

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

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Tamanna Rahman Khalidi

FIRST APPEAL NO. 143 OF 2013

G. M. Salam Mia and another

....Appellants

-Versus-

Md. A. Gaffar and others

.... Opposite parties

Mr. Md. Abdul Khaleque with

Mr. Sultan Mahmood Banna with

Mr. Md. Tarik Alam, Advocates

.... For the appellants.

None appears

.... For the respondents.

Heard on 19.04.2026 and Judgment on 20.04.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 28.02.2013 passed by the learned Joint District Judge, 2nd Court, Kushtia, in Money Suit No.1 of 2009 decreeing the suit.

Facts in short are that 12 employees of Agricultural Office of Doulatpur Upazilla of Kushtia as plaintiffs filed above suit for recovery of Taka 18,02,250/- alleging that the plaintiffs did not file any petition for house building loan against their provident funds nor they withdrew any money from their respective provident fund but defendant Nos.1 and 2 in unholy unlawful collusion created false the

loans against provident funds of the plaintiffs and encashed and misappropriated Taka 18,02,250/-.

Defendant Nos.1 and 2 contested above suit by filing two separate written statements wherein they have denied to have prepared any false document or created false housing loan against the provident funds of the plaintiffs or misappropriation of Taka 18,02,250/-. It has been further stated that Akram Hossain the Upper Division Clerk and Accountant of defendant No.2 was authorized to submit salary and other bills of the Office of defendant No.2 and he produced above loan documents for processing and payment to defendant No.1. Above Akram Hossain created above false documents and defendant No.1 and his Office staff in good faith processed and passed above bills in accordance with the accounts rules and practice. Above Akram Hossain received approved bills for Taka 18,02,250/- from the office of the defendant No.1 and withdrew above money on behalf of the plaintiffs from Sonali Bank. Above Akram Hossain did not handover above money to the plaintiffs and misappropriation the same. Defendant No.2 initiated a departmental proceedings against above Akram Hossain for above forgery, cheating and misappropriation of above Taka 18,02,250/- and in above proceedings Akram Hossain voluntarily gave a confession and promised to return above money. It was further stated that for above forgery and misappropriation of Taka 18,02,250/- of the plaintiffs Special Case No.12 of 2009 was initiated against Akram

Hossain which was ended in his conviction. The plaintiffs did not implead above Akram Hossain as a defendant and most illegally obtained above decree against defendant Nos.1 and 2 who had no role in above misappropriation of Taka 18,02,250/-.

At trial plaintiffs examined one witness and defendants examined three. Documents of the plaintiffs were marked as Exhibit Nos.1-3, 4 series and 5 series and those of the defendants were marked as Exhibit Nos."Ka" - "Ga", "Ja" series and "Neo" series respectively.

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant Nos.1 and 2 as appellants moved to this Court and preferred this First Appeal.

Mr. Md. Abdul Khaleque, learned Advocate for appellant No.2 submits that the material facts of this case are not disputed rather those are admitted. It is admitted that defendant No.2 is the Upazill Agricultural Officer and 12 plaintiffs are his staffs of varying status and posts who maintained general provident funds. Plaintiffs did not submit any petition to defendant No.1 for house building loan against their provident fund but 12 separate petitions seeking loan against their respective provident fund were submitted and signed by defendant No.2 and the same was assigned to accounts clerk Akram Hossain who encashed above bills from Sonali Bank. Above Akram Hossain

withdrew above money but did not handover the same to any plaintiff and misappropriated the same. Above Akram Hossain made a confession in support of above forgery and misappropriation of Taka 18,02,250/- on 11.08.2008 (Exhibit No."Ga"). It is not disputed that due to above forgery and defalcation defendant No.1 initiated a departmental proceedings against Akram Hossain in which above Akram Hossain was held liable. Akram Hossain was also found guilty of misappropriation of above money in Special Case No.12 of 2009 and was convicted in above case. All above materials on record clearly show that it was not defendant Nos. 1-2 but Akram Hossain alone was involved in above misappropriation and forgery but the plaintiffs due to an unholy alliance with above Akram Hossain did not implead him as a defendant in above suit. The learned Joint District Judge utterly failed to appreciate above materials on record and most illegally held that defendant Nos.1 and 2 were responsible for above cheating and misappropriation and accordingly decreed above suit which is not tenable in law.

Respondents did not enter appearance in this First Appeal nor anyone was found available for the respondents at the time of hearing of this First Appeal although this 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.

As mentioned above 12 employees of Upazilla Agricultural Office, Doulatpur, Kushtia as plaintiffs jointly filed above suit for money for recovery of Taka 18,02,250/-. It was alleged that defendant Nos.1-2 jointly created false loan documents against their general provident funds although there was not a single piece of evidence connecting above defendants with alleged collusion, forgery and misappropriation of above money.

In above suit for recovery of money the plaintiffs are required to prove that defendants committed forgery or cheating in creating false loan documents and misappropriating above money or they failed to discharge their duties in accordance with law or they committed criminal negligence or incompetence and unwillingly or willingly caused above loss of the plaintiffs.

Defendant No.2 claimed that his signatures on above loan applications were forged which was supported by the opinion of the hand writing expert. Plaintiffs were required to produce other evidence to substantiate the allegation of collusion but no such evidence was adduced at trial. As such the impugned judgment and decree of the trial Court as far as it relates of defendant No.2 is without any lawful basis or evidence.

As far defendant No.1 is concerned he has stated in his evidence that on a causal examination of the signatures of defendant No.2 on above loan petition with his signatures preserved in Accounts Office he

found similarity and since those documents were produced by Akram Hossain the authorized agent of defendant No.2 who used to bring all bills from above office he accepted those in good faith. Above bills were processed by his Office and handed over to Akram Hossain who encashed those from the Sonali Bank and misappropriate the same.

It is not disputed that due to above occurrence of misappropriation of provident fund money of the plaintiffs a departmental proceeding was initiated and a Criminal Case being Special Case No.12 of 2009 was instituted against above Akram Hossain and Akram Hossain gave a confession admitting his guilt in above forgery and misappropriation of Taka 18,02,250/- in writing on 11.08.2008 (Exhibit No."Kha"). The defendants produced the inquiry report dated 20.08.2008 (Exhibit No."Uma") which shows that above Akram Hossain was found responsible for creation of above forged documents and misappropriation of plaintiffs Taka 18,02,250/-.The defendants also produced the judgment and order dated 29.02.2012 passed against Akram Hossain in Special Case No.12 of 2009 convicting him alone for commission of above forgery and misappropriation of Taka 18,02,250/-. As such above Akram Hossain was a necessary party in above suit but the plaintiffs for unexplained reason did not implead him as a defendant.

On consideration of above facts and circumstances of the case and evidence on record we hold that the ends of justice will be meet 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 implead above Akram Hossain as a defendant and adduce further evidence if any.

In the result, the First Appeal is allowed. The judgment and decree dated 28.02.2013 passed by the learned Joint District Judge, 2nd Court, Kushtia, in Money Suit No.1 of 2009 is set aside.

Above suit is remanded to above trial Court for retrial after giving the plaintiffs an opportunity to amend the plaint and adduce further evidence, if any.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER