

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

First Appeal No. 29 of 2016

In the matter of:

Md. Yashin and others.

... Defendant -Appellants

-Versus-

Sayedul Haque @ Murad Hossain and others.

...Plaintiffs-Respondents

Mr. M. Khaled Ahmed, Senior Advocate with
Mr. S.M. Arif, Advocate

...For the appellants

Mr. Md. Mainul Islam, Advocate

... For the respondent nos. 1 and 2.

Ms. Fara Mahmuda (Shilpi), Advocate with
Ms. Esmat Sultana (Dipa), Advocates

... For proforma-respondent nos. 3(a)-3(p)

**Heard on 14.05.2025, 21.05.2025, 29.05.2025
and 02.06.2025**
Judgment on 22.06.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of the defendants in Other Class Suit No. 68 of 2005, this appeal is directed against the judgment and decree dated 25.10.2015 passed by the learned Joint District Judge, First Court, Chattogram in that suit decreeing the same against defendant no. 1 on contest and *ex parte* against the rest.

The precise facts leading to preferring this appeal are:

The present respondents as plaintiffs filed the aforesaid suit for partition of the suit land described in schedule 1(ka) to the plaint and further declaration to the effect that the B.S. record appertaining to the suit land is wrong, without basis and inoperative. The plaintiffs filed the suit seeking the following reliefs:

“ক) নালিশী ১নং তপশীলের আদায় ১(ক) তপশীলের সম্পত্তি সংক্রান্ত বাদীগণের বরাবরে বিভাগের প্রাথমিক ডিক্রী প্রদানের বিহীন আঞ্জা হয়।

খ) মূল বিবাদীগণ মাননীয় আদালতের নির্ধারিত মেয়াদ মধ্যে আপোষে অধীন বাদীগণের প্রাথমিক ডিক্রি প্রাপ্ত অংশ বিভাগ করিয়া না দিলে মাননীয় আদালত কর্তৃক সার্ভে জানা এডভোকেট কমিশনার নিয়োগ ক্রমে নালিশী সম্পত্তি বিভাগ করতঃ বাদীগণের বাস্তব দখল বজায় ক্রমে বিভাগের চূড়ান্ত ডিক্রি প্রদানের বিহীন আঞ্জা হয়।

গ) নালিশী সম্পত্তি সংক্রান্ত বি.এস. খতিয়ান ভুল, ভিত্তিহীন ও অকার্যকর মর্মে ঘোষণা মূলক ডিক্রি প্রদানের বিহীন আঞ্জা হয়।

ঘ) মোকদ্দমার খরচ প্রতিদ্বন্দ্বিতাকারী বিবাদীর বিরুদ্ধে ডিক্রী হয়।

ঙ) অপরাপর প্রতিকার যাহা মাননীয় আদালত সমীচীন মনে করেন তাহা প্রদানের বিহীন আঞ্জা হয়।”

The case of the plaintiffs in short is that the suit land belonged to two brothers named, Nazir Ullah and Habibullah and R.S. record was prepared in their names. Nazir Ullah died leaving behind one son,

Saber Ahmed. Saber Ahmed purchased the land from the heirs of deceased Habibullah. Then Saber Ahmed sold 53 decimals of land to Sarafat Ali by deed no. 7663 dated 24.12.1960 and deed no. 1605 dated 15.04.1961. P.S. record was prepared in the name of Sarafat Ali. Sarafat Ali died leaving behind his wife Ayesha Khatun, son Khairati Miah and defendant nos. 3 to 7. Ayesha Khatun sold her land to defendant no. 2, Rabeya Khatun. Khairati Miah sold his land and delivered possession to defendant no. 1. Defendant no. 3 sold his share of 8 *gandas* to Farid Miah by registered deed no. 5597 dated 09.08.1973. Farid Miah sold 1(ka) scheduled land and delivered possession of the same to the plaintiffs by deed no. 2716 dated 09.11.2003. The vendors of the plaintiffs had more land than what was sold to the plaintiffs for which they could not get the documents of the original viz-a-viz deed nos. 7663 dated 09.08.1973; 1605 dated 15.04.1961 and deed no. 5597 dated 09.08.1973. The plaintiffs have been enjoying the possession in the suit land. Defendant no.1 threatened the power of attorney holder of the plaintiffs to dispossess them from the suit land on 25.03.2005. The wife of defendant no. 2 has been enjoying the possession in suit land by cultivating through *barga*. On query, defendant no. 1 informed that B.S. *khatian* was not recorded in the name of the predecessors of the plaintiffs. Then the authorised person of the plaintiffs collected the certified copy of B.S. *khatian* and came to learn that B.S. *khatian* was recorded in the name

of defendant nos. 1 and 2. It appears that excess land was recorded in the name of defendant nos. 1 and 2. The plaintiffs requested the defendants to make partition and provide a *Nadabi* document but they refused on 29.03.2005. Hence, the plaintiffs instituted the suit.

