

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.209 OF 2011

Shukur Ali Master and others

.... Appellants

-Versus-

Doraj Kazi and others

.... Respondents

Mr. Md. Kaisaruzzaman, Advocate with

Mr. Syed Arifur Rahman, Advocate

.... For the appellants.

Mr. Md. Shahadat Tanveer Amin, Advocate

.... For the respondents.

Heard and Judgment on 07.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 23.02.2011 passed by the learned Joint District Judge, 2nd Court, Tangail in Partition Suit No.8 of 2006.

Facts in short are that respondent Nos.1-10 along with other 62 persons as plaintiffs jointly instituted above suit for partition of 16.41 acres land appertaining to R. S. Khatian Nos.198/1 and 198/2 of Mouza- Egaro Kahonia as described in Schedule No.1 and 2.81 acres land appertaining to C. S. Khatian No.296 corresponding to R.S. Khatian No.508 of Mouza-Bakria as described in Schedule No.2 and

6.04 acres land appertaining to C. S. Khatian No.87 corresponding to R. S. Khatian No.100 of Mouza- Haldia as described in Schedule No.3 claiming saham for $11.55\frac{5}{6}$ acres land.

The case of plaintiff Nos.10-11 for 6.04 acres land of Schedule No.3 is that above property belonged to three brothers namely Kadar Ali Sheikh, Bhomor Ali Sheikh and Gomor Ali Sheikh in equal shares and C. S. Khatian No.87 was correctly prepared. Above Bhomor Ali Sheikh died leaving one son and one daughter namely Gabu Sheikh and Sundari and plaintiff Nos.10 and 11 are their successive heirs and they have inherited 2.04 acres land and is in possession of above land. But above properties were not portioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.45-49 and 59 contested above suit by filing a joint written statement alleging that above 6.04 acres land was owned, held and possessed by three brothers Kadar Ali Sheikh, Bhomor Ali Sheikh and Gomor Ali Sheikh and the same was correctly recorded in C. S. Khatian No.87. Above Bhomor Ali Sheikh divorced his wife who remarried elsewhere. Gabu Sheikh and Sundari were not biological son and daughter of Bhomor Ali Sheikh nor they inherited his property. During his life time above Bhomor Ali Sheikh transferred $2.01\frac{1}{3}$ acres land by oral gift to his two brothers Kadar Ali Sheikh and Bhomor Ali Sheikh and defendants as their successive heirs are owning and

possessing above land. Above land has been rightly recorded in their names in the relevant S. A. Khatians.

At trial plaintiffs examined six witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-4 series. On the other hand defendant Nos.45-49 and 59 examined three witnesses but they did not produce and prove any document.

The learned District Judge decreed above suit on contest against defendant Nos. 45-49 and 59 and on compromise against defendant Nos.7-12, 14-27 and 29-33 and granted saham to the plaintiffs for $11.55\frac{5}{6}$ acres, defendant No.50 for 1.67 acres and defendant No.53 for $25\frac{1}{9}$ acres land.

Being aggrieved by and dissatisfied with above judgment and decree passed by the learned Joint District Judge defendant No.45-49 and 59 as appellants moved to this Court and preferred this First Appeal.

Mr. Md. Kaisaruzzaman, learned Advocate for the appellants submits that admittedly 6.04 acres land of Schedule No.3 belonged to three brothers Kadar Ali Sheikh, Bhomor Ali Sheikh and Gomor Ali Sheikh and defendant Nos.45-49 and 59 are successive heirs of Kadar Ali Sheikh and Gomor Ali Sheikh. Plaintiff Nos.10 and 11 claimed to be the successive heirs of Bhomor Ali Sheikh who had lawful title and possession in $2.1\frac{1}{3}$ acres land. Defendants claim that Bhomor Ali Sheikh

was issueless and he transferred his total land by gift to his two brothers Kadar Ali Sheikh and Gomor Ali Sheikh. Plaintiff Nos.10 and 11 did not give evidence in this suit in support of their claim that Bhomor had one son namely Gabu Sheikh and a daughter namely Sundari and plaintiff Nos.10 and 11 are their successive heirs. Plaintiffs could not adduce any evidence, documentary or oral, to substantiate above claim. DW6 and DW7 were the witnesses of defendant Nos.50 and 53 who compromised with the plaintiffs and they were not witnesses of contesting defendant Nos.45-49 and 59. The learned Joint District Judge committed serious illegality in decreeing above suit for property of Schedule No.3 on the basis of uncorroborated evidence of DW6 and DW7 which is not tenable in law.

On the other hand Mr. Md. Shahadat Tanveer Amin, learned Advocate for the respondents submits that DW6 Mozibor Rahman is the grandson of Gomor Ali Sheikh and DW7 Soleman is a daughter of Kadar Ali Sheikh. As such DW6 and DW7 were competent witnesses to give evidence as to the genology of Bhomor Ali Sheikh who in their respective cross examination stated that Bhomor Ali Sheikh died leaving one son Gabu Sheikh and daughter Sundari and plaintiff Nos.10 and 11 were their successive heirs. On consideration of above oral evidence of competent witnesses as to the genology of Bhomor Ali Sheikh the learned Joint District Judge has rightly decreed above suit. The defendants have claimed that Bhomor Ali Sheikh transferred his

land to his two brothers Kadar Ali Sheikh and Bhomor Ali Sheikh by gift but they could not prove above claim by any evidence. On consideration of above facts and circumstances of the case and evidences on record the learned Joint District Judge rightly decreed above suit which calls for no interference.

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

Respondent Nos.1-10 and other 62 persons in total 72 persons as plaintiffs jointly filed above suit for partition for land of three separate mouja and three separate C. S. Khatians which have been described in details in Schedule Nos.1-3. The land of Schedule Nos.1 and 2 are not claimed by plaintiff Nos.10 and 11 or defendant Nos.45-49 and 59. Plaintiff Nos.10-11 claim to be the heirs of Bhomor Ali Sheikh and claim his $2.0\frac{1}{2}$ acres land. Defendant Nos.45-49 and 59 contested above suit claiming title and possession of land of Bhomor Ali Sheikh as described in Schedule No.3. Those defendants do not have any claim in the property of Schedule Nos.1 and 2. Defendant No.7-12, 24-27, 29-35, 50 and 53 admitted plaintiff's title and possession in the land of Schedule Nos.1 and 2 and executed solenama. On the basis of above solenama the learned Judge of the trial Court passed compromise decree against above defendants and the plaintiffs minus plaintiff Nos.10 and 11. There is no common interest among all the plaintiffs and all the defendants as to the partible land of tree separate Mouzas recorded

under various C. S. Khatians as described in Schedule Nos.1-3 of the plaint. It is not understandable as to why the plaintiffs having claims of separate land of separate C. S. Khatians of separate moujas against separate defendants filed this one suit when there was no community of interest between the parties and how above suit for partition was tenable in law.

It turns out from the plaint that the plaintiffs have described the disputed properties by mentioning C. S. Khatian and R. S. Khatians. The R. S. Khatians were the revisional survey of the C. S. Khatians and prepared before the publication of S. A. Khatian. When this suit was filed in 2006 the latest record of rights were the S. A. Khatians but the plaintiffs did not mention the corresponding S. A. Khatians and S. A. Plot Numbers of disputed property. A plaintiffs may have origin of his title in the C. S. Khatian and he will have to mention that C. S. Khatian in the schedule of the plaint but in order to get a decree from a Civil Court he must mention the corresponding latest record of rights so that the Court may determine who are the necessary parties to the suit and for which land a decree is being sought. The failure of the plaintiffs to describe corresponding S. A. Khatians of the disputed properties of C. S. Khatian and R. S. Khatian make the suit properties unspecified and vague which will create trouble at the time execution of the decree by the Advocate Commissioner.

It is admitted that 6.04 acres land was owned, held and possessed by three brothers Kadar Ali Sheikh, Bhomor Ali Sheikh and Gomor Ali Sheikh in equal shares and C. S. Khatian No.87 was correctly prepared. Plaintiff Nos.10 and 11 have claimed $2.01\frac{1}{3}$ acres land of Gomor Ali Sheikh claiming that above Bhomor Ali Sheikh died leaving one son Gabu Sheikh and one daughter Sundari and they are successive heirs of above Gabu Sheikh and Sundari. Defendant Nos.45-49 and 59 have claimed that above Bhomor Ali Sheikh was issueless and Gabu Sheikh and Sundari were not biological son and daughter of Bhomor Ali Sheikh. Since plaintiff Nos.10 and 11 have claimed title and possession in above land as successive heirs of Bhomor Ali Sheikh the initial onus rested upon them to prove that they are successive heirs of Bhomor Ali Sheikh. Plaintiff Nos.10 and 11 who claim to be the successive heirs of Bhomor Ali Sheikh were competent witnesses to give evidence as to the genology of Bhomor Ali Sheikh. They should have made above claims on oath before the trial Court and subjected themselves to cross examination by the defendants. But plaintiff Nos.10 and 11 opted not to stand in the witness box and give evidence in support of their above claim.

Above plaintiffs authorized PW1 Kazi Md. Mozibor Rahman to give evidence on their behalf who cannot be accepted as a competent witness to give evidence as to genology of Bhomor Ali Sheikh. DW6 Mozibor Rahman and DW7 Soleman did not say in their respective

evidence that Bhomor Ali Sheikh died leaving one son Gabu Sheikh and one daughter Sundari. But in cross examination by the plaintiffs they stated that Bhomor Ali Sheikh had a son namely Gabu Sheikh and a daughter namely Sundari. In cross examination the defendant DW6 Mozibor Rahman stated that he did not know the wife of Bhomor Ali Sheikh nor he ever visited the house of the plaintiffs which is situated in Ghataiyal and he lives in Madhupur. Similarly PW7 Soleman stated in cross examination that Bhomor had four daughters and after demise of Bhomor Ali Shiekh his wife married again. As mentioned above DW6 Mozibor Rahman and DW7 Soleman already executed a solenama with other plaintiffs and thereafter gave above evidence in reply to cross examination by the plaintiffs.

On the other hand the defendant Nos.45-49 and 59 could not adduce any documentary or oral evidence of competent witness to substantiate their claim that Bhomor Ali Sheikh transferred $2.041\frac{1}{3}$ acres land to his two brothers Kadar Ali Sheikh and Bhomor Ali Sheikh by gift and above Bhomor Ali Sheikh died issueless.

Plaintiff Nos.10 and 11 could not discharge their initial onus to prove that Bhomor Ali Sheikh died leaving one son Gabu Sheikh and one daughter Sundari by legal evidence.

On consideration of the above 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 both the parties an opportunity to amend their respective pleadings and adduce further evidence if any.

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 23.02.2011 passed by the learned Joint District Judge , 2nd Court, Tangail in Partition Suit No.8 of 2006 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.

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**