

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:
Mr. Justice S M Kuddus Zaman
and
Mr. Justice Md. Saiful Islam

FIRST APPEAL No.66 of 2017

Golam Kuddus

... Appellant

-Versus-

Golam Shohel and others

...for the respondents

Mr. Md. Sumon Ali, Advocate

... For the appellants

No one appears

... For the respondents

Heard & Judgment on 07.12.2025.

S M Kuddus Zaman, J

This appeal is directed against the impugned judgment and decree dated 29.09.2016 passed by the learned Joint District Judge, 2nd Court, Madaripur in Title Suit No.45 of 2012 dismissing the suit.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 1.68 acres land appertaining to S.A. khatians No.1959, 961, 604, 2203, 2106, 2209, 1919, 959 and 1918 seeking saham for 19.764 decimal alleging that above property belonged to Harokumer Ghos and others which was sold in auction for non-payment of rent vide Rent Suit Nos.2053/60-61, 276/62-63 and 269/62-63 and purchased by Charu Bala and Nilima Ghos. Above Nilima transferred 23 decimal land to Sudhir Ghos by registered kobla deed dated 02.11.1973 who in his turn transferred the same to Anil Ghos by registered kobla

deed dated 20.06.1978. Above Charu Bala died leaving two sons namely Sudhir Ghos and Anil Chandra Ghos and Sudhir Gosh transferred 1.68 acres land to plaintiff's predecessor Alimunnesa by registered kobla deed dated 18.07.1983 and draft BRS khatian of above property has been correctly prepared in her name. Above Alimunnesa died leaving the plaintiffs and defendants as heirs. Above property has not been partitioned by meets and bounds and defendants refused to effect an amicable partition.

Defendant Nos.1-11 contested above suit by filing a written statement alleging that the plaintiff has relinquished his title and possession in above property in favour of the defendants and defendants are in possession in above property. Plaintiffs do not have any right, title and interest in above property.

At trial plaintiff examined two witnesses who were partially cross examined by the defendants. Documents produced by plaintiffs were marked as Exhibit No.1 series. Defendant Nos.1-11 did not examine any witness nor produced any document at trial. On consideration of facts and circumstances of the case and evidence on record the 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. Md. Sumon Ali learned Advocate for the appellants submits that the plaintiffs could not produce relevant S.A. khatian or certified copies of those since those were torned and they produced information slips issued in this regard by the relevant office which were marked as Exhibit No.1 series. The plaintiffs submitted certified copies of six registered kobla deeds of Alimunnesa by which she acquired title and possession in above 1.68 acres land. But the learned Judge

of the trial court did not admit above certified copies of kobla deeds into evidence nor marked as Exhibits. It is admitted that Alimunnessa died leaving the plaintiffs and defendant Nos.1-21 as heirs. Defendant Nos.1-11 abandoned their claim in above property although they submitted a written statement. As such the plaintiffs succeeded to prove title and possession of Alimunnessa in above 1.68 acres land and plaintiffs lawful share in disputed 19.764 decimal land. On consideration of above facts and circumstances of the case and materials on record the learned Judge of the trial court should have decreed above suit and granted the plaintiffs separate saham for above 19.764 decimal land but the learned Judge failed to appreciate above materials on record and most illegally dismissed above suit which is not tenable in law.

No one appears on behalf of the respondents at the time of hearing although this appeal appeared in the list for hearing on several dates.

We have considered the submissions of the learned Advocate for the appellants and carefully examined all materials on record.

It has been alleged that above 1.68 acres land belonged to Harokumer Ghos and others and in their names relevant khatians were correctly prepared. But the plaintiffs could not produce any khatian or any other document which proves that above 1.68 decimal land belonged Harokumer Ghos and others. Plaintiffs have further claimed that above property of Harokumer Ghos and others were sold in auction due to non-payment of rent. But the plaintiffs did not specifically mention if the above property were sold in auction at the instance of the Zaminders pursuant to execution of Rent suit decree or by the government pursuant to certificate cases. No document of auction sale of above property has been produced and proved at trial. It has been alleged that above property was purchased by Charu Bala and Nilima in above auction sale but no certificate of

sale or certificate of delivery of possession showing that above property was purchased by Charu Bala and Nilima were produced and proved at trial. The plaintiffs did not produce any S.A. khatian but has produced information slips which were marked as Exhibit No.1 series. It turns out from Exhibit No.1 series that due to interpolation and conflicting plot numbers, copies of above khatians could not be supplied. The plaintiffs did not produce C.S. or R.S. or BRS khatians in support of their claims as mentioned above.

As far as six registered kobla deeds of Alimunnessa are concerned only certified copies of above deeds were produced by P.W.1 Golam Kuddus. But he did not provide any explanation for non production of original kobla deeds. The learned Joint District Judge did not admit above deeds into evidence and make any findings as to genuinity and correctness or incorrectness or falsity of above kobla deeds.

The learned Advocate for the appellants submits that since this is a suit for partition and plaintiffs and defendants are co-sharers and there are some defects and deficiencies in the plaint and all relevant documents were not produced at trial 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 the parties an opportunity to amend their respective pleadings and adduce further evidence.

A suit for partition demands a legal settlement on merit on the basis of evidence and such a suit should not be dismissed on procedural grounds or for any deficiency or defect due to lack of professional skill or knowledge of law of the concerned Advocate.

In above view of the 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 the suit is remanded to the trial court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence, if any.

In the result, the First Appeal is allowed. The impugned judgment and decree dated 29.09.2016 passed by the learned Joint District Judge, 2nd Court, Madaripur in Title Suit No.45 of 2012 is set aside and above suit is remanded to the trial court for retrial after giving both the parties an opportunity to amend their respective pleadings and further evidence, if any.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.

Md. Saiful Islam, J

I agree.

*Md. Kamrul Islam
Assistant Bench Officer*