

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Appeal No. 594 of 2019**

**In the matter of:**

Gol Vanu Bibi being dead her heirs; Md. Ali  
Nowab and others

... Plaintiffs-Appellants.

-Versus-

Ful Moti Begum and others

... Defendants-Respondents.

Mr. Ashfaqr Rahman, Advocate

...For the appellants.

None appears

... For the respondents.

**Judgment on 08.01.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

At the instance of the plaintiffs in Title Suit (Partition Suit) No. 08 of 1988, this appeal is directed against the judgment and decree dated 04.03.2019 passed by the learned Joint District Judge, First Court, Cumilla dismissing the suit on contest against the contesting defendants and *ex parte* against the rest.

The salient facts in preferring the instant appeal are:

The present appellant as plaintiff filed the aforesaid suit for partition seeking the following reliefs:

“(ক) আরজির তপছিলোক্ত ভূমির আন্দরে বাদীর দাবীকৃত ৫৯ শতক ভূমি বাবদ এক পৃথক ছাহাম পাওয়ার প্রাথমিক ডিক্রি দিতে।

(খ) আদালতের নির্দিষ্ট সময়ের মধ্যে পক্ষগন বাদীকে তাহার প্রাপ্ত ভূমি বন্টন করিয়া দিতে ব্যর্থ হইলে আদালতের জনৈক সার্ভে অভিজ্ঞ এডভোকেট কমিশনার নিযুক্ত হইয়া তাহা দ্বারা নালিশী ভূমির পরিমাপ পূর্বক বাদীর পৃথক ছাহাম প্রস্তুত হইবার আদেশ প্রদান করিতে।

(গ) আদালত যোগে পক্ষগণের সকল বাধা বিঘ্ন অপসারিত ক্রমে উক্ত ভূমিতে বাদীকে দখল দিতে।

(ঘ) আদালতের ন্যায় বিচারে বাদী আর যে যে উপকার ও প্রতিকার পাইতে পারে তাহা পাওয়ার আদেশ দিতে। এবং

(ঙ) বাদীকে মোকদ্দমার খরচ পাওয়ার আদেশ প্রদান করিতে মর্জি হয়।”

The case of the plaintiffs in short is that the suit land of plot no. 395 originally belonged to one Omar Gazi and C.S. record was accordingly prepared in his name. As he failed to pay *khajna*, the suit land was then put on auction. The auction purchasers then leased out 2.74 acres of land including the suit land to one, Azimuddin Munshi on 19.02.1935 by *Kobuliyat* no. 1940. Azimuddin Munshi afterwards died leaving behind his wife, Chandraban Bibi, two sons, defendant nos. 1 and 2 and two daughters Afia Khatun and Lajjatun Nesa. Chandraban Bibi died leaving behind her sons and daughters who then became the owners of the properties. Afia Khatun, daughter of Chandraban Bibi died leaving behind her husband, Esmat Ullah and two sons, defendant nos. 4 and 5 and three daughters, defendant nos. 6 to 8. Esmat Ullah died leaving behind the sons and daughters of his first wife, defendant nos. 4 to 8 and three daughters of his second wife, defendant nos. 9 to 11. Lajjatun Nesa died

leaving behind 1 son and 1 daughter, the defendant no. 12 and 13. Darikanath, alias Sharika Mohon Sharma, took a lease of 49 decimals of land on plot no. 395 from the owner. 49 decimals of land were recorded in S.A. khatian no. 114 in the name of Darikanath Sharma. Plaintiff Selimullah became the owner of the said 49 decimals of land and his name was recorded in the D.P. *khatian* no. 208. Plaintiff and his brother defendant no. 14 purchased 60 decimals of land from defendant no. 1 on 09.02.1953. Subsequently, the plaintiff became the owner of 6 decimals of land by amicable settlement. Thereafter, on 07.03.1987, the plaintiff purchased 4 decimals of land from defendant no. 3. Thus, the plaintiff became the owner of 10 decimals of land. The plaintiff filled his land with soil and installed a rice mill. He has been consuming and paying electricity bills. Thus, the plaintiff became the owner of 59 decimals of land out of 2.78 acres of land. The plaintiff requested the defendants for partition of the suit land but the defendant refused it. Finally, the plaintiff requested the defendants to partition the suit land on 31.12.1987 but they refused. Hence, the plaintiff was compelled to institute the suit.

Defendant no. 3 contested the suit by filing a written statement stating *inter alia* that Azim Uddin belonged to 2.74 acres of land in the suit plot. After the demise of Azim Uddin, his heirs became the owners and the R.S. record was prepared in their name. Thereafter, Hazera Khatun got 39.50 decimals of land in the suit plot by amicable settlement. She sold out 5 decimals of land to one, Ali Akbar and Md. Mostofa. So she prayed for *saham* of 34.50 decimals of land in the suit plot.

Defendant nos. 17 to 22 contested the suit by filing a joint written statement stating *inter alia* that one Azim Uddin was the owner of the suit

land. Azim Uddin died leaving behind one wife, two sons and three daughters. Abdul Khalek and Abdus Sattar got 2.74 decimals of land of plot no. 395. Thereafter, Abdus Sattar sold out 12 decimals of land of the suit plot to defendant no.17 on 20.12.1974 by deed no.10592. Abdul Khalek transferred 60 decimals of land to the defendants on 31.03.1975 by deed no. 10593. After that on 19.10.1977, Abdul Khalek and Abdus Sattar transferred 48 decimals of land of the suit plot to the defendants by deed no. 14977. On 15.02.1978, Abdul Khalek and Abdus Sattar transferred a further 4 decimals of land to the defendants by deed no. 4819. Thus, the defendants became owners of 1.24 acres of land of the suit plot. They have been enjoying possession of the suit land. On 15.03.1987, the plaintiff threatened the defendant to dispossess them from the suit land. The plaintiffs have no title, right and possession in the suit land. So, the suit is liable to be dismissed.

In order to dispose of the suit, the learned Judge of the trial Court framed as many as 4 (four) different issues. To support the case, the plaintiff examined as many as 03(three) witnesses while the defendants examined 07(seven) witnesses. The plaintiffs and the defendants also produced several documents which were also marked as exhibits.

Upon hearing the parties and on perusal of the pleadings and evidence, the learned Joint District Judge, First Court, Cumilla dismissed the suit on contest against the contesting defendants and *ex parte* against the rest on 04.03.2019.

Being aggrieved by and dissatisfied with the judgment and decree dated 04.03.2019 passed by the learned Joint District Judge, First Court,

Cumilla in Title Suit (Partition Suit) No. 08 of 1988, the plaintiff as appellant preferred this appeal before this Court.

Mr. Ashfaque Rahman, the learned Advocate appearing for the appellant upon taking us to the impugned judgment and decree as well as the documents so appeared in the paper book at the very outset contends that the trial Court dismissed the suit finding wrongly that the plaintiff has failed to prove his title and out of 5 (five) sets of defendants being (1) Defendant nos. 17-22; (2) Defendant nos. 4, 5(Ka)-5 (Umo), 6/7/8; (3) Defendant nos. 124,131-136; (4) Defendant nos. 14/15 and (5) Defendant no. 3 filed separate petitions for *saham* before the concerned Court, however, the trial Court while passing the impugned judgment did not consider the *saham* of the respective parties.

He further contends that the plaintiff submitted deeds dated 18.03.1987 before the trial Court but no such documents were exhibited. He also submits that if the plaintiff-appellant gets an opportunity to submit and prove deed nos. 6952 and 6953 both dated 18.03.1987 then he would be able to prove title of at least 5(five) decimals of land though the plaintiff-appellant sought *saham* to the extent of 59 decimals of land and his entire claim was rejected outright by the trial Court. So, the learned Advocate humbly prays that the suit may kindly be sent back on remand before the trial Court to prove the suit.

None appears for the respondents to oppose the appeal.

We have heard the learned counsel for the appellants and perused the impugned judgment and decree, memorandum of appeal, evidence, as well as other materials on record.

The plaintiff-appellant submitted that the plaintiffs and his brother defendant no.14 jointly purchased 60 decimals of land from defendant no.1 by registered deed dated 09.02.2003 and by another deed dated 18.03.1987, the plaintiff purchased 4 decimals of land from defendant no. 3 and those documents were submitted before the trial Court but unfortunately the said documents have not been exhibited for which the trial Court drew adverse presumption as to the title and possession of the plaintiffs.

It appears from the evidence adduced by PW1, Selim Ullah that in examination-in-chief he stated that “আমার বাবা ৪ শতক জমি ৩নং বিবাদী থেকে খরিদ করে। ঐ দলিল ১৮/৩/৮৭ইং তাং- হয়। তার সই মঞ্জুরী দাখিল দিলাম।” (vide page no.349 of the paper book). It appears from the above-mentioned evidence that PW1 submitted deed dated 18.03.1987 before the trial Court however the same was not exhibited. The learned counsel on behalf of the plaintiffs-appellants submitted certified copies of deed nos. 6952 and 6953 both dated 18.03.1987 before us. It also appears from the written statement filed by the defendant no. 3 that she sold out 5 decimals of land of the suit plot to one Ali Akbar and Md. Mostafa. So, it is necessary to prove the genuineness of the said deeds by adducing evidence.

We find substance in the submissions made by the learned counsel appearing on behalf of the appellant to the effect that if the plaintiffs-appellants get the opportunity to submit, exhibit and prove deed nos. 6952 and 6953 both dated 18.03.1987 before the trial Court then they would be able to prove the title at least 5 decimals of land though the plaintiffs sought a *saham* of 59 decimals of land in the suit. We find that crucial evidence has come up that could be examined.

However, we are of the view given the above decision that the ends of justice would be met if the case is sent back on remand to the trial Court for passing an appropriate judgment and decree giving an opportunity to the plaintiffs to produce the certified copies of deed nos. 6952 and 6953 both dated 18.03.1987 and marked as exhibits and then reconsider evidences.

Section 107 of the Code of Civil Procedure empowers the appellate Court to remand a Case. We also get support from the decision passed in the case of *Superintendent Engineer, Power Development Board Vs. Madhumati Cinema Ltd.*, reported in 54 DLR(AD) 170, wherein it was held,

“Although the provision of remand should not be exercised to cure any defect or filling up any lacuna in the pleadings of the parties or the case of the parties but in order to decide the material issue concerned in the suit we are of the view that the order of remand was warranted in the facts and circumstances of the case...”

Given the above facts, circumstances and *ratio*, we find substance in the submission so placed by the learned Advocate on behalf of the appellant. Moreover, we find merit in the appeal.

Accordingly, the appeal is allowed, however without any order as to costs in this appeal.

The judgment and decree dated 04.03.2019 passed by the learned Joint District Judge, First Court, Cumilla in Title Suit (Partition Suit) No. 08 of 1988 is thus set aside and the suit is sent back on remand.

The trial Court is directed to call the relevant volume from the concerned sub registry office to prove the genuineness of deed nos. 6952 and 6953 both dated 18.03.1987 if so sought by the plaintiff-appellant.

However, the learned Joint District Judge, First Court, Cumilla is directed to dispose of Title Suit No. 08 of 1988 as expeditiously as possible, preferably within 06(six) months from the date of receipt of the copy of this judgment.

Let a copy of this judgment along with the lower Court records be communicated to the Court concerned forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.

Md. Sabuj Akan/  
Assistant Bench Officer