

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

First Appeal No. 189 of 2020

IN THE MATTER OF:

Biddut Kumar Karmakar and another
....Appellants

Versus

Joydeb Karmakar and others
....Respondents

Mr. Ahmed Nowshed Jamil, Advocate with
Mr. H.M. Borhan, Advocate
....For the Appellants

Mr. Muhammad Tawhidul Islam, Advocate with
Mr. Arif Moinuddin Chowdhury, Advocate
....For the Respondent No. 1

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 10.08.2025

Md. Iqbal Kabir, J:

The instant First Appeal is directed against the judgment and decree dated 30.09.2019 (decree signed on 07.10.2019) passed by the learned Joint District Judge, First Court, Khulna in Title Suit No. 46 of 2005, decreeing the suit in part.

Short facts of the case are that the respondent Nos. 1 and 2, as plaintiffs, instituted Title Suit No. 46 of 2005 in the First Court of Joint District Judge, Khulna, for partition. The specific case of the plaintiffs is that the land measuring 0.72 acres appertaining to C.S. Plot Nos. 2892 and 2893 under C.S. Khatian No. 3212 of Mouza-Baniakhamar within Police Station and District-Khulna belonged to Hare Krishna Karmakar and others. Hare Krishna Karmakar, in his four annas share, got 0.18 acre of land out of 0.72 acres. He settled the land to his wife, namely Hemanta Kumari Karmakar, by a Patta dated 26.03.1955. Therefore, S.A. Khatian No. 3466 was prepared in the name of Hemanta Kumari Karmakar. Hare Krishna Karmakar, considering the future of his daughter namely Jamuna Bala, though earlier executed a Patta covering 0.05 acre of land, but that was not acted upon, and Jamuna Bala never claimed the land covered by the said Patta. Hemanta Kumari Karmakar, at her old age,

executed a Will in favour of Ratan, Joydeb, Basudeb, Sabitri Bala Karmakar, Nitai Chandra Karmakar, and Jamuna Bala Karmakar, allocating the share of each. According to such allocation, Ratan, Joydeb, Basudeb and Sabitri Bala Karmakar got 0.09 acre of land out of 0.18 acres each, having 0.0225 acre of land. Besides, Nitai Chandra Karmakar got 0.045 acre of land, and Jamuna Bala Karmakar got 0.0450 acre of land. However, in that Will, it was mentioned that after the death of Jamuna Bala, the property would be vested upon the sons of Ananta Kumar Karmakar, i.e., Ratan, Joydeb, and Basudeb. Hemanta Kumari Karmakar died on 07.08.1967. The recipients of the Will filed Miscellaneous Case No. 152 of 1969 and they got a letter of administration on 24.08.1974. Jamuna Bala died on 18.05.1984, and according to the Will, her four annas share (0.0450 acre land) was vested upon Ratan, Joydeb and Basudeb and each of them got 0.0150 acre land. Subsequently, Ratan ($0.0225+0.0150=0.0375$) and Basudeb ($0.0225+0.0150=0.0375$) jointly transferred their entire 0.0750-acre land in favour of Pushpa Rani Karmakar by a registered Deed of Sale No. 3955 dated 23.02.1985. However, Pushpa Rani Karmakar gifted the said land in favour of the plaintiffs, namely Joydeb and Basudeb vide a registered Deed of Gift No. 2029 dated 29.06.2003 and delivered possession thereof. Thereby, the plaintiffs acquired title to 0.01350 acres of land. Plaintiffs demanded amicable partition on 23.05.05, but the defendants refused to do so and hence the suit.

The suit was contested by the defendant Nos. 1-3 who, by appearing in the suit, filed a written statement and thereby denied the material allegations and contending, *inter alia*, that the suit is not maintainable in its present form and manner, the suit is barred by limitation, and bad for defect of parties, etc. The specific case of contesting defendants, in short, is that the land measuring 0.72 acres appertaining to C.S. Khatiyani No. 3212 belonged to Haripada and Bishu in two annas share, Hare Krishna in four annas share, Basanto Khetromohon, Rahda Binod Ramlal, and Joyhori in sixteen gonda share each, and Sudhir had four annas share. Hare Krishna Karmakar, while owning and possessing 0.18 acres of land, settled 0.05 acres of land to Jamuna Bala by a Patta dated 10.06.1941 with a condition that after the death of Jamuna Bala, said land would be vested upon the heirs of Hare Krishna Karmakar. Thereafter, Hare Krishna Karmakar transferred 0.13 acres of land to the deity, namely Radha Krishna, by an Arpannama dated 21.09.1946. But the said Arpannama was not acted upon. Hare Krishna Karmakar died leaving behind three sons, namely Ananta, Gobinda, and Nitai. Gobinada Karmakar became a trustee in the year 1948 and as such, his share was inherited by his two brothers, namely Ananta and Nitai. Jamuna Bala died on 18.05.1984, for which

