

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. 374 of 2019

Deputy Commissioner, Brahmanbaria
...Appellant

-Versus-

Habibur Rahman and others

... Respondents

Mr. Md. Shaif Uddin Raton, Deputy Attorney General
with

Mr. Md. Moshihur Rahman, Assistant Attorney General

Mr. Md. Arifur Rahman, Assistant Attorney General

Mr. Md. Mizanur Rahman, Assistant Attorney General

Mr. Chandan Chandra Sarker, Assistant Attorney
General

.... For the appellant.

Ms. Tasmia Prodhan, Advocate

.... For the respondent No.1.

Heard on 20.01.2026 and 22.02.2026.

Judgment on 01.03.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 13.03.2017 passed by the learned Joint District Judge, 1st Court, Brahmanbaria, in Civil Suit No.10 of 2013 decreeing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title, recovery of possession and partition of 10 decimal land appertaining to C. S. Khatian No.371 seeking a saham for

6 decimal alleging that above land belonged to Ramkrishna Dupi and in his name C. S. Khatian No.371 was rightly prepared. Ramkrishna died leaving only son Nagarbashi who also died leaving Motilal Dupi as only son and heir who possessed above land dwelling house and planting trees and S. A. Bujarat Khatian Nos.565/566 was rightly recorded in his name. But Taher Miah and Hazi Abdul Jalil most illegally got above 10 decimal land recorded in their names in the finally published S. A. Khatian. Above Motilal Dupi filed Title Suit No.122 of 1987 against the Government and obtained a decree on 06.05.1990 and transferred 6 decimal land to the plaintiff by two separate registered kabla deed dated 20.10.1986 and 08.01.1992 and delivered possession. Defendant Nos.1-7 forcibly dispossessed the plaintiff from above land in December, 2007 and erected some shops and a part of above land was given to a Mosque.

Defendant Nos.1-5 and 17 contested above suit by filing separate written statements wherein they have denied all claims and allegations made in the plaint and stated that above property belonged to the Government and the same was rightly recorded in the name of the Government in relevant S. A. Khatian and defendant Nos.1-5 obtained lease of disputed 10 decimal land from the Government and possessing the same. Plaintiff was never in possession in above 10 decimal land nor the defendants have dispossessed the plaintiff from above land.

At trial plaintiff examined 5 witnesses and defendants examined 7. Documents of the plaintiff were marked as Exhibit Nos.1-5 series and those of the defendants were marked as Exhibit No."Ka" to "Ga" and "X".

On consideration of the facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit on contest against defendant Nos.1-5 and 17-18 in preliminary form and plaintiffs were allotted Saham for 6 decimal land.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant No.17 as appellant moved to this Court and preferred this First Appeal.

Mr. Md. Moshihur Rahman, learned Assistant Attorney General for the appellant submits that the plaintiffs sought declaration of title and recovery of possession against defendant Nos.1-7 whom the plaintiff did not admit as co-sharers. The learned Judge of the trial Court refused to pass a decree for declaration of title and recovery of possession against defendant Nos.1-7. The plaintiff did not seek a decree for partition against defendant Nos.1-5 or 17-18. Plaintiff sought decree for partition against defendant Nos.8-12 but the learned Judge did not pass a decree for partition against defendant Nos.8-12. The learned Joint District Judge has passed decree for partition against the defendants whom the plaintiff did not admit as co-sharers. The learned Joint District Judge utterly failed to appreciate the facts and

circumstances of the case and evidence on record and most illegally passed above judgment and decree which is not tenable in law.

Ms. Tasmia Prodhan, learned Advocate for respondent No.1 frankly concedes that the plaintiff sought recovery of possession for 6 decimal land against defendant Nos.1-7 but the learned Judge of the trial Court although decreed above suit erroneously did not pass a decree for recovery of possession. The learned Advocate further submits that erroneously latest survey khatian numbers were not mentioned in the plaint nor disputed 6 decimal land was demarcated by mentioning boundaries and for above deficiencies the learned Judge of the trial Court refused to pass a decree for recovery of possession. In this suit the co-sharers and non co-sharers have been impleaded as defebdabts and separate remedies were sought against the co-sharers and non co-sharers. Above deficiency or defect in the plaint was caused due to lack of professional skill and knowledge of the appointed Advocate for the plaintiff and the plaintiff should not made to suffer for above errors of their appointed Advocate. 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 the plaintiff an opportunity to amend the plaint and adduce further 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 above 10 decimal land belonged to Ramkrishna Dupi and the same was recorded in C. S. Khatian No.38371. Plaintiff claims that above land was inheritly by their predecessor. Motilal Dupi and they purchased above land by two registered kabla deeds from Motilal Dupi. Plaintiff further claim that S. A. Khatian was erroneously recorded. In the schedule to the plaint the plaintiff has described 10 decimal land by mentioning C. S. Khatian Number and Plot Number and did not mention the relevant S. A. or R. S. Khatians nor provided any boundaries sufficient for identification of disputed 6 decimal land. In a suit for declaration of title and recovery of possession a plaintiff is required to provide description of the disputed land by providing latest Revenue Khatian and Plot Numbers and if necessary also by boundaries and no decree can be passed in respect of a land which remains unspecified and vague.

The plaintiffs did not admit defendant Nos.1-7 and 17 as co-sharers but they were made defendants in above suit for partition. The plaintiffs admit defendant Nos.8-12 co-sharers but against them sought a decree for declaration of title and recovery of possession. The nature, character, necessary parties and land in a suit for declaration of title and recovery of possession is completely different from that of a suit for partition. A plaintiff cannot mix together the cause of action against non co-sharer defendants for declaration of title and recovery of possession with the cause of action for partition against the co-sharers in a single

suit as has been done in this particular suit. The plaintiff could file a suit for partition against the defendants whom he admits as co-sharers and a separate suit for declaration of title and recovery of possession against the defendants whom the plaintiff does not admit as co-sharers. In a suit for partition possession of one co-sharer is considered as possession on behalf of all other co-sharers unless there is specific claim of adverse possession against the co-sharer who is out of possession.

In above view of the facts and circumstances of the case and materials on record we find substance in the submission of the learned Advocate for the respondents that due to lack of legal skill and knowledge of the appointed Advocate for the plaintiff above errors occurred in the plaint and the plaintiff should not be made to suffer for above errors of his appointed Advocate and we hold that the ends of justice will be met if the impugned erroneous judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving the plaintiff and the defendants an opportunity to amend the pleadings and adduce further evidence if any.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 13.03.2017 passed by the learned Joint District Judge, 1st Court, Brahmanbaria, in Civil Suit No.10 of 2013 is set aside and the above 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.

However, there is no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**