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.94 OF 2020

Md. Baccu Miah and others

.... Appellants

-Versus-

Md. Nur Uddin and others

.... Respondents

Mr. Md. Amzad Hossain, Advocate with

Ms. Mitu Sikder, Advocate

….For the appellants

None appears

…. For the respondents.

Heard and Judgment on 05.11.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 04.04.2019 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.88 of 2011 dismissing the suit ex-parte.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 28.20 decimal land appertaining to C. S. Khatian No.157, S. A Khatian No.174, R. S. Khatian No.43 and City Survey Khatian No.1805 alleging that 73 decimal land including above 28.20 decimal belonged to six brothers namely Toaz Ali, Ayad Ali, Hamed Ali, Abdul Mazid, Khaleque, Sheikh Tenu. Abdul Mazid died leaving above fiver brothers as heirs. Plaintiffs are heirs of above Toaz

Ali, Ayad Ali and Hamid Ali and defendant Nos.1 and 2 are heirs of Sheikh Tenu. Above Sheikh Tenu by amicable partition was in exclusive possession in 69 decimal land of disputed and undisputed plots and he transferred above land to Delower Hossain by registered kabla deed dated 28.10.1966. As such Sheikh Tenu did not have any subsisting title and possession in 73 decimal land of the disputed plot but disputed R. S. Khatian of above land has been erroneously recorded in the name of defendant Nos.1 and 2 heirs of above Sheikh Tenu. On the basis of above erroneous record above defendants denied plaintiff's title.

Despite service of process no defendant entered appearance and contest above suit and the learned Joint District Judge fixed above suit for ex-parte disposal.

Plaintiffs examined two witnesses and produced and proved documents which were marked as Exhibit Nos.1 series – 12.

On consideration of above materials on record the learned Joint District Judge dismissed above suit ex-parte.

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. Md. Amzad Hossain, learned Advocate for the appellants submits that the plaintiffs are successive heirs of C. S. recorded tenant Toaz Ali, Ayad Ali and Hamid Ali and defendant Nos.1 and 2 are heirs of Sheikh Tenu. Sheikh Tenu having transferred his total share in the disputed plot his heirs did not inherit anything but relevant R. S. Khatian

has been erroneously recorded in their names. PW1 gave consistence evidence in support of above case and produce and prove relevant C. S., S. A. and R. S. Khatians. But the learned Joint District Judge rightly found that City Survey Khatians of the disputed land being the latest survey khatians the plaintiffs should have produced those documents and implead those tenants as defendants. Above land has been recorded in two City Survey Khatians being Nos.1805 and 4099. By amendment of the plaint the plaintiff mentioned City Survey Khatian No.1805 in the plaint but erroneously City Survey Khatian No.4099 was not brought into the schedule of the plaint. The plaintiff also did not produce certified copies of above khatians nor impleaded the tenants of above City Survey Khatians as defendants in the suit. The learned Joint District Judge dismissed above suit on procedural grounds for defect of the parties not on the merit of the suit. As such the ends of justice will be met if the judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving the plaintiffs and opportunity to amend the plaint and adduce further evidence.

Respondents did not enter appearance nor anyone was found available at the time of hearing of the First Appeal.

We have considered the submissions of the learned Advocate for the appellants and carefully examined the plaint, exhibited documents and impugned judgment and decree.

It turns out from certified copy of C. S. Khatian Nol.157 that 3.21 acres land including 73 decimal land of Plot No.30 was recorded in the

names of plaintiffs predecessors Toaz Ali, Aayad Ali and Hamid Ali and defendant's predecessor Sheikh Tenu and Abdul Mazid and Khaleque. Plaintiffs claim that Sheikh Tenu transferred 69 decimal land including his total land of Plot No.13 by registered kabla deed dated 28.10.1966 PW1 produced a certified copy of above kabla deed which was marked as Exhibit No.9. It turns out from above statements of the plaint and evidence of PW1 that above dispute is among the co-sharers as to the extent of their share in the undivided ejmali property. A suit for declaration of title at the instance of one co-sharer against other co-sharers for a part of undivided property is not tenable in law. As such the learned Joint District Judge rightly held that the plaintiffs should have instituted a suit for partition for total property of predecessors of the plaintiffs and the defendants.

In above suit under Section 42 of Specific Relief Act, 1877 plaintiffs have sought declaration of title alleging that the R. S. Khatians have been erroneously recorded in the names of defendant Nos.1 and 2. But at the time of filing of the suit the latest survey khatians were City Survey Khatians which also stands in the names of others persons not in the names of the plaintiffs. The learned Advocate for the appellants concedes that two City Survey Khatians being Nos.1805 and 4099 have been prepared for 73 decimal land of C. S. Plot No.13 in the names of other persons. As such the plaintiffs should have produced certified copies of above khatians and implead the maliks of above two City Survey Khatians as defendants but the plaintiffs did not do that and the learned

Joint District Judge rightly found that abvoe suit as a suit for declaration of title was bad for defect of parties.

The learned Advocate for the appellants rightly pointed out that the appointed Advocate for the plaintiffs made serious errors in drafting the plaint as well as making omission in producing latest survey khatians being City Survey Khatians and adducing relevant evidence at trial causing dismissal of the suit.

On consideration of facts and circumstances of the case and materials on record we hold that all above deficiencies in the plaint was due to lack of skill and knowledge of law of the appointed Advocate of the plaintiffs at the trial Court and the plaintiffs should not be made to suffer for the errors and omissions committed by appointed Advocate.

In above view of the facts and circumstances of the case and materials on record we hold that 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 the plaintiffs an opportunity to amend the plaint adduce further evidence after service of fresh summons upon all the defendants.

In the result, the First Appeal is allowed.

The judgment and decree dated 04.04.2019 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.88 of 2011 is set aside and above suit is remanded to the trial Court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further

evidence and after service of fresh summons upon all the defendants in accordance with law.

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