her settled land measuring 0.05 acres was inherited by two brothers, namely, Ananta and Nitai. Nitai died leaving behind three sons, i.e., defendant Nos. 1-3. These defendants claim separate Saham to the extent of 0.09 acres of land.

In order to determine the suit, the Trial Court framed as many as 5 (five) issues.

In the course of the hearing, the plaintiffs examined 2 witnesses and exhibited some documents, which were exhibited and marked as exhibits. On the other hand, the contesting defendants examined 1 witness and exhibited some documentary evidence in support of their respective claims.

However, after hearing the same, the learned Joint District Judge, First Court, Khulna, considering the facts, circumstances, and material evidence on record and law applicable thereto, was pleased to decree the suit by his judgment and decree dated 30.09.2019 (decree drawn on 07.10.2019).

Being aggrieved by and dissatisfied with the said judgment and decree dated 30.09.2019, the contesting defendant Nos. 1 and 3, as appellants, preferred this First Appeal No. 189 of 2020.

Mr. Ahmed Nowshed Jamil, learned Advocate appearing for the appellants, upon placing the application, took us to the impugned judgment and decree, plaint, and written statement. However, at the very outset submits that the Court below, under a misconception of law and facts, without appreciating the matter from a correct proposition, most illegally made an erroneous finding of fact. He brought notice to this Court that the defendant Nos. 1-3 are entitled to get 0.09 acres of land out of 0.18 acres as heirs of Nitai Chandra Karmakar. According to him, the finding of the trial Court to the effect that the Patta No. 2030 dated 10.06.1941 has not been acted upon is perverse and, as such, the impugned judgment and decree are liable to be set aside.

He submits that the Trial Court erred in law and on fact in allotting 0.0450 acre of land in place of 0.09 acre in favour of defendant Nos. 1-3 and thereby, committed illegality by allotting 0.1275 acre of land in favour of plaintiffs, for which the impugned judgment and decree are not sustainable, but liable to be set aside.

He further submits that the Trial Court has failed to appreciate that the plaintiffs obtained a letter of administration by managing the signature of Nitai Chandra Karmakar collusively, and said letter of administration was not acted upon at any point in time, for which the impugned judgment and decree are not sustainable and liable to be set aside.

He submits that the Trial Court erred in law in decreeing the suit in spite of holding that the suit is bad for the defect of the party for not impleading Ratan Karmakar in the suit.

Mr. Muhammad Tawhidul Islam, learned Advocate for the respondent No. 1, entered his appearance and, upon pleading the Judgment and other documents, tried to impress the Court. However, he submits that the suit property measuring 0.18 acres of land belonged to 'Hare Krishan Karmakar'; and C.S. Khatian No. 3212 corresponding to C.S. Plot No. 2892 was recorded in his name. According to him, Hare Krishna executed a Patta, and by the said Patta, 0.05-acre land was given in favor of his daughter Jamuna Bala, for life, but that was never acted upon.

He brought to our notice that at one point in time, Hare Krishna transferred the said 0.18 acre of land to his wife, 'Hemanta Kumari' by another Patta No. 2820 dated 26/03/1955 (Ex. 8, page 193 of the paper book). Therefore, the entire 0.18 acre of land was recorded in the name of Hemanta Kumari in S.A. Khatian No. 3466. He further states that Hemanta Kumari Karmakar, at her old age, executed a Will in favour of Ratan, Joydeb, Basudeb, Sabitri Bala Karmakar, Nitai Chandra Karmakar, and Jamuna Bala Karmakar, allocating the share of each. According to such allocation, Ratan, Joydeb, Basudeb, and Sabitri Bala Karmakar got 0.09 acre of land out of 0.18 acres, having 0.0225 acre land. Besides, Nitai Chandra Karmakar got 0.045 acre of land, and Jamuna Bala Karmakar got 0.0450 acre of land. However, in that Will, it was mentioned that after the death of Jamuna Bala, the property would be vested upon the sons of Ananta Kumar Karmakar, i.e., Ratan, Joydeb, and Basudeb. Hemanta Kumari Karmakar died on 07.08.1967. The beneficiaries of the Will filed Miscellaneous Case No. 152 of 1969 before the District Delegate, Sub-Judge, Khulna for granting the Letter of Administration. The Court granted the Letter of Administration on 24.08.1974 (Exhibit No. 4(Kha)), Jamuna Bala died on 18.05.1984, and according to the Will, her four annas share (0.0450 acre land) was vested upon Ratan, Joydeb and Basudeb and each of them got 0.0150 acre land. Subsequently, Ratan ($0.0225+0.0150=0.0375$) and Basudeb ($0.0225+0.0150=0.0375$) jointly transferred their entire 0.0750-acre land in favour of Pushpa Rani Karmakar by a registered Deed of Sale No. 3955 dated 23.02.1985. However, Pushpa Rani Karmakar gifted the said land in favour of the plaintiffs, namely, Joydeb and Basudeb, vide a registered Deed of Gift No. 2029 dated 29.06.2003 and each of them got 0.0375 acre land (Exhibits No. 6 and 7). Sabitri Bala died during the trial of the Suit. Therefore, her share of 0.0225 was devolved upon her three sons, Ratan, Joydeb and Basudeb; each of them inherited 0.0075 acre of land. Thus, plaintiff No. 1 Joydeb is entitled to ($0.0225+0.015+0.0375+0.0075$) = 0.0825 acre, plaintiff No. 2 is entitled to ($0.0375+0.0075$) = 0.0450 acre land, and Mr. Ratan, whose whereabouts are unknown, is entitled to 0.0075 acre land.

We have considered the submissions of the learned counsel for appellant and that of the respondents at length, perused the memorandum of appeal, including the impugned judgment and decree, and all other connected documents appended in the paper book.

From the fact, it appears that Hare Krishna Karmakar was the owner of 0.18-acre land under C.S. Khatiyon No. 3212 (Exhibit-3). Hare Krishna Karmakar executed a Patta by settling 0.05 acres of land by a registered patta dated 10/06/1941 to his daughter Jamuna Bala Karmakar, and the said patta contained a condition that Jamuna Bala Karmakar would occupy the said land for a lifetime and on her death, the legal heirs of Hare Krishna Karmakar would receive the said 0.05 acres of land. But that Patta was never acted upon. Hare Krishna transferred the said land to his wife Hemanta Kumari Karmakar by a Patta Deed No. 2820, dated 26/03/1955 (Exhibit-8). It also admitted that the said 0.18 acre of land has been recorded in the name of Hemanta Kumari Karmakar in S.A. Khatiyon No. 3466 correctly, and thus, the entire 0.18 acre of land stood in her name (Exhibit- 3 (Ka)).

It also appears that Hemanta Kumari Karmakar, at her old age, executed a deed of Will (Exhibit-4 Ka) in favour of Ratan, Joydeb, Basudeb, Sabitri Bala Karmakar, Nitai Chandra Karmakar, and Jamuna Bala Karmakar, allocating the share of each. According to such allocation, Ratan, Joydeb, Basudeb and Sabitri Bala Karmakar got 0.09 acre of land out of 0.18 acres, having 0.0225 acre of land. Besides, Nitai Chandra Karmakar got 0.045 acre of land, and Jamuna Bala Karmakar got the remaining 0.0450 acre of land. However, in the deed of Will, it was mentioned that after the death of Jamuna Bala, her property would be vested in the sons of Ananta Kumar Karmakar, i.e., Ratan, Joydeb, and Basudeb.

After the death of Hemanta Kumari, all the beneficiaries of the deed of Will filed a Miscellaneous Case No. 152 of 1969 (Exhibit-4 Ga) before the District Delegate, Sub-Judge, Khulna, for granting the Letter of Administration, and the Court, by its order dated 24.08.2974, granted the Letter of Administration (Exhibit-4 Kha). It is pertinent to note that by the Patta Deed No. 2030 dated 10.06.1941, Hare Krishna Karmakar transferred 0.05 acre of land for the lifetime interest to his daughter Jamuna Bala Karmakar, but that Patta was never acted upon.

Further, it appears that the defendant Nos. 1-3, as heirs of Nitai Chandra Karmakar, received 0.0450 acres of land. But Jamuna Bala Karmakar received 0.0450 acre of land in 4 annas for her lifetime. It is admitted by the parties that Jamuna Bala Karmakar died on 18.05.1984. In that case, the 0.0450 acre of land left by Jamuna Bala Karmakar will be received by Ratan Kumar Karmakar,

Joydeb Kumar Karmakar, and Basudeb Kumar Karmakar in equal shares, i.e., 0.0150 acre each. In the context stated above, Ratan Kumar Karmakar, Basudeb Kumar Karmakar, and Joydeb Kumar Karmakar each received 0.0225 acre of land as per the deed of Will and, upon the death of Jamuna Bala Karmakar, each received 0.0150 acre land as per the terms of the deed of Will, i.e., each of them received a total of $(0.0225+0.0150) = 0.0375$ acre of land.

It is at this juncture that Ratan Karmakar, who owned 0.0375 acres of land, and Basudeb Karmakar, who also owned 0.0375 acres of land, jointly sold their total share of 0.075 acres of land to Pushpa Rani Karmakar by the Sale Deed No. 3955 dated 23.02.1985. Subsequently, Pushpa Rani Karmakar transferred the said land to Joydeb Karmakar and Basudeb Karmakar through Deed No. 2029 dated 29.06.2003, each receiving 0.0375 acre (Exhibits 6 and 7). In view of the foregoing, it is evident that Joydeb Karmakar and Basudeb Karmakar ultimately came into possession of the lands originally acquired by Ratan Karmakar under the aforesaid deed of Will.

In addition, similarly, the land previously transferred by Ratan Karmakar and Basudeb Karmakar has also been received equally by Joydeb Karmakar and Basudeb Karmakar. In that case, it can be seen that the total land received by the plaintiff No. 1, Joydeb Karmakar, in the complaint, including the land received under the donation deed marked as Exhibit-7, is $0.0375+0.0375=0.0750$ acre, and the plaintiff No. 2, Basudeb Karmakar, has received 0.0375 acre of land under the said donation deed.

It is pertinent to note that, admittedly, Joydeb Karmakar got 0.0750 acre, Basudeb Karmakar got 0.0375 acre, and Sabitri Bala Karmakar got 0.0225 acre of land. During the trial, Sabitri Bala Karmakar died, who had 3 sons: Ratan Karmakar, Basudeb Karmakar, and Joydeb Karmakar. Therefore, her share of 0.0225 acres of land left by Sabitri Bala Karmakar will be divided by her 3 sons, i.e., Ratan Kumar Karmakar, Basudeb Karmakar, and Joydeb Karmakar, in equal shares, i.e., each of them will get 0.0075 acres.

It is at this juncture, it can be said that (i) Joydeb/ Plaintiff No. 1 got 0.0225 from Hemanta Kumari + 0.0150 from Jamuna Bala + 0.0375 by transfer deed + 0.0075 from Sabitri Bala = total 0.0825 acre; (ii) Basudeb/Plaintiff No. 2 got 0.0375 acre by transfer deed + 0.0075 from Sabitri Bala = total 0.0450 acre and Ratan (whereabouts unknown) got 0.0075 acre from Sabitri Bala.

In the above manner, the Plaintiffs got a total of $0.0825 + 0.045 = 0.1275$ acres of land in the suit land. Nitai Chandra Karmakar, son of Hare Krishna, (4 ana) = 0.045 acre, which devolved upon the defendants (appellants) as his legal heirs.

Since, Nitai Chandra himself was an applicant of the said Miscellaneous Case No. 152 of 1969 and he accepted the Patta in favor of Hemanta Kumari and accepted the Will of Hemanta Kumari and he never raised any demand otherwise in his lifetime, and since, Jamuna Bala herself also accepted the Patta in favor of Hemanta Kumari and accepted the Will of Hemanta Kumari and she was also an applicant of the said Miscellaneous Case therefore, the case of the defendants does not stand at all.

In light of the above, the trial Court, on correct assessment of evidence, both oral and documentary, decreed the suit, finding the plaintiff's title in the suit land. We find nothing to interfere with the aforesaid judgment passed by the trial Court. Therefore, the appeal bears no merit.

Accordingly, the appeal is dismissed without any order as to cost. The judgment and decree passed by the Court below are hereby affirmed.

Send down the Lower Court Records along with a copy of this judgment at once.

Md. Riaz Uddin Khan, J:

I agree.