On the contrary, defendant no.1 contested the suit by filing written statement denying all the material allegations so made in the plaint. It is stated in the written statement that Sarafat Ali died leaving behind 3 sons named, Khairati Miah, Farid Miah and Mozaffar Ahmed and 3 daughters named, Sohag Khatun, Anowara Begum and Nur Khatun. Mozaffar Ahmed sold 4 *gonda* (8 decimals) of land to defendant no. 1 by deed no. 7882 dated 19.09.1974. Khairati Miah also sold 3 *gonda*, 3 *kora* ($7\frac{1}{2}$ decimals) of land to defendant no. 1 by deed no. 5059 dated 09.06.1975. Thus, defendant no. 1 owned and possessed 15 decimals of land and B.S. record was prepared and published in the name of defendant nos. 1 and 2. Deed no. 5597 dated 09.08.1973 is forged and fabricated one. Deed no. 2716 dated 09.11.2003 is also forged, fabricated and inoperative. The plaintiffs have no right, title and possession over the suit land and hence the same is liable to be dismissed with cost.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 05(five) different issues and both the plaintiff and defendants examined 03(three) witnesses each in support of their respective cases. Apart from that, the plaintiff and the defendants

produced several documents which were marked as exhibit nos. ‘1-4 series’ and exhibit nos. ‘Ka-Ga series’ as well.

The learned Judge of the trial court after conclusion of the trial and upon considering the materials and evidence on record decreed the suit against defendant no. 1 on contest and *ex parte* against the rest by impugned judgment and decree dated 25.10.2015.

Being aggrieved by and dissatisfied with the said judgment and decree dated 25.10.2015 passed by the learned Joint District Judge, First Court, Chattogram the defendants as appellants preferred this appeal.

Mr. M. Khaled Ahmed, learned senior Advocate appearing on behalf of the appellants upon taking us to the impugned judgment and decree, plaint and written statement at the very outset submits that there are serious disputes on title, so the plaintiffs should have to pray for declaration of title apart from partition and hence, the suit is not maintainable and hence, the appeal is liable to be allowed. In support of his contention, the learned counsel referred a series of decisions passed in the cases of *Rezaul Karim and others Vs. Shamsuzzoha and others* reported in 49 DLR(AD)(1997) 68; *Md. Usman Mia and others Vs. Sunu Mia and others* reported in 13 BLD(1993)621; *Abdur Rab Faraji and others Vs. Nur Mohammad Mia and others* reported in 76 DLR(2024)602; *Ibrahim Ali Vs. Alhaj Md. Nazim Uddin Akhter and others* reported in 21 BLT(HCD)(2013) 276;

Korban Ali Mia Vs. Bodaruddin Kha reported in 22 ALR(HCD) 266; *A. Khaleque Khan Vs. Rasheda Bewa and others* reported in BCR (2004)(HCD) 163; *Jiban Chandra Sarkar Vs. Md. Rafizuddin Bepary and others* reported in VIII ADC (2011) 760; *Indra Mohan Bosak and others Vs. Chanchala Tani Bosak and others* reported in 73 DLR(2021) 111; *Ishaque Mia and another Vs. Abdul Mazid Mollah and others* reported in 1 BLC(1996) 276; *Government of Bangladesh and others Vs. Tenu Miah Tofadar and others* reported in 30 BLC(AD)(2025) 85; *Ajiruddin Mondal and another Vs. Rahman Fakir and others* reported in 13 DLR(SC)(1961) 191; *Fatema Khatun Vs. Fazil Mia* reported in 6 BLC(2001) 241; *Abdul Hamid and others Vs. Abul Hossain Mir* reported in 35 DLR(1983) 295.

He further contends that the plaintiffs should have prayed for declaration of title before challenging the propriety of B.S. record and as such the suit is liable to be dismissed.

In the same vein, Mr. S. M. Arif, the learned counsel appearing for the appellants contends that deed no. 5597 dated 08.08.1973 was not proper and lawful because the said deed was fraudulent, defective and the boundary of land was not mentioned in that deed which is a mandatory ingredient of any sale deed and the seller had no right, title and possession at the time of transferring the land but the trial Court

failed to appreciate such vital aspect and as such the impugned judgment and decree is liable to be set aside.

The learned counsel submits that the defendant prayed for dismissal of the suit but the trial Court wrongly gave *saham* of 5.25 decimals of land which is against the law.

He further submits that Khairati Miah got 9.41 decimals of land from his father Sarafat Ali by inheritance and accordingly he sold $7\frac{1}{2}$ decimals of land to defendant no. 1 by deed no. 5069 dated 09.06.1975 but the trial Court gave 5.24 decimals of land which is totally misconceived and bad in law and facts and as such the impugned judgment and decree is liable to be set aside.

He next contends that the plaintiffs failed to provide the original deed rather they filed certified copies and hence they failed to prove their case. He also contends that the trial Court did not discuss about B.S. *Khatian* and no issue was framed in that regard and the issues were not discussed separately yet the trial Court decreed the suit which is unlawful. With these legal submissions, the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and decree.

Per contra, Mr. Md. Mainul Islam, the learned counsel appearing for respondent nos. 1 and 2 vehemently opposes the contention taken by the learned counsel for the appellants and submits that, though the plaintiffs filed certified copies of deeds of the transfer

instead of its original but in this regard proper explanation was provided and the certified copy of a deed is admissible under section 79 of the Evidence Act, 1872.

He further contends that defendant no. 3, Mozaffar Ahmed sold 16 decimals of land to defendant no. 4, Farid Miah by registered deed no. 5597 dated 09.08.1973. Subsequently, Mozaffar Ahmed sold 8 decimals of self-same land to defendant no. 1, Md. Ibrahim by registered deed no. 7882 dated 19.09.1974. So, the earlier deed no. 5597 took precedence over the subsequent one and the learned counsel in this regard has referred section 47 of the Registration Act, 1908.

Mr. Mainul Islam next contends that the witnesses proved that the plaintiffs have been enjoying the right, title and possession over the suit land and accordingly B.S. record was correctly prepared in the name of the plaintiffs.

He next argues that it is absolute domain and discretion of the Court to grant the relief sought for or to grant any other relief that may seem fit and proper under Order 7, Rule 7 of the Code of the Civil Procedure.

He further contends that a partition suit is unique in nature and in this type of suit, Court can exercise some flexibility due to its equitable and comprehensive nature and the Court can grant relief not specifically prayed for to ensure actual partition.

The learned counsel submits that this Court as an appellate Court has ample power to determine a case finally following the provisions of section 107 of the Code of Civil Procedure, 1908.

However, in support of his contention, the learned counsel has referred to the decision passed in the cases of *Probir Kumar Rakshit Vs. Abdus Sabur and others*, reported in 14 MLR(AD)(2009) 10; *Sawpan Kumar Sarkar and others Vs. Md. Fazaluddin and others*, reported in 14BLC(2009)213; *Chairman, Bangladesh Steel Mills Corporation, now Bangladesh Steel and Engineering Corporation Vs. Md. Masood Reza and others*, reported in 30 DLR(SC)(1978) 169 and prays for dismissing the appeal.

At this, Ms. Farah Mahmuda (Shilpi), the learned Advocate appearing on behalf of the respondent nos. 3(a) to 3(p) has just adopted the submissions made by the learned counsel appearing on behalf of the appellants.

We have considered the submission so advanced by the learned counsel for the appellants and that of the respondents at length, perused the memorandum of appeal, including the impugned judgment and decree and all the documents appended in the paper book.

On going through the plaint, we find that the plaintiff described in paragraph no. 3 of the plaint that “১৩/০৪/১৯৬১ ইং তারিখে সম্পাদিত ও ১৫/০৪/১৯৬১ইং তারিখের ১৬০৫ নম্বর, তারিখ- ১২/১২/১৯৬০ ইং তারিখের সম্পাদিত

২৪/১২/১৯৬০ ইং তারিখের ৭৬৬৩ নম্বর এবং ০৮/০৮/১৯৭৩ ইং তারিখের সম্পাদিত ও ০৯/০৮/১৯৭৩ ইং তারিখের ৫৫৯৭ নম্বর রেজিস্ট্রিয়ুক্ত বায়া এবং বায়ার বায়া আসল দলিলের বাদীগণের নিকট বিক্রয় বাদ আরও সম্পত্তি থাকায় আসল দলিল বাদীগণের বরাবরে হাওলা করা হয় নাই। বাদীগণের সহি মুহুরী নকল সংগ্রহ করিয়াছেন।”

PW1, Aminul Haque in his deposition by corroborating the assertion of the plaintiff stated that “৩নং বিবাদী ৪নং বিবাদীর নিকটে ০৯/০৮/১৯৭৩ ইং তারিখের ৫৫৯৭ দলিলে হস্তান্তর করেন। এই বায়ার আসল দলিল আমাদের ছাড়া আরো জমি থাকার কথা জানান। তাই সেই মুহুরী নকল দিয়াছি।”

In examination-in-chief, PW1 further stated, “১৫/০৪/১৯৬১ ইং তারিখের ১৬০৫ দলিলের জাবেদা নকল, ২৪/১২/১৯৬০ তারিখের ৭৬৬৩ নং কবলার জাবেদা নকল, ০৮/০৮/১৯৭৩ইং তারিখের ৫৫৯৭ নং কবলার অবিকল নকল, ইং ০৯/১১/২০০৩ তারিখের ২৭১৫ দলিলের মূলকপি দিলাম। প্রদঃ ৪ সিরিজ।”

In view of the above evidence, we find that an appropriate explanation was given by the plaintiffs. Moreover, the certified copy of a deed is admissible under section 79 of the Evidence Act, 1872.

So, we find no substance in the contention raised by Mr. Arif, learned counsel appearing for the appellants regarding filing of certified copies instead of original of a deed.

The learned counsel for the appellants claimed that deed no. 5597 dated 08.08.1973 is forged, fraudulent and defective since the boundary of the purchased land was not mentioned in the deed. But, it appears from the evidence adduced by PW1, Aminul Haque that when he produced the certified copy of deed no. 5597 as exhibit- ‘4(Kha)’

the defendants did not raise any objection. However, it is our considered view that omission in describing boundaries of a land can create serious legal complications about the identification and possession of the property but it does not make a sale deed void by itself. At any time a deed may be rectified by correcting or adding the boundaries.

The defendant-appellants claimed that Md. Ibrahim (defendant no.1) purchased 8 decimals of land from Mozaffar Ahmed (defendant no. 3) by deed no. 7882 dated 19.09.1974 (Exhibit-‘Ka’). But it appears from Exhibit-4(Kha) that the self-same land measuring 16 decimals of land was sold by the above-mentioned Mozaffar Ahmed to Farid Miah (defendant no. 4) by deed no. 5597 dated 09.08.1973. It is a settled principle that an earlier deed will take precedence over the subsequent deed. So, the trial Court has very rightly held that “মোজাফফর আহাম্মদ ১৯/০৯/১৯৭৪ ইং তারিখের ৭৮৮২ নং কবলামূলে এই বিবাদীর নিকট ৪ গন্ডা জমি বিক্রয় করিয়া দখল বুঝাইয়া দেয়। কিন্তু এই বিবাদীপক্ষ উক্তরূপ দাবী করিলেও মোজাফফর আহাম্মদ তাহার স্বত্ব ০৯/০৮/১৯৭৩ ইং তারিখের ৫৫৯৭ নং দলিলমূলে ফরিদ মিয়ার নিকট বিক্রয় করিয়া দিয়াছে। মোজাফফর আহাম্মদ উক্ত দলিলমূলে ফরিদ মিয়ার নিকট বিক্রয় করার পর তাহার কোন স্বত্ব অবশিষ্ট না থাকায় ২৯/০৯/১৯৭৪ ইং তারিখের ৭৮৮২ নং দলিলমূলে ৪ গন্ডা সম্পত্তিতে ১নং বিবাদীর কোন স্বত্ব অর্জিত হয় নাই।”

In the decisions, reported in 15 DLR 77, this Court also held:

“In case of successive transfers of the self-same property in favour of different persons by a common vendor by registered documents, the

dispute as to the precedence of one document over the other has to be determined in accordance with the principles laid down in section 47 of the Registration Act.”

In *Ramaswami Pillai Vs. Ramaswami Naickar and others*, reported in AIR 1960, Madras 396 it was held that sale executed prior in point of time would prevail. In *Azizuddin alias Ainuddin Kha Vs. Abu Taleb Sarder*, reported in 35DLR(1983)360, this Court held: “Execution of the defendant’s kabala being earlier in point of time will have precedence over the plaintiff’s kabala.”

In view of the above *ratio*, we are of the view that the claim of defendant no.1 in respect of 8 decimals of land purchased by subsequent deed no. 7882 dated 19.09.1974 is not sustainable and the defendant no. 1 has not acquired any title by the said deed.

It is admitted that Sarafat Ali died leaving behind 01(one) wife named, Ayesha Khatun, 03(three) sons named, Khairati Miah, Farid Miah and Mozaffar Ahmed and three daughters named, Sohag Khatun, Anowara Begum and Nur Khatun. Out of 48 decimals of land, his wife is entitled to $\frac{1}{8}$ th share that is 6 decimals, each daughter is entitled to 4.6666 decimals and each son is entitled to 9.33 decimals of land. Thus, Khairati Miah was entitled to 9.33 decimals of land. He sold $7\frac{1}{2}$ decimals of land to defendant no. 1, Md. Ibrahim by deed no. 5059 dated 09.06.1975. The plaintiff or anybody else did not raise any objection that Khairati Miah sold out excess shares of his 9.33

decimals of land. So, we cannot understand how the trial Court found that: “১নং বিবাদীর আরো দাবী হইল, খয়রাতি মিয়া ০৯/০৬/১৯৭৫ ইং তারিখের ৫০৬৯ নং দলিলমূলে এই বিবাদীর নিকট ৩ গন্ডা ৩ কড়া বা সাড়ে ০৭ শতক সম্পত্তি বিক্রয় করে। কিন্তু নালিশী সম্পত্তিতে খয়রাতি মিয়ার ওয়ারিশসূত্রে ৫.২৪ শতক সম্পত্তিতে স্বত্ব রহিয়াছে এবং উক্ত দলিল বাবদ ৫.২৪ শতক কার্যকর থাকিবে।”

In support of its view the trial Court held in its judgment held that “বাদীপক্ষ হাবিব উল্লাহর ওয়ারিশ হইতে খরিদসূত্রে স্বত্বান দাবী করিলেও তাহার উক্ত দাবীর সমর্থনে কোন দলিলপত্র দাখিল করে নাই।”

However, it appears from Exhibit-4 and 4‘Ka’ that the plaintiffs filed certified copies of deed no. 1605 dated 15.04.1961 and deed no. 7663 dated 24.12.1960. In examination-in-chief PW1, Aminul Haque stated that “আমি B.S. ৪০৭৮, ১৩৮৫ নং খতিয়ানের জাবেদা নকল দিলাম, প্রদ-৩ সিঃ, ইং ১৫.০৪.১৯৬১ তারিখের ১৬০৫ দলিলের জাবেদা নকল, ২৪.১২.১৯৬০ ইং তারিখের ৭৬৬৩ নং কবলার জাবেদা নকল, ০৮.০৮.১৯৭৩ ইং তারিখের ৫৫৯৭ নং কবলার অবিকল নকল, ইং ০৯.১১.২০০৩ তারিখের ২৭১৫ নং কবলার মূল কপি দিলাম, প্রদ-৪ সিঃ।”

The documents were exhibited without any objection of the defendants rather both parties admitted that Saber Ahmed sold the suit land to Sarafat Ali by deed no. 7663 dated 24.12.1960 and deed no. 1605 dated 15.04.1961.

Further, the DW1, Md. Mohosin stated in his evidence that “সাবের আহম্মেদের নিকট হইতে সারারফত আলী ২৪.১২.১৯৬০ তারিখে ৭৬৬৩ নং কবলা এবং ১৫.০৪.১৯৬১ তারিখের ১৬০৫ নং কবলায় খরিদ করিয়া ভোগ দখল করে। তাহার নামে পি.এস. খতিয়ান প্রচার হয়।”

He further deposed that “খয়রাতি মিয়া ০৯.০৬.১৯৭৫ তারিখের ৫০৬৯ নং দলিলে ৩ গভা ৩ কড়া জমি এই বিবাদীর নিকট বিক্রয় করিয়া দখল দেয়। ... ০৯.০৬.১৯৭৫ তারিখের ৫০৬৯ নং মূল কবলা দিলাম। প্রদঃ ‘ক’ সিরিজ; ...।”

Subsequently, P.S. record No. 4078 (Exhibit- 3‘Ka’) was also prepared in the name of Sarafat Ali in respect of the suit land. So, it is our considered view that the trial Court should have distributed *saham* on the basis of 48 decimals of land. Since Khairati Miah was the owner of 9.33 decimals of land and he sold $7\frac{1}{2}$ decimals of land to defendant no. 1, so he is entitled to $7\frac{1}{2}$ decimals instead of 5.24 decimals of land. Hence, the impugned judgment and decree should be modified in respect of the *saham* given to defendant no. 1 by the trial Court.

A suit can be sent back to the trial Court on remand for modification. But it is wise to follow the provision provided in section 107 read with Order 7, Rule 7 of the Code of Civil Procedure to resolve the controversy between the parties once for all by an appellate Court. We find that the suit was instituted in the year 2005, that is 20 years ago. So, at this stage order of remand will create additional expenditure, agony of fresh hearing, prolongation of litigation and multiplicity of proceedings.

In this regard, reliance may be placed in the decision passed in the case of *Begum Sayada Murguba Khatun Vs. Dewan Shafiur*

Reza Chowdhury and another, reported in 30 DLR(1978) 179 wherein it was held:

“Mere disagreement with the findings of the trial Court is no ground for the appellate Court to send a case on remand when the evidence on record is sufficient to decide the matter finally. Order 41, Rule 24 of the Code is a clear and standing bar in such cases. Under Order 41, Rules 23 and 25, the code clearly lays down that there can be no remand unless the conditions laid down in those rules exist.”

We also get support of such view from the decision passed in the case of ***Attor Miah and another Vs. Mst. Mahmuda Khatun Chowdhury***, reported in 43 DLR (AD)(1991) 78, where the Appellate Division held:

“Unnecessary and totally inexplicable order of remand entails hardship, agony of a fresh hearing, delay additional expenditure ...”

In ***Dr. Rezia Khatun Vs. Bhanu Guha and another***, reported in 1986 BLD(AD) 135 our apex Court also observed:

“The long time of judicial decisions is to the effect that the remand order should be avoided as far as possible and even the Privy Council in some cases

observed that indiscriminate order of remand tantamounts to shirking the responsibility.”

So, following the provision of Order 7, Rule 7 and Section 107 of the Code of the Civil Procedure, we are of the opinion that defendant no. 1 will get $7\frac{1}{2}$ decimals of land in the suit land. The plaintiffs will get 9 decimals of land as decreed by the trial Court.

On going through the impugned judgment and decree, it appears that the trial Court has neither framed any issue nor made any discussion in respect of propriety of B.S. record. Since the plaintiff prayed for a declaration that the B.S. record is wrong, without any basis and inoperative, so it was incumbent upon the trial Court to resolve the matter upon framing specific issue and examine whether such record was wrong or right. However, we find that the B.S. record is wrong so far as it relates to the entry of the excess share in the name of defendant no. 1, since there is no basis in excess share and the entry of the name of the plaintiffs in respect of 9 decimals of land is required to be inserted. Since we are not inclined to send back the suit to the trial Court on remand, so we do hereby declare that the B.S. record is wrong and without any basis.

Given the above facts and circumstances and *ratio* settled, we do hereby modify the judgment and decree dated 25.10.2015, passed in Other Class Suit No. 68 of 2005 as discussed and observed above.

Resultantly, the appeal is disposed of, however, without any order as to costs.

The judgment and decree dated 25.10.2015 passed by the learned Joint District Judge, First Court, Chattogram in Other Class Suit No. 68 of 2005 is hereby modified to the effect that the plaintiff will get 9 decimals and the defendant no. 1 will get $7\frac{1}{2}$ decimals of land. The parties are directed to pay the requisite Court fees to have their respective *saham* partitioned.

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

Md. Mozibur Rahman Miah, J.

I agree.