

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.487 of 2018

Hiren Chandra Paul and others

... Appellants

-Versus-

Bijoy Paul being dead his heirs- Roni Paul and others

... Respondents

Mr. Malik Abdullah Al-Amin with

Mr. Ranjit Kumar Barman, Advocates

... For the appellants.

Mr. Md. Shahjahan Chowdhury with

Mr. Shahin Ahmed Khan

Mr. Md. Hadiul Islam,

Mr. Md. Parvez Alam.

Mr. Md. Baschu Mia, Advocates

....For the Respondent Nos.2 and 3.

Heard on 20.01.2026 and 22.01.2026.

Judgment on 25.01.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 27.05.2018 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.638 of 2017.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 32 decimal land seeking saham for 16 decimal land and for further declaration that preparation of R. S. Khatian No.2 in the name of defendant No.1 for above property is erroneous and registered kabla deed No.3666 dated 31.12.2008 of

Dohar Sub-registry Office executed by defendant No.1 to defendant Nos.3 and 4 is not binding upon the plaintiffs. It was alleged that above 32 decimal land belonged to Anath Chandra Paul who died leaving two sons namely Birendra Nath Paul predecessor of defendant Nos.3-4 and Dhirendra Nath Paul predecessor of the plaintiffs as heirs and S. A. Khatian No.351 was correctly recorded in their names. Defendant No.2 claiming title and possession in above 32 decimal land filed Title Suit No.24 of 1984 which was dismissed on contest on 04.05.1987 and above defendant preferred title of the Title Appeal No.125 of 1987 against the judgment and decree of the trial Court which was also dismissed on 22.08.1999. The predecessor of the defendants Direndra Nath Paul alone paid all expenses for above suit. The father of the plaintiffs Birendra Nath Paul started living in Faridpur District and died on 03.01.2010. Above property has not been partitioned by meets and bounds and defendant No.1 refused to effect an amicable partition on 16.06.2011.

Defendant Nos.1 and 3-4 contested above by filing two separate written statements defendant No.1 alleged that defendant No.2 claiming that she has purchased above land from now deceased plaintiff Direndra Nath Paul filed Title Suit No.339 of 1977 which was subsequently renumbered as Title Suit No.24 of 1984. In fear of above defendant No.2 Direndra Nath Paul left the disputed property about 70 years back along with his family and started living in Sonapur

Village of Faridpur District. Defendant No.1 alone contested above Civil Suit No.24 of 1994 which was dismissed on 04.05.1987 and defendant No.2 preferred Civil Appeal No.125 of 1987 which was also dismissed on 22.08.1999. Defendant No.2 filed Miscellaneous Case No.2 of 2000 which was also dismissed on 26.04.2004. Plaintiffs predecessor Direndra Nath Paul did not bear cost of above litigation and on consideration of above circumstances executed an Angikarnama on 15.12.1993 waiving his claims over above property. Defendant is in exclusive possession of above 32 decimal land by constructing dwelling huts and paying rent to the Government. Defendant No.1 has transferred above 32 decimal land to his two sons defendant Nos.3 and 4 by registered kabla deed dated 13.12.2008 and they are in possession of above property.

At trial plaintiffs examined three witnesses and defendants examined five. Documents of the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants were marked as Exhibit Nos."Ka" to "Kha" series.

On consideration of the facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit holding that the plaintiffs being out of possession of above property they cannot get a decree for partition without declaration of title and recovery of possession.

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

Mr. Malik Abdullah Al-Amin, learned Advocate for the appellants submits that admittedly above 32 decimal land belonged to Anath Chandra Paul who died leaving two sons plaintiffs predecessor Direndra Nath Paul and defendant No.1 as heirs and above land was rightly recorded in their names in S. A. Khatian No.951. It is also admitted that defendant No.2 claiming title and possession in above property filed Title Suit No.24 of 1984 which was dismissed on 04.05.1987 (Exhibit No.3) and against above judgment she preferred Title Appeal No.6 of 2009 which was also dismissed on 22.08.1999 (Exhibit No.4). It is also admitted that R. S. Khatian No.2 of above property was erroneously recorded in the name of defendant No.2 who had no right, title, interest and possession of above property. The defendants claimed 16 decimal land of plaintiffs predecessor Direndra Nath Paul on the basis of and unregistered Angicarnama dated 15.12.1993. But the plaintiffs could not prove authenticity and effectiveness of above deed of Angicarnama by legal evidence and above Angicarnama cannot be treated as a deed of transfer of title. The appellants submitted a petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint for incorporating a relief for declaration of title. But the appellants do

not want to press above petition for amendment of plaint which may be rejected for non prosecution and the suit may be decreed granting separate saham to the appellants for 16 decimal land.

On the other hand Mr. Md. Shahjahan Chowdhury, learned Advocate for respondent Nos.2(a)-2(b) and 3 submits that plaintiffs predecessor Direndra Nath Paul left the dwelling huts in the disputed property about 70 years back and started living in Village-Sonatala of Faridput District and now deceased defendant No.1 Direndra Nath Paul alone is in exclusive possession in above property. Defendant No.2 claiming title in above land on the basis of purchase from Direndra Nath Paul filed Title Suit No.24 of 1984 and Birendra Nath Paul alone contested above suit which was dismissed on 04.05.1987 and defendant No.2 preferred Title Appeal No.125 of 1987 which was also dismissed on 22.08.1999. Birendra Nath Paul alone born all expenses of above litigation and Direndra Nath neither contested above suit and appeal nor paid any cost of above litigation. As such above Direndra Nath Paul executed and notarized a deed of Angicarnama to his brother Direndra Nath Paul on 15.12.1993 relinquishing all his claim over above 16 decimal land and from above date Direndra Nath Paul is possessing 32 decimal land and transferred the same to defendant Nos.3 and 4 by a registered kabra deed dated 31.12.2008 and delivered possession. The learned Advocate further submits that above deed dated 15.12.1993 although

designated as a deed of Angicarnama in fact above deed was a deed of sale and by above deed title and possession of Direndra Nath Paul was extinguished. In support of above submissions the learned Advocate refers to the case law reported in ILR Vol-34 Page No.139.

The learned Advocate lastly submits that Direndra Nath Paul father and predecessor of defendant Nos.3 and 4 also acquired valid title in above 16 decimal land of Direndra Nath Paul by adverse possession. In support of acquisition of title by adverse possession against co-sharer the learned Advocate refers to the case law reported in PLD 1957 (SC) Page-251.

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

It is admitted that 32 decimal land belonged to Anath Chandra Paul who died leaving two sons plaintiffs predecessor Direndra Chandra Paul and now deceased plaintiff No.1 as heirs and in their names S. A. Khatian No.951 was rightly prepared. Defendant Nos.3 and 4 are two sons of Birendra Nath Paul who claims title in above 32 decimal land on the strength of a registered deed of sale dated 31.12.2008 from their father. It is also admitted that defendant No.2 claiming title and possession in above 32 decimal land filed Title Suit No.24 of 1984 which was dismissed on 04.05.1987 and against above judgment and decree defendant No.1 preferred Title Appeal No.125

of 1987 which was also dismissed on 22.08.1999. Defendant No.2 also filed Miscellaneous Case No.6 of 2009 which was also dismissed on 26.04.2004. As such defendant No.2 did not have any lawful right, title, interest or possession in above 32 decimal land but erroneously above 32 decimals land was recorded in R. S. Khatian No.2 in the name of defendant No.2.

It is admitted that Direndra Nath Paul along with family left his dwelling house in the disputed land and started living in Sonatala Village of Faridpur District about 70 years back and above 32 decimal land was in possession of defendants predecessor Direndra Chandra Paul. Plaintiffs have filed above suit for partition claiming saham for 16 decimal land as heirs of Direndra Chandra Paul.

Defendants claim that title of Direndra Chandra Paul came to an end by unregistered deed of Angicarnama dated 15.11.1993. While giving evidence as DW1 defendant No.3 Bijoy Paul produced above deed of Angicarnama which was marked as Exhibit No."Murdanna". It turns out from the recital of above Angicarnama that in recognition of bearing all expenses of Title Suit No.24 of 1984 and Title Appeal No.125 of 1987 Direndra Nath Paul relinquished all claims over 16 decimal land in favour of his brother. The learned Advocate for the respondents claims that above unregistered deed of Angicarnama is in fact a deed of sale and in support of above submissions refers to the case law reported in ILR Vol-34 Page-141. Above cited case was

relating to an unregistered deed of compromise between the co-sharers as to partition of a joint property and it was held that a deed of compromise between the co-sharers although not registered can be given effect. The facts and circumstances of above cited case is distinguishable from the facts and circumstances of this case and above case law has no manner of application in this case.

Title in immovable property can be transferred by sale lease, gift and mortgage will or exchange as has been provided in the transfer of property Act, 1882. A deed of sale as has been defined in Section 54 of the Transfer of Property Act, 1982 which consists of two indispensable ingredients, receipt of consideration and expressed intention to transfer of title and such a deed requires registration.

In above deed of Angicarnama (Exhibit No.Na) none of above ingredients are available and above deed of Angicarnama cannot be constituted as a deed of sale. As such title of Direndra Nath Paul in above 16 decimal land remained unaffected by above deed.

Respondents further claim that their predecessor Birendra Nath Paul acquired title by adverse possession against his co-sharer Direndra Nath Paul pursuant to long and uninterrupted possession for 70 years.

Acquisition of title by adverse possession is the wild and unlawful mode of acquisition of title and the person who claims title by adverse possession must make specific mention as to his entry

into possession and when his possession became adverse against the true owner and the date when above adverse possession matured into valid title and prove above claims by legal evidence. Claiming of title by adverse possession against a co-sharer is more difficult since possession of one co-sharer is regarded as possession of all the co-sharers. When one co-sharer is found in possession of joint properties it is to a presumed on the basis of joint title. The co-sharer in possession cannot render his possession adverse to the other co-sharers not in possession merely by any secret hostile claim on his own part in derogation of the title of other co-sharers. It is a rule of law that between co-sharers there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute adverse possession.

As mentioned above in above Title Suit No.24 of 1984 defendant No.2 claimed title in above 32 decimal land stating that above property belonged two brothers Direndra Nath Paul and Birendra Nath Paul and Birendra Nath Paul contested above suit denying above plaintiffs title and possession. Similarly Birendra Nath Paul obtained deed of Angicarnama from his brother Direndra Nath Paul on 18.12.1999 admitting title and possession of Birendra Nath Paul in above 16 decimal land. As such possession of Birendra Nath Paul in above 16 decimal land on the basis of above Angicarnama

was not adverse against plaintiffs predecessor Direndra Nath Paul. Defendant Nos.3-4 claimed title and possession in above land on the basis of registered kabla deed dated 13.12.2008 from their father which is also lawful possession based on a legal document. The defendants could not raise a consistent claim of adverse possession against their co-sharer by setting out specific averments let alone prove the same by legal evidence.

In support of defendants claim of acquisition of title by adverse possession the learned Advocate for the respondents refers to the case law reported in PLD Vol-9 at Page-251 but the facts and circumstances of above cited case is completely distinguishable from the facts and circumstances of this case and above case law has no manner of application in this particular case.

In above view of the facts and circumstances of the case and materials on record we hold that the learned Joint District Judge committed serious illegality in dismissing above suit for 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 this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 27.05.2018 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit

No.638 of 2017 is set aside and above suit is decreed on contest against defendant Nos.1 and 3-4 and ex-parte against the rest in preliminary form and plaintiffs are granted saham for 16 decimal land. Defendants are directed to effect an amicable partition for above land within 60 days from the date of receipt of this order in default the plaintiffs shall get the same through Court. It is further declared that R.S. Khatian No.2 of above property was erroneous and registered kabla deed No.2666 dated 13.12.2008 executed by defendant No.1 to defendant Nos.3-4 is not binding upon the plaintiffs.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER