

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. 132 of 2020

Abdul Khalek and another

....Appellants

-Versus-

Humayun Miah and others

... respondents

Mr. Md. Mubarak Hossain, Advocate

.... For the appellants.

Ms. Rona Naharin, Advocate

....For the respondent No.1.

Heard on 29.04.2026.

Judgment on 03.05.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 29.01.2020 passed by the learned Joint District Judge, 3rd Court, Cumilla, in Title Suit No.145 of 2014 decreeing the same.

Facts in short are that the respondents as plaintiffs instituted above suit for partition of 24 decimal land as described in the schedule to the plaint claiming saham for 12 decimal land alleging that above 24 decimal land belonged to Ali Akbar and Jamila who transferred the same to plaintiff and defendant No.1 by registered kabala deed dated 11.02.1964. Above land is adjacent to Bataichari Bazar and there is a

road on the western side of above land. As such plaintiffs and defendants divided above land in equal to portions so that both the parties can get access to road and plaintiff was given southern part and defendant was given northern part of the land. But above land was not partitioned by meets and bounds and the defendant denies to effect an amicable partition.

Defendant contested above suit by filing written statement alleging that plaintiff and defendant purchased above land by registered kabla deed dated 11.02.1964 but subsequently the quantity of land was found to be 23 decimal and the same was rightly recorded in B. S. Khatian No.905. Plaintiff and defendant are two brothers and they amicably partitioned above land and the defendant is possessing western side of the land which comprises the road. Plaintiff has filed this false suit in order to get the portion of land of the defendant which is connected with the road. The learned Joint District Judge rightly decreed above suit for $11\frac{1}{2}$ decimal land and granted defendant saham for the same quantity of land but most illegally directed the Advocate Commissioner to effect saham of the plaintiff and defendant by dividing above land into two portions from northern and southern side of the land which is not tenable in law.

At trial plaintiff examined three witnesses and documents of the plaintiff were marked as Exhibit Nos.1-5. On the other hand defendants

examined three witnesses and documents of the defendants were marked as Exhibit Nos."Ka" to "Cha".

On consideration of the facts and circumstances of the case and materials on record the learned Joint District Judge decreed above suit for $11\frac{1}{2}$ decimal land and granted saham to the defendant for $11\frac{1}{2}$ decimal land and directed the Advocate Commissioner to partition above land by dividing the same into two plots one from northern side and the other from southern side so that both the parties can get access to road.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above defendants as appellants moved to this Court and preferred this First Appeal.

Mr. Md. Mubarak Hossain, learned Advocate for the appellants submits that in a suit for partition the Judge of the trial Court is required to determine the extent of share of the parties to the suit and the practical partition of the undivided property is effected by the Court appointed Advocate commissioner. The learned Joint District Judge failed to appreciate above aspect of a suit for partition and most illegally directed the Advocate Commissioner the process and way of partition of above land interfering in the work of the Advocate Commissioner which is not tenable in law.

On the other hand Ms. Rona Naharin, learned Advocate for respondent No.1 frankly concedes that the learned Judge of the trial

Court should have determined the respective share of the plaintiffs and defendants in above joint properties and leave the way and method of partition to the Advocate Commissioner who on consideration of existing possession and convenience of the parties will effect a partition on the field. But the learned Joint District Judge has most illegally directed the Advocate Commissioner for effecting partition of above land by dividing the same in southern and northern plots which is not tenable in law.

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

It is admitted that the plaintiff and defendant No.1 who are two full brothers jointly purchased 24 decimal land of S. A. Khatian No.625 from Ali Akbar and Jamila by registered kabla deed dated 11.02.1964 and above land has been recorded in their names rightly in B. S. Khatian No.905 but the quantity of land has been reduced to 23 decimal. Admittedly plaintiff and defendant each are entitled to get $11\frac{1}{2}$ decimal land and the learned Joint District Judge rightly decreed above suit for $11\frac{1}{2}$ decimal land and granted separate saham to the defendant for another $11\frac{1}{2}$ decimal land.

It turns out from the impugned judgment that the learned Joint District Judge directed the Advocate Commissioner to divide above 23

decimal land into two equal portions from northern and southern side so that both the parties may get excess to road.

In a suit for partition the mandate of the learned Judge of the trial Court is to determine the respective share of the plaintiffs and defendants in the undivided joint properties. It is the duty of the Advocate Commissioner who shall effect above partition by necessary measurement and investigation of the undivided property taking into account the existing possession and convenience and inconvenience of the co-sharers of above property. The learned Joint District Judge should not have stepped in the jurisdiction or area of work of the Advocate Commissioner and direct for specific method for partition of above property. The learned Joint District Judge has exceeded the limits of his jurisdiction and interfered with the work of the Advocate Commissioner by directing above method of partition which is not tenable in law.

On consideration of above facts and circumstances of the case and materials on record we find substance in the submissions of the learned Advocates for the respective parties hold that the ends of justice will be met if impugned judgment and decree of the trial Court is modified and above direction of the learned Joint District Judge upon the Advocate Commissioner is expunged.

As such, the impugned judgment and decree is modified and plaintiff and defendant No.1 each is granted saham for $11\frac{1}{2}$ decimal

land but the directions of the learned Joint District Judge for partition of above land by two plots from southern and northern side is expunged. The learned Advocate Commissioner shall partition above land between the plaintiff and defendant taking into account the existing possession, convenience and inconvenience of the parties in accordance with law.

With above modification and expunge of the impugned judgment this First Appeal is allowed in part.

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