

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 351 of 2012

with

Civil Rule No. 936(f) of 2012

1(Kha) Md. Muktar Hussain and others

..... appellants

-Versus –

Shahab Uddin being dead his legal heirs:

1(Ka) Md. Ashraf Uddin and others

..... respondents

And

First Appeal No. 336 of 2012

with

Civil Rule No. 373(f) of 2022

Babul

..... appellant

-Vessus-

Shahabuddin being dead his legal heirs:

1(a) Md. Samaruddin and others

..... respondents

Mr. Md. Sumon Ali with

Mr. Meah Muhammad Abdullah Zahid and

Mr. Md. Yamin Newaz Khan, Advocates

..... for the appellants

(In both the appeals and petitioners in the Rules)

Mr. K.M. Saifuddin Ahmed, Senior Advocate

..... for respondents 1(a)-1(j)

(in the appeals and petitioners in the Rules)

Judgment on: 11.08.2025.

Bhishmadev Chakrabortty, J:

Since the appeals have been preferred against the same judgment and decree of the Joint District Judge, Court 4, Dhaka, the Rules have arisen out of the aforesaid appeals and parties thereto are same, these have been heard together and the being disposed of by this judgment.

First Appeal 351 of 2012, at the instance of defendants 1, 3-6 and 7, is directed against the judgment and decree of the Joint District Judge, Court 4, Dhaka passed on 19.06.2012 in Title Suit 193 of 2000 decreeing the suit for partition in preliminary form.

First Appeal 336 of 2012, at the instance of defendant 16, is directed against the aforesaid judgment passed by the same Court in the same suit decreeing the suit for partition in preliminary form.

The plaint case, in brief, is that Amir Uddin one of the CS recorded tenant owned held and possessed 14 decimals of land out of 84 decimals described in the schedule to the plaint through amicable partition. He further got 2 decimals from Natib Bibi as heir. In this way he became owner and possessor of 16 decimals in the suit khatians. Thereafter, he sold out 5.25 decimals to Tuku Mia through registered *kabala* dated 23.10.1936. Nazim Uddin son of aforesaid Amir Uddin inherited 10.75 decimals from his father. He further purchased 10.25 decimals from Azim Uddin, son of Afor Uddin through a *kabala* dated 27.11.1918. Thus he became owner of 21 decimals of land. Plaintiff Shahab Uddin son of Nazim Uddin inherited 7.80 decimals from his father and subsequently through oral gift he got 11.70 decimals from three daughters of Nazim Uddin, i.e., from his sisters. In this way the plaintiffs became owner and possessor of 19.50 decimals and claimed *saham* to that extent described in the suit schedule.

Defendants 1, 3-6 and 7 appeared in the suit and claimed that Azim Uddin as son of Afor Uddin inherited 15.27 decimals of land from his father. He purchased 38.18 decimals from Meghu Choukider and Suraton through a *kabala* dated 16.08.1918. He further inherited 1.91 decimals as heir of Natib Bibi. In this way he totally got 55.36 decimals of land in the suit khatians. He sold out therefrom 10.18 decimals to Nazim Uddin through a *kabala* dated 27.11.1918 and same quantity of land to Khatun Nessa through another *kabala* of same date. Therefore, it remained 35.00 decimals to him. Munsur Ali and Izzat Ali (predecessor of the aforesaid defendants) as sons of Azim Uddin inherited the aforesaid share. They further purchased 5.25 decimals from Tuku through a registered *kabala* dated 29.12.1946 and sold out 6.00 decimals to Asraf Ali and as such they remained owner and possessor of 34.25 decimals. They claimed *saham* in respect of the aforesaid share.

Defendant 2 claimed that Anwar Ali as son of Kamor Ali and Khatun Nessa got  $(15.27+14.00+10.18)$  decimals = 39.45 decimals by inheritance. Anwar Ali then purchased 5.68 decimals from Abdul and Akkabor through a *kabala* dated 16.07.1924. He further purchased 1.50 decimals from Samiran through *kabala* dated 30.05.1948. Therefrom he transferred 8.00 decimals and 12.50 decimals to his son Asraf Ali through two separate *kabalas* dated 24.04.1977 and 08.07.1977 respectively. In this way he remained owner and possessor of 26.14 decimals. Defendant 2 Asraf Ali inherited aforesaid 26.14

decimals from his father Anwar Ali. He further purchased 20.50 decimals from Anwar Ali, 2.35 decimals from Abdul Hamid, 1.45 decimals from heirs of Tamiz Uddin, 6.00 decimals from Munsur Ali and 1.75 decimals by way of inheritance from Kuki Bibi. In this way he became owner of 58.19 decimals in the suit khatians and claimed its *saham*.

Defendant 16 contested the suit and claimed *saham* through Gulnagar. He stated that Gulnagar purchased .94 decimals from Abdul Latif son of Tamiz Uddin through a *kabala* dated 04.02.1963. She further purchased .5165 decimals from Abdul Latif and .58 decimals from Abdul Hamid son of Tamiz Uddin through *kabalas*. She inherited .47 decimals as wife of Abdus Sobahan. In this way she became owner of 2.50 decimals in the suit khatians and sold it to defendant 16 through a *kabala* dated 17.09.1993. He claimed *saham* to that extent.

Defendants 17-26 claimed share of 3.15 decimals of land in the suit khatians by way of inheritance from gradual heirs of Tamiz Uddin and by way of purchase.

Defendant 11, 13-15 as heirs of Tamiz Uddin and by way of purchaser claimed *saham* in the suit land for 9.295 decimals.

Defendant 14 filed written statement and claimed *saham* in the suit land of 4.66 decimals as heirs of Tamiz Uddin and through purchase.

On pleadings the trial Court framed 5 issues. In the trial the plaintiffs examined 2 witnesses and produced their documents exhibits 1-5. Defendants 1, 3-6 and 7 examined 1 witness DW 1 and produced their documents exhibits Ka, Kha-Kha3, Ga, Ga1, Gha-Gha6, Uma and Uma(1). Defendant 2 examined 1 witness DW 2 and produced his documents exhibits Ka-1, Kha-1, Kha-1(1) and Kha-1(2). Defendant 16 examined 1 witness DW 3 and produced his documents exhibits Ka2, Kha2, Ga3 and Gha3. Defendants 17-26 examined 1 witness DW 4 and produced their documents exhibit Kha-3 and defendants 14 and 11 examined 1 witness DW 5 and produced their document exhibit Ka-4. However, the Joint District Judge decreed the suit in preliminary from giving *saham* to the plaintiffs for 7.72 decimals, to defendants 1(Ka)-1(Chha), 3-6 and 7 for 3.49 decimals, to defendant 2 for 41.17 decimals, to defendant 11 for 9.29 decimals, to defendant 14 for 5.19 decimals, to defendant 16 for 1.05 decimals, to defendants 17-26 for 1.97 decimals and to defendant 27 for 2.11 decimals of land. Being aggrieved by defendants 1(Ka)-1(Chha), 3-6 and 7 preferred aforesaid First Appeal 351 of 2012 while defendant 16 preferred First Appeal 336 of 2012 in this Court.

During pending of First Appeal 336 of 2012, the appellants filed an application for injunction against the respondents and accordingly Civil Rule 396 (f) of 2012 was issued and *ad interim* order to maintain *status quo* in the suit land was passed. The

appellants of First Appeal 351 of 2012 filed an application for staying operation of the impugned judgment and decree and Civil Rule 936 (f) of 2012 was issued and an order to that effect was passed.

Mr. Md. Sumon Ali, learned Advocate for the appellants in both the appeals taking us through the impugned judgment and other materials on record submits that the trial Court decreed the suit only considering the case of the plaintiffs and documents submitted by them. This is a suit for partition where most of defendants claimed *saham* in the suit schedule. Therefore, the footing of the plaintiffs as well as the *saham* claiming defendants are same. The trial Court allocated *saham* to the defendants without going through their oral evidence and documents submitted by them. In First Appeal 351 of 2012 Mr. Ali submits that if the documents of defendants 1, 3-6 and 7 exhibits-Kha and Kha-1 were considered by the learned Judge, the share allocated to them would have been increased and they would get more share than allocated to them and consequently the share allocated to defendant 2 and plaintiffs would have been reduced. If the evidence and documents of these defendants (appellants of FA 351 of 2012) was considered by the trial Court they would surely got total 30.25 decimals of land in the suit khatians by way of purchase and inheritance. In First Appeal 336 of 2012, he submits that defendant 16 produced his document dated 17.09.1993 exhibit-Ka 2 through which he purchased land from Gulnagar. He is found to have entitled to 2.50 decimals of land in the suit khatians. Since in allocating share to the

other defendants the learned Judge did not at all consider their cases and documents, therefore, this Court can allocate shares to them afresh on the basis of the evidence and other materials on record. In the alternative, the case may be sent on remand to the trial Court to write a fresh judgment on the basis oral evidence and documents submitted before it and allocate *saham* to these appellants and others in accordance with law.

Mr. K.M. Saifuddin Ahmed Chowdhury, learned Senior Advocate for respondent 1(a)-1(j) in both the appeals, on the other hand opposes the appeals and supports the judgment and decree passed by the trial Court allocating *saham* to these respondents of 7.72 decimals. He submits that judgment passed by the trial Court is based on materials on record and may not be interfered with by this Court.

We have considered the submissions of both the sides and gone through the materials on record.

It is admitted fact that the suit land of CS khatians 697, 699 and 699(Ka), plot 2453 measuring an area of 84 decimals originally belonged to Goal Mohammad. He died leaving behind 4 sons namely Afor Uddin, Amir Uddin, Tamiz Uddin and Kamor Ali and 3 daughters Suraton Nessa, Kuki Bibi and Natib Bibi. The plaintiffs and defendants claimed *saham* in suit schedule as gradual heirs of the aforesaid 7 heirs of Goal Mohammad. They also claimed land through purchase from the sharers. In support of the respective claims the

parties examined witness and produced series of documents which were duly marked as exhibits without any objections from any quarter. This is a suit for partition and most of the defendants claimed *saham* in the suit land. In a suit for partition a defendant who claims *saham* in the suit land stands on the similar footing with the plaintiff. In dealing with the share of a defendant in such a suit the Court is to consider his case, as if he is claiming share in the suit land as plaintiff. But in this case, the trial Court only discussed the case of the plaintiffs and allocated them share of 7.72 decimals. Although the trial Court allocated shares to the defendants who claimed *sahams* by way of inheritance and purchase but did not discuss or gave any findings how they are entitled to the share as allocated. It appears that defendants 1, 3-6 and 7 (appellants in First Appeal 251 of 2012) claimed share of 15.27 decimals land by way of inheritance from Afor Uddin, furthermore Azim Uddin son of Afor Uddin purchased 38.18 decimals through a registered *kabala* dated 16.08.1918 exhibit Kha 2 from Meghu Choukider and Suraton. The aforesaid *kabala* was exhibited without any objection from any quarter. They further got 1.91 decimals as heirs of Natib Bibi. The purchase deed of Meghu Choukider from Amir Uddin dated 03.01.1907 is exhibit-Kha. Another purchase deed of Meghu Choukider from Kamor Ali dated 19. 03.1908 was exhibit-Kha1. Those were produced in original in the Court but were not at all considered by the trial judge. If the aforesaid three deeds exhibits-Kha, Kha1 and Kha 2 were considered by the

trial Judge, the share allocated to defendants 1, 3-6 and 7 would have been otherwise and surely increased than that was allocated to them. If the share would have been allocated to the aforesaid defendants considering those deeds, the share of defendant 2 and others would have been decreased. Defendant 16 (the appellants of First Appeal 336 of 2012) exhibited his purchase deed from Gul Nahar dated 17.09.1993 exhibit-Kha 2 and prove it, but he was given *saham* of 1.05 decimals without any reasoning.

It is difficult for us to allocate share here afresh to the appellants in the absence of other defendants who did neither appear in this Court to contest the appeals nor preferred any separate appeal. Therefore, we find that justice would be best served, if we send the suit on remand to the trial Court to write a judgment afresh on the basis of the oral evidence and documents submitted and exhibited duly. In dealing with the suit, the trial Court will consider the documents submitted by the defendants including these defendant-appellants who claimed *saham* in the suit land.

In view of the discussion made hereinabove, we find merit in both the appeals. Accordingly, the appeals are allowed. No order as to costs. The judgment and preliminary decree passed by the trial Court is hereby set aside. The case is sent on remand to the trial Court to dispose of it in the light of the observations, findings and directions

given in the body of this judgment. In disposing the suit the trial Court may hear the arguments of the parties afresh.

The connecting Rules are, therefore, disposed of and interim orders passed in the Rules are vacated.

The concerned Court is directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and order. In dealing with the case, the trial Court shall not allow either party any adjournment without dire necessity.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.

*Rajib*