

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.404 of 2013

Md. Bashir Miah

....Appellant

-Versus-

Mst. Ajhara Akter Koli and others

.... Respondents

Mr. Dider Alam Kollol, Advocate

....For the appellant.

Mr. Md. Muzakkir Hussain, Advocate with

Mr. Ratan Kumar, Advocate

....For the respondent No.1.

Heard on 10.08.2026 and Judgment on 19.08.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 26.02.2013 passed by the learned Joint District Judge, 1st Court, Sylhet in Title Suit No.198 of 2006 decreeing the suit.

Facts in short are that respondent Nos.1-6 as plaintiffs filed above suit for partition of 15 decimal land appertaining to old Khatian No.257 seeking saham for 0.1166 decimal land alleging that above 15 decimal land belonged to Tahurunnessa who died leaving two sons, defendant Nos.1 and plaintiff No.3 and five daughters, plaintiff Nos.1-2 and 4-6 as

heirs. Defendant Nos.1-3 disclosed that they have purchased above 15 decimal land from defendant No.4 by registered kabla deed dated 20.12.2000. Above property has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.1-3 contested above suit by filing joint written statement alleging that total land of Nurunnessa having not brought into the hotchpotch of above suit the same was not tenable in law. It was further stated that by amicable partition defendant No.4 was in exclusive possession in disputed 15 decimal land and he transferred the same to defendant Nos.1-3 by registered kabla deed dated 20.12.2003 and delivered possession.

At trial plaintiffs examined three witnesses and defendants examined two. Documents of the plaintiffs were marked as Exhibit Nos.1-3 series and those of the defendants were marked as Exhibit Nos."Ka" to "Gha".

The learned Joint District Judge decreed above suit in preliminary form and granted saham to the plaintiffs for 11.66 decimal land and defendant Nos.1-3 were granted saham for 3.34 decimal land.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant No.1 as appellant moved to this Court and preferred this First Appeal.

Mr. Dider Alam Kollol, learned Advocate for the appellant submits that it is admitted that disputed 15 decimal land belonged

Nurunnessa and she died leaving two sons, defendant No.4 and plaintiff No.3 and five daughters, plaintiff Nos.1-2 and 4-6 as heirs. Plaintiffs have filed above suit for partition of the property of Nurunnessa as such the plaintiffs were required to brought into hotchpotch each and every piece of property belonged to Nurunnessa. At Paragraph No.7 of the written statement the defendants have stated that the total property of Nurunnessa was not brought into the hotchpotch of above suit and above suit was not tenable in law. Plaintiff No.1 while giving evidence as PW1 stated in cross examination that his father died leaving 223 kedar land before their mother who inherited her husband's property. She further stated that her mother also acquired some property by kabinnama from her husband but above property was not partitioned and she could not mention the quantity of land her mother inherited from her husband. She lastly stated that they have filed this suit for partition of 15 decimal land of Plot Nos.214. It is admitted that disputed 15 decimal land was acquired by Nurunnessa by purchase by registered kabla deed dated 26.02.1989 but the plaintiff did not brought into hotchpotch the other land of Nurunnessa which she acquired by inheritance and by kabinnama from her husband. Defendant No.4 the eldest son of Nurunnessa was in exclusive possession in above 15 decimal who and transferred the same to defendant Nos.1-3 by registered kabla deed dated 20.12.2000 and above defendants are in possession of above land. Plaintiff No.3 was a minor

and other plaintiffs are daughters and they were not in possession in above cultivable land. The plaintiffs have filed above suit for partial preemption only for 15 decimal land to deprive defendant Nos.1-3 from their lawful right which is not tenable in law. The learned Joint District Judge utterly failed to appreciate above facts and circumstances of the case and relevant law and most illegally decreed above suit which is not tenable in law.

Mr. Md. Muzakkir Hussain, learned Advocate for respondent No.1 submits that disputed 15 decimal land was acquired by Nurunnessa by purchase by registered kabla deed dated 26.02.1989 and she died leaving two sons, defendant No.4 and plaintiff No.3 and five daughters, plaintiff Nos.1-2 and 4-6 as heirs. It is admitted that defendant Nos.1-3 has purchased total 15 decimal land from defendant No.4 alone by above kabla deed. Defendant No.4 cannot transfer the property of his minor brother and sisters who in order to recover their lawful property filed above suit for partition and the learned Joint District Judge on correct appreciation of facts and circumstances of the case and materials on record rightly decreed above suit which calls for no interference. The learned Advocate further submits that the partial partition is permissible in law and there is no hard and fast rule that the total ejmali property have to be brought into the hotchpotch of the suit.

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

It is admitted that Nurunnessa purchased disputed 15 decimal land by registered kabla deed dated 26.02.1989 and she died leaving two sons, plaintiff No.3 and defendant No.4 and five daughters, plaintiff Nos.1-2 and 4-6 as heirs. Plaintiffs have filed above suit for partition of above 15 decimal land of Nurunnessa. At Paragraph No.7 of the written statement defendant Nos.1-3 stated that total property of Nurunnessa were not brought into the hotchpotch of above suit for partition and for above deficiency the suit was not tenable in law. In her evidence as PW1 plaintiff No.1 has admitted that her father transferred some land to his wife Nurunnessa by kabinnama and her father died leaving 223 kedar land which were inherited by them and their mother Nurunnessa and defendant No.2. The learned Advocate for respondent No.1 frankly concedes that the plaintiffs have filed this suit only for 15 decimal land which was transferred by defendant No.4 to defendant Nos.1-3 by registered kabla deed dated 20.12.2000. The learned Advocate for respondent No.1 could not deny that Nurunnessa had other properties which she acquired from her husband by inheritance and kabinama. On consideration of above facts and circumstances of the case and materials on record we hold that the plaintiffs did not brought into hotchpotch of above suit for partition all the properties of Nurunnessa but they have filed above suit for partial partition only for 15 decimal land.

As mentioned above plaintiffs have filed this suit as heirs of Nurussessa against other co-sharer of above Nurunnessa namely defendant No.2 her elder son and purchasers from defendant No.2. Plaintiffs are not purchasers of partial land from a particular khatian. As such plaintiffs are not entitled to maintain a suit for partial partition and they were required to bring into hotchpotch all properties of Nurunnessa.

A Joint property may be possessed by the co-sharers by amicable partition and the co-sharer who is in exclusive possession in a piece of ejmali property can maintain above possession against other co-sharers until partition by meets and bounds is effected. A co-sharer in such exclusive possession by amicable partition may also transfer the same to a non co-sharer for money and the purchaser can protect the possession until partition by meets and bounds.

In above view of the facts and circumstances of the case and rule of partition we hold that above suit for partition was bad for not bringing into hotchpotch total land of Nurunnessa. But above deficiency in the above was caused due to lack of legal skill of the appointed Advocate of the plaintiffs and the plaintiffs should not be made to suffer for the same.

It is admitted that the property of Nurunnessa has not been partitioned by meets and bounds among his co-sharers. The cause of action for suit for partition survives until a partition by meets and

bounds is effected. As such a suit for partition should not be dismissed on procedural deficiencies or defects such as for non including each and every piece of joint property into the hotchpotch of the suit but the plaintiff should be given an opportunity to remove above deficiencies so that the Court can finally determine the suit and effect a partition by meets and bounds.

On consideration of above facts and circumstances of the case and materials on record we hold that the learned Joint District Judge committed an error in decreeing above suit although the same was bad for not incorporating each and every piece of joint property into the hotchpotch of the suit and 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 the parties and opportunity to amend their respective pleadings and adduce further evidence if any.

In above view of above facts and circumstances of the case and materials on record we find substances in this First Appeal which deserves to be allowed.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 26.02.2013 passed by the learned Joint District Judge, 1st Court, Sylhet in Title Suit No.198 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.

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

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER