

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL APPELLATE JURISDICTION)

*Present:*

*Mr. Justice S M Kuddus Zaman*

*And*

*Mr. Justice Sayed Jahed Mansur*

**First Appeal No.290 of 2000**

Hafiza Bewa being dead her heirs and successors and  
others

....Appellants

-Versus-

Mojammel Hossain and others

....Respondents

Mr. M. Khaled Ahmed, Senior Advocate with

Mr. Mridul Datta, Advocate

Mr. Habibur Rahman, Advocate

Ms. Nasrin Sultana Rina, Advocate

Mr. Al-Amin, Advocate

Ms. Nadia Mehrin, Advocate and

Ms. Nasrin Ferdous, Advocate

.... For the appellants.

None appears....For the respondents.

**Heard on 04.11.2025 and Judgment on 12.11.2025**

**S M Kuddus Zaman, J:**

This First Appeal is directed against the impugned judgment and decree dated 28.11.1999 passed by the learned Sub-ordinate Judge, 1<sup>st</sup> Court, Natore in Other Class (Partition) Suit No.13 of 1992 dismissing the same.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of land of C. S. recorded tenant Hafez Mondal seeking a separate saham for  $14.54\frac{5}{6}$  acres land.

It was stated that Hafez Mondal while owning and possessing above property died leaving two daughters Sonavan and Ayesha and two wives Fulzan and Osimon as heirs. Above Ayesha died leaving husband Kazimuddin and one son plaintiff Eakub Ali as heirs. Plaintiff and contesting defendant Nos.6-8 are sons of above Kazimuddin. Above Kazimuddin died leaving plaintiff and defendant Nos.6-8 as four sons and one daughter defendant No.4 as heirs. Plaintiff as heir of Ayesha and Kazimuddin inherited  $14.54\frac{5}{6}$  acres land. But above land has not been partitioned by meets and bounds and the defendants denied to effect an amicable partition.

Defendant Nos.6-8 contested above suit by filing a joint written statement alleging that plaintiff Yeakub and defendants predecessor Kazimuddin partitioned above property of Ayesha by a registered deed of partition dated 17.04.1954 and on the basis of above partition plaintiff and Kazimuddin possessed their respective land peacefully and transferred to several persons and above property has been correctly recorded in the names of above plaintiff and Kazimuddin and their purchasers in relevant S. A. and R. S. Khatians. Plaintiffs having transferred his fully his heirs in above khatians he does not have any subsisting interest in above khatians.

At trial plaintiffs examined four witnesses and defendants examined five. Documents of the plaintiffs were marked as Exhibit

Nos.1-3 series and those of the defendants were marked as Exhibit Nos.1-D series.

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 above judgment and decree of the trial Court above plaintiffs as appellants moved to this Court and preferred this Appeal.

Mr. M. Khaled Ahmed, learned Senior Advocate for the appellants submits that undisputedly Hafez Mondal was the rightful owner and possessor of 38.2 acres land who died leaving behind two daughters Ayesha and Sonavan, and two sisters Khabiron and Obiron as heirs. Above Ayesha died leaving plaintiff as only son and Kazimuddin as husband. Above Kazimuddin died leaving plaintiff and defendant Nos.6-8 four sons and one daughter defendant No.4 as heirs. Plaintiff also purchased 1 acre 45 acre land from Mofizuddin by registered kabla deed dated 12.04.1983 and plaintiff further purchased land from defendant Nos.6-8. The learned Advocate submits that plaintiff Yeakub did not execute and register impugned deed of partition dated 17.04.1954 (Exhibit No."C") and above deed was never acted upon and relevant S.A. and R.S. khatians of above property were erroneously recorded. But the learned Judge of the trial Court utterly failed to appreciate above facts and circumstances of the case and

materials on record and most illegally dismissed above suit which is not tenable in law.

The learned Advocate lastly submits that the plaintiff could not clearly make out his case in the plaint as to what quantity of land plaintiff inherited from his mother and what quantity of land he claims from his father Kazimuddin nor any clear stand was taken as to the registered deed of partition dated 17.04.1954 and R. S. and S. A. khatians of above property. Nor all relevant documents were produced at trial causing unfortunate dismissal of the suit. Since this is a suit for partition the impugned judgment and decree may be set aside and the suit may be remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence.

No one appears on behalf of the respondents at the time hearing of this First Appeal although the First Appeal appeared in the list for hearing on several dates.

We have considered the submissions of the learned Advocate for the appellants and carefully examined all materials on record.

The plaintiff has saham in above property as a successive heir of Hafez Mondal alleging that Hafez Mondal died leaving two daughters Ayesha and Sonavan and two wives Fulzan and Osimon as heirs. It is not disputed that above Ayesha died leaving one son plaintiff Yeakub and husband Kazimuddin as heirs.

Defendant Nos.6-8 have in their written statement alleged that above Kazimuddin and plaintiff Yeakub partitioned the land which they inherited from Ayesha by a registered deed of partition dated 17.04.1954 and on the basis of above registered deed of partition they possessed their respective property which was correctly recorded in the relevant S. A. and R. S. Khatians.

The plaintiff who is a party to above registered deed of partition dated 17.04.1954 (Exhibit-“C”) did not deny the legality, propriety and effectiveness of above deed of partition by amendment of the plaint nor he specifically denied above claim of the defendants that on the basis of above deed of partition plaintiff and Kazimuddin separately possessed the property they inherited from Ayesha and the same was correctly in relevant S. A. and R. S. Khatians.

After demise of plaintiff Yeakub his heirs were substituted in above suit and his son Abdul Jalil Mondal gave evidence as PW1 but in his evidence he did not make specific denial of above claims of the defendants as to register deed of partition (Exhibit-“C”), correctness of S. A. and R. S. khatians. In cross examination he merely stated that the R. S. and S. A. khatians of above property were jointly recorded in the names of the plaintiffs and the defendants without assailing the correctness and effectiveness of above khatians.

A property can be partitioned either by a registered deed of partitioned or by a suit for partition or amicably but a partition by

amicable settlement does not extinguish title of the co-sharers. If a property is partitioned by meets and bounds by a register deed of partition the same property cannot be partitioned again. In view of above facts and circumstances of the case we are unable to find any illegality in the findings of the trial Court that the property of Ayesha which was inherited by plaintiff Yeakub and Kazimuddin was partitioned by registered deed of partition dated 17.04.1954 and on the basis of above partition they possessed above land separately and transferred the same to other persons and delivered possession and relevant S.A. and R.S. khatians of above property was prepared correctly.

Learned Advocate for the appellants submits that after demise of Ayesha her husband Kazimuddin married again and out of above wedlock three sons defendant No.6-8 were born. After demise of Kazimuddin defendant Nos.8-6 and plaintiff inherited his property but above property has not been partitioned by meets and bounds.

Above submission of the learned Advocate for the appellants is out of pleadings. There is nothing in the plaint that defendant Nos.6-8 are step brothers of plaintiff Yeakub or Kazimuddin had a second wife and above Kazimuddin had a daughter defendant No.4 nor the plaintiff sought partition of the land of Kazimuddin. The plaintiff sought partition of land of Hafez Mondal.

We have found that the land of Hafiz Mondal which was inherited by plaintiff Yeakub and his father Kazimuddin was amicably partitioned by them by registered deed of partitioned dated 17.04.1954 and plaintiff Yeakub did not dispute the correctness and effectiveness of above registered deed of partitioned and subsequent record of rights prepared for above land. The plaintiff cannot again partition the land of Hafez Mondal or Sonavan. The plaintiff is a son of Hafez Mondal and defendant Nos.6-8 and 4 are his step brothers and sisters. The plaintiff may seek partition of the land left by above Kazimuddin.

On consideration of above facts and circumstances of the case and materials on records we hold that the ends of justice will be met if the impugned judgment and decree are set aside and the suit is remanded to the trial Court for retrial so that the plaintiff can make necessary amendments to the plaint to incorporate above claim and implead necessary parties as defendants.

In above view of the 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, this First Appeal is allowed.

The impugned judgment and decree dated 28.11.1999 passed by the Sub-ordinate Judge, 1<sup>st</sup> Court, Natore in Other Class (Partition) Suit No.13 of 1992 is set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend the

respective pleadings and adduce further evidence in the light of the observations made above.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

*Sayed Jahed Mansur, J:*

I agree.

MD. MASUDUR RAHMAN  
BENCH OFFICER