In default of payment of the said costs within the stipulated period, their written statement shall stand rejected.
4. Added appellant Nos. 9–18 shall be impleaded as defendants in the suit and shall be permitted to file their written statements, if any, within the period to be fixed by the trial Court.
5. The parties shall be at liberty to amend their respective pleadings, if so advised and if otherwise permissible in law.
6. The trial Court shall afford all the parties reasonable opportunity to adduce evidence and shall thereafter dispose of the suit afresh on its own merits and in accordance with law.
7. In deciding the suit, the trial Court shall take into consideration, insofar as relevant to the subject matter of the present suit, the judgment and decree dated 17.04.2007 passed in Partition Suit No. 5 of 2004, as well as any subsequent decree passed therein.
8. The trial Court shall decide the suit independently on the evidence and materials on record and shall not be influenced by any observation made in this judgment.
9. The order of stay earlier granted by this Court shall stand vacated.
10. The trial Court is directed to dispose of the suit as expeditiously as possible, preferably within six months from the date of receipt of the lower Court records and a copy of this judgment.

11. There shall be no order as to costs of the appeal, save and except the costs of Tk. 10,000/- imposed upon defendant Nos. 11–22 as a condition for acceptance of their written statement, as directed above.

12. The office is directed to send down the lower Court records forthwith, along with a copy of this judgment, to the Court concerned for necessary action.

(Justice Md. Badruzzaman)

I agree:

(Justice Aynun Nahar Siddiqua)