

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.178 of 2019*

*With*

*Civil Rule No.700 (F) of 2024*

Md. Abdul Wahed Sarker and another  
... Appellants

-Versus-

Kabir Ahmed and others

... Respondents

Mr. Kazi Shoayeb Hasan, Advocate

... For the appellants.

Mr. Md. Nazmul Islam, Advocate

....For the Respondent Nos.29-31.

*Heard on 03.02.2026 and Judgment on 09.02.2026.*

*S M Kuddus Zaman, J:*

This First Appeal is directed against the impugned judgment and decree dated 30.10.2018 passed by the learned Special Joint District Judge and Paribesh Adalat, Dhaka in Title Suit No.1552 of 2008 dismissing the suit.

In this First Appeal the appellants filed an application for an order of temporary injunction and on that application Civil Rule No.700(F) of 2024 was issued. Above Civil Rule is also being heard and disposed of by this single judgment.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 3.23 acres land appertaining to C. S. and S. A. Plot No.159 of C. S. Khatian No.23 corresponding to S. A. and R. S. Khatian No.8 seeking saham for 0.1325 decimal land. It was alleged that above property belonged to Gopal Chandra who died leaving only son Ram Chandra and in his name above S. A. Khatian was rightly prepared. Ram Chandra died leaving two namely Gabinda Chandra Sarker and Chitta Ranjan Sarker, one daughter Taramoni Dasi and two wives namely Jagat Dasi and Kunti Dasi. Above Gabinda Chandra Sarker transferred 32 decimal land to Chan Miah, Ramjan Ali, Abdul Hafez and Abdul Hamid by registered kabla deed No.4116 dated 07.05.1969. Plaintiff have purchased 1325 decimal land by successive purchase by two registered kabla deeds dated 19.06.1995 and 16.10.1995 from heirs or transferees of above Chan Miah, Ramjan Ali, Abdul Hafez and Abdul Hamid. Above property has not been partitioned by meets and bounds and the defendants denied to effect an amicable partition. Defendant Nos.29-31 contested above suit by filing a joint written statement alleging that Ram Chandra Sarker was the rightful owner and possessor of above land who died leaving wife Jagat Dasi as heir who transferred 22 decimal land by registered kabla deed dated 05.10.1962 to Azim Uddin and defendant have purchased 0.0990 decimal land from the successive heirs and transferees of above Azim Uddin by two registered kabla deed dated 01.06.1989 and 22.11.1989.

At trial plaintiffs examined five witnesses and defendants examined 4. Documents of the plaintiffs were marked as Exhibit Nos.1-7 and those of the defendants as Exhibit Nos."Ka" to "Cha".

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge dismissed above suit holding that the suit was bad for defect of parties and for non inclusion of total joint property into the plaint.

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. Kazi Shoayeb Hasan, learned Advocate for the appellants submits that disputed C. S. Khatian No.23 corresponding to S. A. Khatian No.28 and R. S. Khatian No.8 comprises as many as 16 plots and total area of 24.34 acres land but the plaintiffs filed above suit for partition only for 3.23 acres land of Plot No.159. On consideration of above materials on record the learned Judge of the trial Court rightly held that all joint properties were not brought into the hotchpotch of above suit and all co-sharers were not impleaded as defendants in above suit for partition. The learned Judge has rightly pointed out that plaintiffs have lawful title and possession in 3.35 decimal land but due to above procedural defect the learned Judge could not pass a decree in above suit. Since above suit was for partitioned the ends of justice will be met if the judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both sides an

opportunity to amend their respective pleadings and adduce further evidence.

On the other hand Mr. Md. Nazmul Islam, learned Advocate for the respondent Nos.29-31 concedes that the plaintiffs filed this suit for partition land of the disputed holding and instead of incorporating all joint properties of 16 plots of C. S. Khatian No.23 corresponding to S. A. Khatian No.28 and R. S. Khatian No.8 the plaintiffs filed this suit only for one plot being No.159. Despite objection of the defendants the plaintiffs did not implead all co-sharers of above jama as defendants in above suit. As such the learned Judge of the trial Court rightly held that the suit was bad for defect of parties and for not incorporating each and every piece of joint property in above suit and rightly dismissed above suit. Since above suit is a suit for partition the learned Advocate concedes that the ends of justice demands will be met if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

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

As mentioned above appellants as plaintiffs instituted above suit for partition of 3.23 acres land appertaining to Plot No.159 of C. S. Khatian No.23 corresponding to S. A. Khatian No.28 and R. S. Khatian No.8. It is admitted that above C. S., R. S. and S. A. Khatians comprises as many as 16 separate plots and the total area of land of above khatians

is 24.34 acres. The plaintiffs did not incorporate total joint property into the hotchpotch of above suit for partition. It is also admitted that all co-sharers of above S. A. and R. S. Khatians were not impleaded as defendants in above suit for partition. The learned Advocate for the appellants has submitted a petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint for impleading some co-sharers who were not impleaded as defendants and incorporating remaining land of above khatians into the hotchpotch of above suit.

In a suit for partition the plaintiff is required to implead each and every co-sharer as defendants and bring into hotchpotch each and every piece of joint property. If a single witness or a small piece of joint property remains outside of the hotchpotch of the suit then the suit for partition must fail on above procedural ground. The cause of action of a suit for partition is recurring and that continues until the joint property has been partitioned by meets and bounds. As such the ends of justice demands that a suit for partition should not be dismissed on the procedural defects rather the parties should be given reasonable opportunity to remove procedural deficiencies and such a suit should be disposed of on merit in accordance with law. 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 the suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 30.10.2018 passed by the learned Special Joint District Judge and Paribesh Adalat, Dhaka in Title Suit No.1552 of 2008 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

Civil Rule No.700(F) of 2024 is accordingly disposed of.

The learned Special Joint District Judge is directed to dispose of above suit on merit in accordance with law within a period of 6(six) months from the date of receipt of this order.

However, there will be no order as to cost.

Send down the lower Court record immediately.

**Tamanna Rahman Khalidi, J:**

I agree.