

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. 659 of 2019

Kamsurun Nessa @ Kamrun Nessa

...Appellant

-Versus-

Ramiza Akhter and others

... Opposite parties

Mr. M. Rezaul Karim with

Ms. Hosneara Shimul, Advocates

... For the appellant.

Mr. Md. Sanowr Hossain, Advocate

... For the respondent Nos.1-15.

Heard on 20.01.2026 and Judgment on 04.03.2026

S M Kuddus Zaman, J:

This First Appeal at the instance of the plaintiff is directed against the judgment and decree dated 05.02.2019 passed by the learned Joint District Judge, 5th Court, Dhaka, in Title Suit No.107 of 2009 dismissing the suit.

Facts in short are that the appellant as plaintiff instituted above suit for declaration of title for 3.66 decimal land and for further declaration that R. S. Khatian No.943 was erroneous alleging that 1.01 acres land including above 3.66 decimal belonged to Yousuf Ali Bepary and C. S. Khatian No.520 was correctly recorded in his name who transferred above land to his three sons who in their turn transferred

above 1.01 acres land to the plaintiff and Manna Mia and Jalal Mia predecessors of defendant No.1-5 by registered kabla deed dated 09.07.1958 and delivered possession. Above land was rightly recorded in S. A. Khatian No.703 in the names of plaintiff and her two brothers, Manna and Jalal. The Government acquired 22 decimal land for construction of public road and compensation money was received by above two brothers of the plaintiff and in R. S. Khatian No.934 remaining 79 decimal land was rightly recorded in the names of plaintiff and her above two brothers. In above kabla deed the plaintiff and her two brothers had equal sharers but the defendants denied plaintiff's title in $\frac{1}{3}$ share of above land.

Defendant Nos.1-15 contested above suit by filing a joint written statement alleging that Jalenur Miah purchased above 1.01 acre land in the benami of his three children plaintiff and predecessors of the defendants namely Abdul Mannan and Jalal Uddin and Jalenur Miah was the real owner and possessor of the land. After demise of above Jalenur Miah plaintiff and her two brothers amicably partitioned above land and the Plaintiff acquired $\frac{1}{5}$ share in above land and accordingly, R. S. and City Survey Khatians were rightly prepared. Plaintiff did not own or possess $\frac{1}{3}$ share of above land.

At trial plaintiff examined two witnesses and defendants examined one. Documents of the plaintiff were marked as Exhibit

Nos.1-6 and those of the defendants were marked as Exhibit Nos."Ka" to "Ta".

On consideration of the facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit.

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

Mr. S. M. Rezaul Karim, learned Advocate for the appellant submits that disputed 1.01 acre land was purchased by Jalenur Miah in the name of his one daughter plaintiff and two sons namely Abdul Mannan and Jalal Uddin predecessor of the defendant Nos.1-5. In above deed no separate share was mentioned for each of the recipients of the kabla deed. As such each recipient of above kabla deed acquired equal share in above 1.01 acre land. The defendants claim that each son of Jalenur Miah acquired double share of his daughter (plaintiff) is barred by Section 91 of the Evidence Act, 1872. The plaintiff is entitled to get $\frac{1}{3}$ share pursuant to registered kabla deed dated 09.07.1988 (Exhibit No.2) but the learned Judge of the trial Court miserably failed to appreciate above materials on record and most illegally dismissed above suit which is not tenable in law.

On the other hand Mr. Mr. Md. Sanower Hossain learned Advocate for the respondent Nos.1-5 submits that since the plaintiff

and her two brothers Abdul Mannan and Jalal Uddin were minors at the time of purchase of above 1.01 acre land by their father Jalenur Miah by registered kabala deed dated 09.07.1958 (Exhibit No.2) it is to be presumed that above property belonged to their father. As such after demise of above Jalenur Miah above 1.01 acre land was inherited by plaintiff and her two brothers namely Abdul Mannan and Jalal Uddin predecessor of defendant Nos.1-5 and they are accordingly possessing above land and relevant R. S. and City Survey Khatian were prepared correctly. In the plaint the plaintiff did not mention the City Survey Khatian which is the latest record of right for specification of the disputed land. On correct appreciation of facts and circumstances of the case and materials on record the learned Joint District Judge rightly dismissed above suit which calls for no interference.

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

It is admitted that Jalenur Miah purchased 1.01 acre land by registered kabala Deed No.8522 dated 09.07.1958 (Exhibit No.2) with his money for the benefit and welfare of his three children, one daughter plaintiff and two sons Abdul Mannan and Jalal Uddin predecessors of the defendants and in above kabala Deed no share of each recipients of the deed was mentioned. Above Jalenur Miah did not claim that he was the real owner of above 1.01 acres land and minor plaintiff and minors Mannan and Jalal Uddin were his benamders. As such after demise of

Jalenur Miah defendant Nos.1-15 or their predecessors Abdul Manan and Jalal Uddin did not have any right to claim that Jalenur Miah was the real owner and plaintiff was his benamder for above land. Had above Jalenur Miah filed a suit for declaration that he was the real owner and plaintiff was his benamder only then the legal presumption that the property which stands in the name of a minor belongs to her father would have come in to effect.

The intention of above Jalenur Miah as expressed in the recitals of kabla deed No.8522 dated 09.07.1958 (Exhibit No.2) appears to be that the recipients shall get equal title in above land. The plaintiff and the defendants admit that their source of title in above land is the kabla deed dated 09.07.1958 (Exhibit No.2). As such the question of acquisition of title in above land by inheritance does not come at all. The learned Advocate for the appellant rightly pointed out that oral evidence as to a registered and written document varying the terms of above document is not permissible in the absence of an allegation of error or fraud. The defendants did not claim fraud or error as to the execution of above registered kabla dated 09.07.1958. As such the defendants cannot claim that the plaintiff is entitle to get half share of her brother Manan or Jalal Uddin which is contrary to the contents of above kabala deed.

It is surprising that above suit was not for partition but for declaration of title. The plaintiff admitted at Paragraph No.4 of the

plaint that 22 decimal land out of 1.01 acre was acquired by the Government but above land was not excluded from schedule "Ka" and instead of claiming title for $\frac{1}{3}$ share out of remaining 79 decimal land the plaintiff sought declaration of title for 33.66 decimal land and provided boundaries for the same. The plaintiff cannot be given a decree for declaration of title for above 33.66 decimal land. It has been admitted in the plaint that City Survey Khatian of above land has been published in the official gazette but the plaintiff did not provide City Survey Khatian number in the plaint nor produced above khatian at trial.

On consideration of above facts and circumstances of the case and materials on record we hold that above deficiency in the plaint occurred due to lack of professional skill of the appointed Advocate for the plaintiff at Trial Court and the plaintiff should not made to suffer for that and the ends of justice will be met if the impugned judgment and decree is set aside and above 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.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 05.02.2019 passed by the learned Joint District Judge, 5th Court, Dhaka, in Title Suit No.107 of 2009 is set aside and above 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.

Send down the lower Courts record immediately.

Tamanna Rahman Khalidi, J:

I agree.

**MD. MASUDUR RAHMAN
BENCH OFFICER**