

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. 375 OF 2015**

Josimuddin and others

...Appellants

-Versus-

Idris Ali and others

... Respondents

Mr. Md. Mostafa, Advocate

.... For the appellant Nos.1-2, 4-5 and 7-8.

Mr. Md. Iqbal Hossain, Advocate

.... For the respondent Nos.14, 16 and 45-

46.

**Heard and Judgment on 06.05.2026.**

**S M Kuddus Zaman, J:**

This First Appeal is directed against the judgment and decree dated 24.08.2015 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Cumilla, in Title Suit No.30 of 2010.

Facts in short are that respondent Nos.1-8 as plaintiffs instituted above suit for partition of 13.94 acre land as described in schedule Nos.1 and 2 to the plaint seeking a saham for 4.72 acre land alleging that land of C. S. Khatian No.4 of Schedule No.1 belonged to Jahabox before the cadastral survey who died leaving three sons Abbas Ali,

Usman Ali and Okkas Ali and Osman Ali died leaving above two brothers Abbas Ali and Okkas Ali and wife Kalomjan Bibi and daughter Banesa Bibi as heirs. The property of C. S. Khatian Nos.125, 92 and 636 of second schedule belonged to two brothers Abbas Ali and Okkas Ali in equal share. Okkas Ali died leaving two sons Hasan Ali and Kalu Miah and one daughter Siforjan Bibi but above C. S. Khatians were erroneously recorded only in the name of Hasan Ali alone. Plaintiffs are successive heirs of Osman Ali and by way of inheritance and subsequent purchase they are owning and possessing 4.72 acre land but the same has not been partitioned by meets and bounds and the defendants refused to effect an amicable partitioned.

Defendant Nos.43-45 contested above suit by filing a joint written statement alleging that above Okkas Ali died leaving only son Hasan Ali and he had no son namely Kalu or daughter Siforjan Bibi. Above Hasan Ali died leaving only daughter Kolomjan Bibi who died leaving defendant No.43-45 as heirs who acquired 3.22 acre land and seeks saham for the same. It was further alleged that Kalu was the son of the wife of Okkas Ali by her previous husband.

At trial plaintiffs examined two witnesses and documents of the plaintiffs were marked as Exhibit Nos.1-13. Defendant Nos.43-45 examined two witnesses and their documents were marked as Exhibit Nos."Ka" to "Gha".

On consideration of facts and circumstances of the case and evidence on record the learned Joint District Judge decreed above suit and gave saham to the plaintiffs for 4.9796 acres land and defendant Nos.43-45 were given saham for 122.56 decimal land instead of  $3.21\frac{7}{8}$  acre land.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court defendant Nos.43-45 and heirs of deceased defendant No.55 Samed Ali as appellants moved to this Court and preferred this First Appeal.

Despite service of process the plaintiffs of above suit who are respondents Nos.1-8 did not enter appearance in this appeal and contest the same.

Respondent Nos.14, 16 and 45-46 appeared in this appeal.

Mr. Md. Mostafa, learned Advocate for the appellant Nos. 1-2, 4-5 and 7-8 submits that Hasan Ali was the only son and heir of Okkas Ali and he alone inherited total property of Okkas Ali and his name was correctly recorded in the relevant C. S. Khatians and Okkas Ali did not have any son namely Kalu or daughter namely siforjan as has been alleged by the plaintiffs. Above Kalu and Siforjan were children of the wife of Okkas Ali by her previous husband but the learned Judge of the trial Court erroneously held that above Kalu and Siforjan were heirs of Okkas Ali and thereby unlawful reduced the saham of defendant Nos.43-45 which is not tenable in law. The learned Advocate further

submits that defendant No.55 Samid Ali died during above suit but his heirs were not substituted in above suit and his heirs appellant No.14-16 did not have any knowledge as to above suit and they could not contest the claim of the plaintiff by filing written statement nor they could seek separate saham for 4 acres land purchased by defendant No.55 by 13 separate registered kabla deeds before filing of above suit. Above land of deceased defendant No.55 have been unlawfully allocated to the plaintiffs and the ends of justice will be met if above judgment and decree is set aside and the suit is remanded to the trial Court for retrial after giving the heirs of deceased defendant No.55 an opportunity to contest above suit and seek saham for above land.

Mr. Md. Iqbal Hossain, learned Advocate for respondent Nos.14, 16 and 45-46 submits that they were defendant Nos.7, 9 and 52-53 of above suit for partition but no process of above suit was served upon them and since they were working abroad they had no knowledge as to above suit and they could not contest above claim of the plaintiffs nor they could seek separate saham for their 1.53 acres land which has been erroneously allotted to the plaintiffs. The learned Advocate further submits that the ends of justice will be met if impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving above defendants an opportunity to contest above suit by filing written statement and seek separate saham.

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

As mentioned above now deceased defendant No.55 was impleaded as a defendant in above suit for partition but he could not contest above suit. It has been alleged by his heirs the appellants that above defendant died immediately after filing of above suit without receipt of summon. But his heirs were not substituted and they had no knowledge about of above suit. Defendant No.55 acquired 4 acres land by purchase 13 separate registered kabla deeds from the recorded tenants of disputed khatians. But they could not produce above documents at trial nor could seek any saham and their above land has been allotted in the saham of the plaintiffs.

Similarly, respondent Nos.14, 16 and 45-46 were impleaded as defendant Nos.7, 9 and 52-53 in above suit for partition and they claimed that they were working abroad and no process of above suit was served upon them and they had no knowledge and scope to contest above suit and claim their legitimate saham and taking advantage of the their absence in above suit their legitimate share in above joint property has been unlawfully allotted in the saham of the plaintiff.

As mentioned above an important dispute in above suit is as to the heirs of Okkas. Plaintiffs claim that Okkas died leaving two sons Hasan and Kalu and the daughter namely Siforjan as heirs. But

defendant Nos.43-45 who are the heirs of daughter of Hasan claim that Okkas had only one son namely Hasan and Kalu and Siforjan were the children of the wife of Okkas by her previous husband. The learned Advocate for the appellants submits that the appellants have discovered new evidence oral and documentary in support of their claim that Hasan was the sole heir of Okkas and they would produce above additional evidence if the suit is remanded to the trial Court.

In a suit for partition the plaintiff admits lawful title of each and every co-sharer whom he impleads in the suit as defendants. In such a suit for partition the main dispute is with regard to the quantum of share which the plaintiffs and defendants are entitled to get. The learned Advocate for the appellants pointing at Paragraph No.10(Ka) of the plaint rightly submits that the plaintiffs sought saham for 4.72 acre land but the learned Judge of the trial Court most illegally allotted 4.97 acres land without any explanation.

On consideration of above facts and circumstance 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 the heirs deceased defendant No.7, 9, 52 and 53 a fair opportunity to submit written statement and all the parties be given opportunity to amend their respective pleadings and adduce further evidence.

In above view of the materials on record we find substance in this First Appeal which deserves to be allowed.

In the result, the First Appeal is allowed. The judgment and decree dated 24.08.2015 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Cumilla, in Title Suit No.30 of 2010 is set aside. Above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence and all the defendants an opportunity to file written statement and contest above suit in accordance with law.

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