

**District-Bagerhat.****IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 2892 of 2013.**

Md. Abdul Jabber Gazi.

---- Plaintiff-Appellant-Petitioner.

-Versus-

Abdur Rashid Howlader and others.

----Defendant- Respondent-Opposite Parties.

Mr. Md. Oziullah, Senior Advocate with

Mr. Md. Mizanur Rahman, Advocate

----For the Plaintiff-Appellant-Petitioner.

Mr. Chanchal Kumar Biswas, Advocate

----For the Defendant- Respondent-Opposite Parties.

**Heard On: 04.11.2025, 25.11.2025, 01.12.2025.**

And

**Judgment Delivered On: 07.12.2025.****Md. Toufiq Inam, J.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment dated 10.04.2013 and decree dated 15.04.2013 passed by the Joint District Judge, Bagerhat in Title Appeal No. 98 of 2003, whereby the appeal of the opposite parties was allowed and the petitioner's Title Appeal No. 84 of 2003 was dismissed, thereby modifying the judgment dated 10.05.2003 and decree dated 14.05.2003 passed by the Assistant Judge, Sarankhola, Bagerhat in Title Suit No. 14 of 2001, should not be set aside.

The plaintiff-petitioner's case is that he instituted Title Suit No. 14 of 2001 before the Assistant Judge, Sarankhola, Bagerhat seeking declaration of title, partition, and permanent injunction in respect of the scheduled land. The suit land, situated in Mouza No. 10, Sonatola, S.A. Khatian No. 887, measuring 5 decimals, originally belonged to Biharilal Karmaker. After his death, his two sons, Kartik and Ganesh, inherited the property. On 25.01.1983, Kartik and Ganesh executed an exchange deed in favour of defendant No. 2, transferring 3.25 decimals out of 5 decimals in S.A. Plot Nos. 3515 and 3516. Under the exchange, defendant No. 2 received 3 decimals and began possession from the southern side of the two plots, while the remaining 1.75 decimals continued with Kartik and Ganesh. Out of the 1.75 decimals retained, Ganesh transferred 0.875 decimals on 01.03.1996 to Kalachand Karmaker through a registered heba, and Shyamal and Kamal jointly transferred 0.875 decimals on 13.07.1995 to the plaintiff through a registered heba. Subsequently, Kalachand conveyed his 0.875 decimals to the plaintiff by a registered kabala with delivery of possession. Accordingly, the petitioner claims ownership and possession of 1.75 decimals from the northern side of Plot Nos. 3515 and 3516, supported by mutation and payment of land development tax. The petitioner also asserts the presence of a *gol-pataghar* on the suit land. On 18.05.2001, defendant No. 1 threatened forcible dispossession, and fearing imminent action due to the defendant's local influence, the petitioner instituted the suit, as the land required formal partition.

The defendants contested the suit, asserting that Plot Nos. 3515 and 3516 belonged exclusively to them, that the plaintiff had never been in possession, that his purchases were invalid, and that he had no right or title in the land. They prayed for dismissal.

The trial court dismissed the suit on the assumption that Plot No. 3516 remained government sikasti/khas land, while the appellate court, modifying the judgment, held that defendant No. 2 was entitled to Plot No. 3515 under the exchange deed and that Plot No. 3516 was khas land. The appellate court allowed the appeal of defendants Nos. 1 and 2 while dismissing the petitioner's appeal. It noted that Plot No. 3515 was classified as shop land and Plot No. 3516 had historically been maintained as "Sonatala Canal" for public use, for which no rent was assessed. Accordingly, it held that section 86 of the State Acquisition and Tenancy Act, 1950 applied, and the petitioner could not derive title through his kabala deeds, though the government could prioritize him in settlement due to possession.

Mr. Md. Oziullah, learned Senior Advocate for the petitioner, submits that the S.A. Khatian No. 887 was correctly prepared in the name of Biharilal Karmaker. The heirs, Kartik and Ganesh, executed Exchange Deed No. 978 dated 25.01.1983 in favour of defendant No. 2, transferring only the southern side of Plot Nos. 3515 and 3516; not solely from Plot no. 3515. The remaining 1.75 decimals were validly

transferred to the petitioner's predecessors under registered sale deeds, which were incorporated in B.S. Khatian Nos. 3223 and 1154, with long continued possession and payment of land tax. Both parties have been in possession of their respective portions in accordance with the B.S. records, which were finally published by the Government.

He contends that the trial court erroneously treated the petitioner's possession as unauthorized, dismissing the suit on the assumption that the land was government khas. The appellate court compounded this error, failing to properly consider cross-examination of D.W. 4 and the trial court's own observation that the petitioner possessed the northern portion while the defendants possessed the southern portion. The periphery map relied upon by the defendants was prepared after the petitioner's mutation and lacks probative value to displace registered deeds and continuous possession. The appellate court's conclusion that Section 86 of the SAT Act applied is misconceived; the land had become solid and usable, and land revenue continued to be paid up to Bangla year 1426.

*Per Contra*, Mr. Chanchal Kumar Biswas, learned Advocate for the defendants, submits that the exchange deed transferred the southern portion to defendant No. 2 and that the subsequent sale agreements with the petitioner were ineffective, as the vendors had no salable title

at that time. He argues that the petitioner's title was extinguished. He adds that the petitioner himself admits in the plaint the effect of the exchange deed, and the deed's operation is limited to the southern portion.

At trial, the petitioner examined four witnesses and produced documentary evidence. P.W. 1, the petitioner, deposed that he purchased the land in 1998 for valuable consideration, produced his purchase deeds, and had mutation effected in his favour, paying land taxes regularly. He erected a *goal-pataghar* on the land and furnished exchange deeds to establish title. In cross-examination, he reaffirmed that the exchange deed dated 25.01.1983 involved both plots and that he possessed 1.75 decimals from the northern side. Importantly, D.W. 4 (Government witness) admitted the petitioner's possession and chain of title, and failed to produce evidence that the land was ever khas prior to the filing of the suit. A periphery map dated 26.07.2001, signed by the U.N.O. and A.C. (Land) in 2002, was produced by D.W. 4, but its authenticity is questionable.

Upon careful scrutiny, it is evident that the exchange deed No. 978 dated 25.01.1983 pertained only to the southern portion. Exchange Deed No. 978 dated 25.01.1983 (exhibit-Kha) reveals that land from the southern side of Plot Nos. 3515 and 3516 has been delivered to the defendants. The vendors of the petitioner retained title to the northern

portion, which was subsequently conveyed to the petitioner through registered kabala deeds, acted upon, and supported by mutation and continuous tax payment.

However, upon considering the facts and evidence, it appears that Plot Nos. 3515 and 3516, as well as the adjacent canal, lie parallel to each other in a north–south alignment. When the land was divided east–west. In 1983, the original owner exchanged the southern composite portion, measuring 3.25 decimals, with Defendant No. 2 in consideration of other property. The remaining northern composite portion, measuring 1.75 decimals, was later sold to the plaintiff-petitioner. Thus, the entire 5 decimals of land were transferred through two separate conveyances. The parties received their respective composite portions: the defendants were allotted the southern portions of both Plot Nos. 3515 and 3516, while the plaintiff obtained the northern portions.

It is undisputed that Plot No. 3516 lay on the bank of the Canal and that 2 decimals of land from the canal-side portion of Plot No. 3516 were later lost due to erosion. Due to the effect of sikasti/erosion, the total area of the suit land now stands at 3 decimals out of the original 5 decimals. The present dispute arises at the stage of partition. The plaintiff-petitioner, as purchaser of 1.75 decimals, seeks separate allotment of his share. Defendant Nos. 1 and 2 object, contending that

since they got the property by earlier transfer and since the erosion occurred on the canal-side, they are entitled to the entirety of the surviving 3 decimals, leaving the plaintiff-petitioner with nothing. The plaintiff-petitioner's learned Advocate, on the other hand, asserts that both transferees acquired mixed land from both plot Nos. 3515 & 3516 and that the erosion affected their common subject-matter from plot No. 3516; therefore, the loss must be borne proportionately according to each party's fractional share.

The governing legal principle in such situations is well settled. Where land held in co-ownership suffers physical diminution- whether by diluvion, acquisition, encroachment, or otherwise- the loss follows the fractional title, not the chronology of purchase. A co-owner's entitlement is determined by the share he holds in the entire undivided holding, and any subsequent loss must be apportioned proportionately, unless there is clear, credible evidence that the diminished portion lay exclusively within a party's separately demarcated and independently possessed area. In the present case, the evidence shows that no such separate demarcation ever existed. Rather, both the 1983 exchange and the subsequent sale conveyed composite portions comprising parts of the Plot No. 3516 as well as the inland Plot No. 3515. Accordingly, both the defendant No.2 and the plaintiff-petitioner became co-owners of the entire 5-decimal holding, and the erosion affected their undivided common property.

When the original total land was 5 decimals and the loss amounts to 2 decimals, the only equitable and legally defensible method is proportional deduction. The defendant No.2 originally acquired 3.25 decimals, representing 65% of the total 5 decimals, while the plaintiff-petitioner originally acquired 1.75 decimals, representing 35%. Applying proportional deduction, the defendant No.2 must bear 1.3 decimals of the loss and the plaintiff-petitioner must bear 0.7 decimals. The surviving land therefore stands at 1.95 decimals for the defendant No.2 and 1.05 decimals for the plaintiff-petitioner, together constituting the actual 3 decimals still available.

The defendants' argument that priority flows from being earlier transfers has no legal basis. Priority cannot arise merely from the earlier date of transfer unless accompanied by exclusive possession or contractual stipulation, neither of which is present. The defendant No.2 got 3.25 decimals, not the entire holding, and the vendor was legally competent to convey the remaining 1.75 decimals to the plaintiff-petitioner. There is no evidence that the defendant No.2 ever possessed the entirety of Plot No. 3515 to the exclusion of the plaintiff-petitioner. The erosion occurred after both conveyances and affected the undivided interests of both parties.

The plaintiff-petitioner's contention that the erosion-related loss must be shared proportionately is therefore consistent with both law and



equity. Since each party's transferred portion consisted in part of the eroded plot No. 3516, the erosion cannot extinguish only the plaintiff-petitioner's share while preserving the defendants' share intact.

In view of the facts and the applicable legal principles, this court holds that the 2 decimals lost to erosion should be proportionately deducted from the respective shares of the defendant No.2 and the plaintiff-petitioner. After such adjustment, the defendant No.2 remain entitled to 1.95 decimals and the plaintiff-petitioner to 1.05 decimals out of the surviving 3 decimals.

For those reasons-

- i) The **Rule is made absolute.**
- ii) The impugned judgment and decree dated 10.04.2013 and 15.04.2013 passed by the learned Joint District Judge, Bagerhat in Title Appeal No. 98 of 2003 (allowing the defendants' appeal) and Title Appeal No. 84 of 2003 (dismissing the petitioner's appeal) are hereby set aside.
- iii) The judgment and decree of the trial court dismissing Title Suit No. 14 of 2001 are also set aside.
- iv) The **suit is decreed in part.** It is declared that the plaintiff-petitioner has valid right, title, and saham in the northern portion of the suit land, measuring 1.05 decimals.

- v) Defendant No. 2 is entitled to the southern portion of the suit land measuring 1.95 decimals under Exchange Deed No. 978 dated 25.01.1983. His rights, title, and possession in respect of this southern portion are fully protected.
- vi) The trial court is directed to effect the saham in accordance with this declaration and complete all steps in the final decree proceedings. The preliminary decree for such partition should reflect these adjusted entitlements, and the commissioner may thereafter proceed to allot physically feasible plots in accordance with the adjusted shares.

A copy of this judgment along with the records of the lower courts shall be transmitted to the trial court for information and necessary action.

**(Justice Md. Toufiq Inam)**