

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. 18 OF 2015 with
FIRST APPEAL NO.19 OF 2015

Abdul Malek

....Appellant

-Versus-

Abdus Sattar Mollah and others

.... Respondents

Mr. Md. Faruque Ahammed, Senior Advocate

With

Mr. M. A. Mannan Bhuiyan, Advocate

Mr. Kawsar Ahmed, Advocate

Mr. A.K.M. Maudud, Advocate

.... For the appellant

Mr. Md. Ruhul Quddus, Senior Advocate with

Mr. Md. Kamal Parvez, Advocate

.... For the respondent No1.

Mr. Khandaker Aminul Haque, Advocate

.... For the respondent Nos.10 and 11.

Heard on 18.05.2026 and 11.06.2026.

Judgment on 22.06.2026.

S M Kuddus Zaman, J:

First Appeals No.18 of 2015 and First Appeal No.19 of 2015 are directed against the judgment and decree dated 24.07.2014 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit Nos.1207 of 2012 and 1232 of 2012 tried analogously and decreeing Title Suit No.1207 of 2012 and dismissing Title Suit No.1232 of 2012.

Since First Appeal No.18 of 2025 and First Appeal No.19 of 2025 relate to same matter those are heard together and being disposed of by this single judgment.

Facts in short are that respondent No.1 of First Appeal No.18 of 2015 as plaintiff instituted Title Suit No.1207 of 2012 alleging that Suresh Chandra Dutta was the owner and possessor of 8.27 acre land including disputed 6.36 acre who died leaving three sons namely Sushil Chandra Dutta, Patit Chandra Dutta and Suvash Chandra Dutta and Sushil Chandra Dutta died leaving two sons Shomvu Nath Dutta and Bijoy Chandra Dutta defendant as heirs. Above heirs of Suresh Chandra Dutta while owning and possessing above land entered into a family arrangement and disputed 6.36 acre land was allotted to the sharer of Shomvu Nath Dutta and Bijoy Chandra Dutta who transferred above land to the plaintiff by two registered kabra deeds dated 20.02.2001 and delivered possession. Plaintiff was in peaceful possession in above land but taking advantage of his temporary absence from the locality the defendants dispossessed him from some part of above land during pendency of this suit. Defendant Nos.1-6 claiming to have purchased above 6.36 acre land from above Patit Chandra Dutta, Suvash Chandra Dutta, Shomvu Nath Dutta and Bijoy Chandra Dutta by two registered kabra deeds dated 09.05.2000 denied plaintiff's title. In fact above kabra deeds were forged documents and the plaintiff filed a Criminal Case being No.44(12)2002. In above case PW2 Shuvash Chandra Dutta gave

evidence and the signature of the executants of two documents dated 09.05.2000 of the defendants were examined by the hand writing expert and report was submitted stating that above signatures of the executants of above deeds were forged. Another executant of above deeds of the defendant namely Shuvash Nath Dutta gave evidence in this suit as PW2 claiming that their signatures were forged.

Defendant Nos.1-6 contested above suit by filing joint written statement alleging that Suresh Chandra Dutta while owning and possessing 8.27 acre land died leaving three sons Sushil Chandra Dutta, Patit Chandra Dutta, Suvash Chandra Dutta and Sunil Chandra Dutta and Sunil Chandra Dutta died leaving two sons Shomvu Nath Dutta and Bijoy Chandra Dutta as heirs. Above Patit Chandra Dutta, Suvash Chandra Dutta, Shomvu Nath Dutta and Bijoy Chandra Dutta jointly transferred disputed 6.36 acre land by two registered kabla deeds dated 09.05.2000 to defendant Nos.1-6 who are owning and possessing above land by constructing dwelling huts and cultivation. Plaintiffs did not get any title and possession in above land since the vendors of their deeds previously transferred their total land to the defendants.

Above defendants as plaintiff filed Title Suit No.1232 of 2012 setting out identical claims and allegations as stated in their written statements. As mentioned above two suits were tried analogously by the trial Court and the witnesses of plaintiff of Title Suit No.1232 of 2012 gave evidence as DWs.

At trial plaintiffs examined seven witnesses and defendants examined five. Documents of the plaintiffs were marked as Exhibit Nos.1-12 and those of the defendants were marked as Exhibit Nos.“Ka” to “Ja”.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed Title Suit No.1207 of 2012 and dismissed Title Suit No.1232 of 2012.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant No.5 of Title Suit No.1207 of 2012 and plaintiff of Title Suit No.1232 of 2012 as appellant moved to this Court and preferred First Appeal No.18 of 2015 and First Appeal No.19 of 2015.

Respondent Nos.10 and 11 were added as respondents by this Court on the basis of a petition under Order 1 Rule 10 of the Code of Civil Procedure, 1908 alleging that their predecessor Md. Hasen Ali purchased total 8.27 acre land from Suresh Chandra Dutta by registered kabla deed No.8313 dated 28.07.1965 and was in peaceful possession in above land and by successive transfer by registered kabla deeds above respondents are owning and possessing in above land but above respondents were not impleaded as defendants in Title Suit No.1207 of 2012 or Title Suit No.1232 of 2012 and they did not get an opportunity to contest above suits.

Mr. Md. Faruque Ahamed, learned Advocate for the appellant submits that the defendants of Title Suit No.1207 of 2012 purchased 6.36 acre land by two registered kabla deeds on 09.05.2000 from Patit Chandra Dutta, Suvash Chandra Dutta, Shomvu Nath Dutta and Bijoy Chandra Dutta but from above vendors the plaintiffs purchased 6.36 acre land by two deeds dated 20.02.2001. As such the sale deeds of the defendants were earlier at point of time and shall prevail over the sale deeds of the plaintiffs. The plaintiffs have merely stated in their plaint that above two deeds of the defendants were forged documents. No detailed facts as to forgery were set out in the plaint nor any evidence was adduced to substantiate the same. Defendants produced certified copies of above two sale deeds dated 09.05.2000 which were marked as Exhibit Nos. "Cha" and "Ja" Above registered deeds show that those were genuine documents nor forged one. In the plaint as well as in the evidence of PW1 Abdus Sattar Mollah and PW2 Suvash Chandra Dutta it have been admitted that defendants are in possession in above land by constructing dwelling huts. Above admission proves the correctness and genuinity of the kabla deeds of the defendants. The plaintiffs have filed above suit for mere declaration under Section 42 of the Specific Relief Act, 1877 but since they were out of possession the suit was not tenable in law. The learned Judge of the trial Court passed the impugned judgment on the basis of hand writing expert report of the executants of their deeds dated 09.05.2000 but above piece of the

evidence of above Criminal Case was inadmissible in above suits. The learned Joint District Judge utterly failed to appreciate above facts and circumstances of the case and evidence on record and most illegally decreed above suit of the plaintiffs which is not tenable in law. The learned Advocate further submits that filing of Title Suit No.1232 of 2012 by the defendants as plaintiffs were totally misconceived since the deeds of the defendants were earlier at point of time from those of the plaintiffs. The learned Advocate lastly submits that since added respondent Nos.10 and 11 have produced certified copy of registered deed No.8313 dated 28.07.1965 allegedly executed by Suresh Chandra Dutta predecessor of the vendors of both the plaintiffs and the defendants showing transfer of total 8.27 acre land and they were not made defendants in above suits they may be given an opportunity to prove the genuinity and correctness of above kabla deed dated 28.07.1965.

On the other hand Mr. Md. Ruhul Quddus, learned Senior Advocate for respondent No.1 frankly concedes that in the plaint and in the evidence of PW1 Abdus Sattar Mollah and PW2 Subash Chandra Dutta has alleged that during pendency of the suit defendant has forcibly dispossessed the plaintiffs from some part of the disputed land. The learned Joint District Judge has adjudged two registered kabla deeds dated 09.05.2000 of the defendants as forged on the basis of the evidence of a Criminal Case and not in above suit respondent Nos.10

and 11 have produced a registered kabla deed of 28.07.1965 showing transfer of total 8.27 acre land by Suresh Chandra Dutta predecessor of the vendors of both the plaintiffs and the defendants. As such the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

Mr. Khandaker Aminul Haque, learned Advocate for respondent Nos.10 and 11 submits that admittedly 8.27 acre land including above disputed land belonged to Suresh Chandra Dutta predecessor of the vendors of both the plaintiffs and defendants. Above Suresh Chandra Dutta himself transferred total 8.27 acre land to Md. Hasen Ali by registered kabla deed dated 28.07.1965 and from above Md. Hasen Ali respondent Nos.10 and 11 acquired above land by successive purchase by registered kabla deeds. Since above Suresh Chandra Dutta did not have any subsisting interest in above 8.27 acre land after his demise his heirs did not acquire any title or possession in above land and by alleged purchase from his heirs the plaintiffs or defendants did not acquire any title or possession. The plaintiffs and defendants did not implead respondent Nos.10 and 11 as defendants in above suits nor they had any opportunity to establish their title and possession in above land. In support of above claims respondent Nos.10 and 11 have produced certified copies of registered kabla deed dated 28.07.1965 and

their other kabla deeds before this Court. The ends of justice will be met if the impugned judgment and decree is set aside and above suits are remanded to the trial Court for retrial after giving respondent Nos.10 - 11 an opportunity to be added as defendants and file written statement and adduce evidence.

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

It is admitted that 8.27 acre land including disputed 6.36 acre land belonged to Suresh Chandra Dutta who died leaving three sons namely Sushil Chandra Dutta, Patit Chandra Dutta and Suvash Chandra Dutta and Sushil Chandra Dutta died leaving two sons namely Shumvo Chandra Dutta and Bijoy Chandra Dutta as heirs. The plaintiffs claimed to have purchased 6.98 acre land from above heirs of Suresh Chandra Dutta by registered kabla deed dated 20.02.2001 (Exhibit Nos.11 and 12). On the other hand defendants claim to have purchased 7.05 acre land by two registered kabla deeds from above same heirs of Suresh Chandra Dutta on 09.05.2000 (Exhibit Nos."Cha" and "Ja" respectively).

Admittedly above two sale deeds of the defendants are earlier in point of time than those of the plaintiffs. As such the learned Advocate for the appellants rightly pointed out that filing of Title Suit No.1232 of 2012 by the defendants as plaintiffs were misconceived and unnecessary. In the plaint it has been alleged that above two registered kabla deeds dated 09.05.2000 of the defendants were forged documents.

But no specific mentions were made as to the facts constituting above forgery. Above defendants produced two certified copies of above deeds which were marked as Exhibit Nos. "Cha" and "Ja". But the defendants did not explain as to non production of above original deeds and the cause of production of the secondary evidence. Plaintiffs also produced two certified copies of their two deeds dated 20.02.2001 without providing any explanation as to non production of the original deeds.

A secondary evidence is admissible in evidence when the party producing above evidence provides an explanation for non production of the primary evidence. The learned Joint District Judge committed an error by admitting above certified copies of the kabla deeds of the plaintiffs and defendants without any explanation as to non production of the originals.

It turns out from record that the plaintiffs did not produce any legal evidence to prove that above two kabla deeds of the defendants dated 09.05.2000 were forged. The plaintiffs could call for the volume of above two deeds from the concerned Registry Office to establish that those deeds were non-existent. The learned Judge of the trial Court has relied on the report of the hand writing expert submitted in Criminal Case No.44(12)2002 to arrive at a decision that above two deeds were not executed by its executants and those were forged. But above evidence of a Criminal Case was inadmissible as evidence in above

suits. As such above findings of the learned Judge of the trial Court are not tenable in law.

It was alleged that the plaintiffs are continuously possessing above land on the basis of purchase by registered deeds dated 20.02.2001. But at Paragraph No.9 of the plaint plaintiff has admitted that the defendants have dispossessed him from some part of the disputed land during pendency of above suit. But no specific mention was made as to the date and manner of above dispossession. PW1 Abdus Sattar Mollah and PW2 Suvash Chandra Dutta have admitted in their respective cross examination that defendants are in possession in some of the disputed property. In view of above materials on record we hold that above suit of the plaintiff was hit by Section 42 of the Specific Relief Act, 1877 for not seeking any relief as to the possession of above land.

As mentioned above respondent Nos.10 and 11 were added in above appeals as respondents by this Court under Order 9 Rule 10 of the Code of Civil Procedure, 1908. They have claimed that original owner of above 8.27 acre land namely Suresh Chandra Dutta transferred above total land to Md. Hasen Ali by registered kabla deed dated 28.07.1965. It has been further claimed that by successive purchase from above Md. Hasan Ali above respondent are in lawful ownership and possession in above land. In support of above claims above respondents have produced certified copies of registered kabla

deed dated 28.07.1965 executed by Suresh Chandra Dutta and subsequent registered kabla deeds. If above sale deed dated 28.07.1965 by Suresh Chandra Dutta to Md. Hasen Ali, predecessor of defendant Nos.10 and 11 is proved to be genuine and effective then the plaintiffs and defendants will get nothing.

On consideration of above facts and circumstances of the case and materials on record we hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suits are remanded to the trial Court for retrial after giving respondent Nos.10 and 11 an opportunity to be added as defendants in above suits and file written statements and the plaintiffs and defendants are allowed to amend their respective pleadings and adduce further evidence if any.

In above view of the materials on record we find substance in First Appeal No.18 of 2015 and First Appeal No.19 of 2015 which deserve to be allowed.

In the result, First Appeal No.18 of 2015 and First Appeal No.19 of 2015 are allowed.

The impugned judgment and decree dated 24.07.2014 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.1207 of 2012 and Title Suit No.1232 of 2012 are set aside and above suits are remanded to the trial Court for retrial after giving respondent Nos.10 and 11 an opportunity to be added as defendants and file written

statements and above plaintiffs and defendants are allowed to amend their pleadings and adduce further evidence if any.

The learned Joint District Judge is directed to conclude the retrial of the suits within a period of one year from the date of receipt of this order.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER