

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.222 OF 1999

Golok Chandra Mallik @ Mondal and others

... Appellants

-Versus-

Heirs of late Pachu Mallik @ Mondal:- Kalipada Mallik
@ Mondal and others

... Respondents

Mr. Tapan Kumar Bepary, with

Mr. Tarak Chandra Roy,

Mr. Bulbul Das, Advocates

.... For the appellants.

Mr. Md. Sadekur Rahman, with

Mr. Mahabub-ule-Islam, Advocates

.... For the respondent Nos.1(Ka), 2(Ka),

3(Ka)-3(Kha) and 19.

Heard on 17.05.2026 and 11.06.2026.

Judgment on 22.06.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 22.04.1999 passed by the learned Sub-Ordinate Judge, 3rd Court, Khulna in Title Suit No.120 of 1994 decreeing the suit in part.

Facts in short are that the appellants as plaintiffs instituted above suit for partition of 42.10 acres land seeking a separate saham for

16.1861 acres alleging that predecessor of the plaintiffs and defendants Nos.1-5 namely Neduram Mondal was the korta of the joint family comprising his four sons Joggeshor, Janoki, Oviram and Jonardhon who had 2.48 acres land. After demise of Neduram his eldest son Joggeshor became the korta of above joint family comprising three brothers namely Janoki, Ovirama and Jonardon and Oviram died leaving above three brothers as heirs. Joggeshor died in 1966 leaving three sons Kiron, Pachu and Mohendra and Kiron became the korta of the joint family and above joint family continued until 1972. Above Kiron, Pachu, Mohendra, Janoki and Jonardhon jointly filed Title Suit No.628 of 1969 for release a part of disputed land from the list of vested and non-resident property which was decreed ex-parte. In above suit it was stated that above plaintiffs were still living in a joint family and their properties were being possessed jointly. During continuation of above joint family Joggeshor and his two brothers, Jonaki and Jonardon jointly purchased 24.28 acre land by 10 separate registered kabla deeds in their names or in the names of their wives or in the names of their sons (Exhibit Nos."2", "2Ka", "2Kha", "2Ga" "2Gha", "2Uma", "2Cha", "2Ja", "2Jha" and "2Neo" respectively).The consideration money of above 10 kabla deeds were paid out of the joint family fund and plaintiffs and defendants are in joint possession in above land. Joggeshor was entrusted to prepare S. A. Khatians of above land who assured the plaintiffs that records have been prepared rightly but

recently the plaintiffs came to know that above S. A. Khatians were not prepared in accordance with the shares of the plaintiffs. Above property has not been partitioned by meets and bounds and the defendants refused to effect an amicable partition. Plaintiffs who are heirs of Janoki and Jonardhon are in entitled to $\frac{2}{3}$ rd share of above 24.28 acre land and the defendants who are heirs of Joggeshor are in entitled to $\frac{1}{3}$ share.

Defendant Nos.1-3 contested above suit by filling a joint written statement alleging that the joint family comprising Joggeshor, Janoki and Jonardhon was dissolved in 1948 over a dispute of auction sale of the property of their predecessor Neduram and above three brothers established their separate huts, partitioned their property and were living in separate mess. All properties purchased by Joggeshor and their brothers in the names of their wives and sons were their own properties and consideration of above deeds were paid by the recipients of above kabla deeds and above property was not property of the joint family. Relevant S. A. Khatians were rightly prepared and plaintiffs and defendants acquired their property separately, sold their property individually and possessed their property separately. It was further stated that Joggeshor purchased 2.90 acres land by registered kabla deed dated 13.05.1957 from Kalipada Dutta and after his demise his son Pachu Mallik has transferred 96.50 decimal land to Golam Rasul Mina

but above property or above Golam Rasul Mina were not impleaded as defendant in above suit. It was further stated that father of plaintiff No.4 Janoki purchased 50 decimal land by registered kabla deed dated 27.07.1959 and sold the same to Mohabbot and three other persons by registered kabla deed dated 04.06.1970 but above Mohabbot Ali Howlader, Alep Mollick, Abdul Latif and Habibur Rahman were not impleaded in above suit as defendants.

At trial plaintiffs examined six witnesses and defendants examined four. Documents of the plaintiffs were marked Exhibit No.1-6 series and those of the defendants were marked Exhibit Nos. "Ka" series, "Kha" series, "Ga" series, "Gha" series, "Uma" series, "Cha" series, "Chaa" series and "Ja" series.

On consideration of above facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit in part granting the plaintiffs saham for 5.78 acres land and defendants were given saham for 15.55 acres land and defendant Nos.18 and 19 were granted saham for 33 decimal land.

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

Mr. Tapan Kumar Bepary, learned Advocate for the appellants submits that the plaintiffs filed above suit for partition of the joint property of the joint family comprising Joggeshor, Jonardhon, Janoki

and Oviram which was after demise of Joggeshor in 1966 headed by Kiron son of Joggeshor and above joint family was dissolved in 1972. The korta of above joint family namely Joggeshor and subsequently Kiron Mallik purchased 24.28 acres land by 10 separate registered kabla deeds during the period from 1947-1961 in the names of Joggeshor, Jonardhon, Janoki or in the names of their wives or sons and consideration money of above kabla deeds were paid out of the joint family fund. Plaintiffs are the heirs of Janoki and Jonardhon and defendants are heirs of Joggeshor. As such plaintiffs are entitled to $\frac{2}{3}$ share of above 24.28 acres land and defendants are entitled to $\frac{1}{3}$ share. Defendants have admitted that the joint family comprising Joggeshor, Janoki, Oviram and Jonardhon was headed by Joggeshor but they claimed that above joint family came to an end in 1948. As such the defendants were required to prove above dissolution of the joint family by legal evidence but the defendants could not prove the same. It has been admitted by DW1 Kalipada Mallik that above joint family had a joint property amounting to 15 bigha land which was the nucleus and out of earnings of above nucleus the consideration of above kabla deeds were paid. Since the plaintiffs succeeded to prove their claim that above 24.28 acres land were jointly acquired the learned Joint District Judge should have granted separate saham to the plaintiffs for $\frac{2}{3}$ share but the

learned judge most illegally held that the plaintiffs could not prove the existence and continuation of joint family which is not tenable in law.

The learned advocate lastly submits that 2.90 acre land purchased by Joggeshor by registered kabla deed dated 13.05.1957 was a part of the joint property which was subsequently transferred for the interest of the joint family. As such above property has not been incorporate in the schedule of this suit. Father of plaintiff No.4 Janoki purchased 50 decimal land by registered kabla deed dated 27.07.1959 and he transferred the same to Mohabbot and others by registered kabla deed dated 04.06.1970 for the interest of the joint family. Since above property is no longer joint property the same was not brought in to the hotchpotch of the suit.

On the other hand Mr. Sadekur Rahman, learned Advocate for respondent Nos.1(Ka), 2(Ka), 3(Ka)-3(Kha) and 19 Submits that the joint family headed by Joggeshor was dissolved in 1948 over a dispute as to auction sale of the property of Neduram and thereafter Joggeshor and his brothers and the sons of Joggeshor purchased land with their own money. Sons of Joggeshor namely Kiron and Pachu were businessmen who used to purchase and sale paddy and they earned huge money from above business and purchased land in their own names and in the name of their mother with their own money. Above 26.28 acres land was not purchased with the fund of the joint family but the recipients of above kabla deeds purchased above land with their own money and

above property was accordingly recorded in relevant S. A. khatians and plaintiffs and defendants predecessor possessed and sold above property treating the same as their individual property. The father of plaintiff No.4 Janoki alone purchased 50 decimal land by registered kabla deed dated 27.07.1959 and sold above land to Mohabbot and other three persons by registered kabla deed dated 04.06.1970 but the plaintiffs did not include above land in this suit and thereby admitted that above land was individual property of Janoki. Similarly Joggeshor purchased 2.90 acres land by registered kabla deed dated 13.05.1957 from Kalipodo Datta out of which his son Pachu transferred 96.50 decimal land to Golam Rasul Mina but above property was also not incorporated in above suit. On consideration of above facts and circumstance of the case and evidence on record the learned Joint District Judge has rightly decreed the suit in part which calls for no interference.

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

As mentioned above appellants as plaintiffs filed above suit for partition of 42.01 acre land appertaining to six C. S. Khatians being Nos.238, 239, 234, 235, 236 and 167 but in the plaint there is no statement as to how plaintiffs or their predecessors were related with above 42.01 acres land. At trial the plaintiffs produced and proved only three C. S. Khatians being Nos.238, 234 and 167 and did not produce

other C. S. Khatians. The plaintiffs in fact seek partition of 24.28 acre land which was purchased by their predecessors Joggeshor, Janoki and Jonardhon in their names or in the names of their wives or sons during the period from 1948 to 1961 (Exhibit Nos. "2", "2Ka", "2Kha", "2Ga" "2Gha", "2Uma", "2Cha", "2Ja", "2Jha" and "2Neo" respectively). As such filing this suit for partition for 42.10 acres land appears to be misconceived.

The plaintiffs have claimed that the joint family headed by Joggeshor and after his demise in 1966 his son Kiron continued until 1972 and they have further claimed all properties purchased in the name of any member of above family during the period from 1942-1961 as joint family properties. In their written statement defendants have mentioned that Joggeshor purchased 2.90 acres land from Kalipada Dutta on 13.05.1957 and after his demise his son Pachu sold 96.50 decimal land to Golam Rasul Mina. The plaintiffs have by amendment of the plaint admitted the purchase of above land by Joggeshor but did not incorporate above land in this suit nor impleaded above Golam Rasul Mina as defendant. Similarly plaintiffs admitted that Janoki purchased 50 decimal land by registered kabla deed dated 27.07.1959 and sold the same to Mohabbat and other three person by registered kobla deed dated 04.06.1970 but above property was not brought into the hotchpotch of this suit nor above purchasers were impleaded as defendants.

In his cross examination PW1 Golok Chandra Mallik admitted that the plaintiffs have transferred 2 acres land to others. The plaintiff did not mention in the plaint or in the evidence of plaintiff witnesses from which khatian above 2 acre land was sold and who were the purchasers. Nor the plaintiff impleaded above purchasers as defendants or exclude above 2 acres land from their share.

On consideration of above facts and circumstances of the case and evidence on record we find substance in the submissions of the learned Advocate for the respondents that above suit for partition was bad for defect of parties and for not bringing into hotchpotch of above suit each and every piece of joint property and for above deficiencies above suit was not tenable in law.

But in a suit for partition the cause of action is recurring and continues until a joint property is partitioned by meets and bounds. As such a suit for partition should not be dismissed for procedural deficiencies such as defect of parties or not incorporating all joint properties into the schedule of the plaint which defects can be cured by amendment of the plaint. The defects or deficiency in the plaint which can be removed by amendment of the plaint should not be the ground for dismissal of the suit and the plaintiff should be given an opportunity to remove of above defects and deficiencies and get judicial determination of the suit.

The learned Advocate for the appellants points out that this Court passed an order of stay against the proceedings of Land Survey Tribunal Suit No.1391 of 2017 involving correction of the B. S. Khatian of disputed property till disposal of this appeal which needs to be continued till disposal of the retrial of the suit.

On consideration of 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 adduced further evidence.

In above view the facts and circumstance 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 22.04.1999 passed by the learned Sub-Ordinate Judge, 3rd Court, Khulna in Title Suit No.120 of 1994 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunities to amend their respective pleadings and adduced further evidence if any.

The proceedings of Land Survey Tribunal Suit No.1391 of 2017 shall remain stayed until conclusion of above retrial. The learned Joint District Judge is directed to conclude the retrial of the suit within one year from the date of receipt of this order.

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