

West Bengal Form No. 3701

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGEMENT IN ORIGINAL SUIT/CASE

DISTRICT : Malda.

IN THE COURT OF : **Civil Judge, Senior Division,
Chanchal, Malda.**

PRESENT : Smt. Soroshi Goswami (WB01145)
Civil Judge (Sr. Divn.),
Chanchal, Malda.

Dated the 14th day of July, 2026

PARTITION SUIT / CASE NO. 134 of 2015

CNR NO. WBML060000082015

HAIDAR ALI AND OTHERS

Plaintiff(s)
Petitioner(s)

Vs.

PORMAN ALI & OTHERS

Defendant(s)
Opposite Party(s)

Give date or dates : This suit/case coming on for final hearing on 23.06.2026 and 30.06.2026 in the presence of

Mr. Umesh Chandra Mondal

Advocate(s) for Plaintiff(s)
Pleader(s) Petitioner(s)

Mr. Azharuddin Ahamed

Advocate(s) for Defendant(s)
Pleader(s) Opposite Party(s)

and having stood for consideration to this day, the Court delivered the following
Judgement :

J U D G E M E N T

This is a suit for partition valued Rs. 3,07,000/-.

THE CASE OF THE PLAINTIFFS IN A NUTSHELL :

1. That previously the suit schedule properties belonged to one Afijuddin , father of the plaintiffs and accordingly, the said properties were recorded in his name in the RSROR as well as in the LRROR. After his death, his five sons, namely, Haidar Ali, A. Khalek, Md. Mohosin Ali, Obaidur Rahaman, i.e., the plaintiff no. 1 to 4 and Porman Ali, i.e., the defendant no.1 along with one daughter , namely, Begum Bibi inherited his properties. Lateron, said Begum Bibi transferre dher inheirted share in favour of her five brother vide Deed no. 1665 for the year 2007. thus, the plaintiffs have been jointly possessing the 4/5th share of the 2 acre 34 satak property, whereas, in the schedule kha property i..e, at suit plot no. 375 measuring 25 satak property, the defendant no.2 has 8 satak property and the plaintiffs are having the remaining 17 satak property. However, it has been alleged by the plaintiffs that the defendants are trying to change the nature and character of the suit property except his own share at the suit plot no. 1657 by making pucca construction therein and also refused to get the suit property to be partitioned by metes and bounds amicably. Hence, the present suit for partition has been filed by the plaintiffs plaint for declaration of their 4/5th share jointly in the schedule 'Ka' property and 4/5th share in the 17th

satak property out of 25 satak property at suit plot no. 375.

It is important to be noted here that during the pendency of this suit defendant no. 2 namely Mafijuddin has been added as per prayer of the plaintiffs vide order dated 01.08.2016. Again, the defendant no. 3 namely Ojeda Bibi has also been arrayed vide order dated 30.01.2020 as per her prayer.

CASE OF DEFENDANTS NO. 1:

2. The defendants no. 1, in his written statement, has categorically denied the plaintiffs' case, however he admitted that the five sons of Afijuddin after inheriting the suit properties, have been possessing their shares separately and distinctly upon constructing their respective houses. He has also stated that the suit is bad for partial partition as said Afijuddin had more properties at Balarampur mouza and other mouzas at non-suited plot no. 343, 365, 372 and 373, which the plaintiffs did not bring into the hotchpot of the instant suit for partition.

In his additional written statement, the defendant no. 1 has further stated that after the death of Afijuddin his five sons and daughter inherited the properties of their deceased father and subsequently, the daughter of Afijuddin transferred her share in favour of her five brothers and thereafter, the five sons of Afijuddin have been possessing their inherited properties separately and distinctly as per their amicable partition. It has been further submitted by the defendant no. 1 that during his lifetime, said Afijuddin transferred his entire properties in favour of

his five sons orally, except suit plot no. 375 and said Afijuddin transferred 17 satak property at suit plot no. 375 in favour of the defendant no. 1 and his wife, i.e., the defendant no. 3 vide deed no. 12818 dated 24.12.1990. Thus, the said property is occupied by these defendants and accordingly, recorded in their names in the LRROR. In spite of that, only to harass the defendants, the plaintiffs have filed the instant suit. He also stated in his written statement that suit plot no. 1657 was previously numbered as 1840 measuring 36 satak, but the plaintiffs have mentioned only 16 satak property at suit plot no. 1657 without mentioning the whereabouts of the remaining 20 satak property. He further submitted that after his transfer of 17 satak property at suit plot no. 375, Afijuddin had only 8 satak property at the said plot, which was inherited by his legal heirs, including the defendant no. 1.

Although the defendant no. 3 has filed her separate written statement, but in her written statement, she has reiterated the averments of the additional written statement of the defendant no. 1 and accordingly, prayed for dismissal of the suit.

3. On the basis of the rival pleadings of the parties, following issues have been framed in this suit:

ISSUES

1. Is the suit maintainable in its present form and law?
2. Have the plaintiffs any cause of action to file this suit?
3. Is the suit bad for defect of parties?

4. Have the plaintiffs unity of title and possession over the suit property?
5. Are the plaintiffs entitled to get the decree as prayed for?
6. To what other relief or reliefs, if any, are the plaintiffs entitled to get?

EVIDENCE ADDUCED

4. In support of his case plaintiff has examined two witnesses viz.:
 1. Hayder Ali (plaintiff no. 1).....**P.W.1.**
 2. Golam Robbani**P.W.2.**

In order to substantiate his case the plaintiffs have exhibited the following documents:

1. The LRROR in connection with khatian no. 33 of Chandrapara mouja.....**Exbt.1,**
2. The LRROR in connection with khatian no.19 of Chandrapara mouja.....**Exbt.2,**
3. Ground rent receipts.....**Exbt.3 (Serise),**

5. On the other hand, the defendants in support of their case examined two witnesses viz.,

1. Porman Ali (Defendant no. 1)..... **D.W.-1,**
2. Md. Safikul Islam**D.W.-2.**

In order to substantiate their case defendants have exhibited the following document:

1. The LRROR in connection with khatian no. 19 of Chandrapara mouja.....**Exbt.A,**

2. The LRROR in connection with khatian no.33 of Chandrapara mouja.....**Exbt. B,**

3. Certified copy of the deed of sale being no 12818 dated 24.12.1990.....**Exbt. C,**

4. Two LRRORs in connection with Khatian no. 1925 and 1926 of Balarampur mouza **Exbt.D (Collectively).**

5. One Khajna dakhila..... **Exbt. E,**

6. Heard the argument of Ld. Advocates for both the parties at length. Ld. Advocate for the plaintiffs has extensively argued that the case of the plaintiffs has been substantially admitted by the defendants in their written statement, as there is no dispute that the suit schedule properties belonged to Afijuddin and after his death his legal heirs, ie., his five sons and one daughter inherited those properties. There is also no dispute that the daughter of Afijuddin transferred her share in favour of her brothers. It has been further argued by him that since, the suit properties have not yet been partitioned by metes and bounds as per law, so the plaintiffs are entitled to get a decree for partition as per their prayer.

On the other hand, Ld. Advocate for the defendants has also presented his argument with equal vigour contending that the suit is bad for partial partition as well as defect of parties. It has been submitted by him that the plaintiffs did not include that all the properties of Afijuddin in this suit and they did not also prove the deed allegedly executed by the daughter of Afijuddin in favour of her brothers. The plaintiffs also did not clearly mention about the remaining properties of suit plot no. 546 and 372 as Afijuddin was not the sole owner of these two plots of land. Hence, he prayed for dismissal of the suit.

DECISION WITH REASONS

ISSUE NOS. 1,2 & 3:-

7. For the sake of brevity and conciseness these three issues are taken up for discussion.

Upon perusal of the evidences on record, no such material can be found to conclude that the suit lacks any cause of action or it is not maintainable otherwise.

It is important to be noted here that the defendant no. 1, in his written statement, has claimed that all the properties left by their predecessor-in-interest, namely, Afijuddin are not brought in the hotchpot of the instant suit, for which the suit is not maintainable on the ground of partial partition. However, the defendants failed to produce

any material evidence from where it can be found that Afijuddin had other properties, which are not included in this suit. On the contrary, the defendants have produced the LRROR in connection with khatian no. 19 and 33 (**marked as Exbt. A and Exbt. B respectively**), both in the name of Afijuddin, which reveal that in the name of Afijuddin, except the suit plots no other plot of land has been recorded in the LRROR, either at Chandrapara mouza or at Balarampur mouza. As such, owing to lack of sufficient evidence I am constrained to hold that the plea of partial partition, raised by the defendants, does not hold any water.

8. Again, although, the defendant no. 1, in his additional written statement, has taken the plea that all the necessary parties have not been arrayed in this suit, but except making such claim, none of the defendants have clearly mentioned as to who are the other necessary parties in this suit. Upon careful scrutiny of the evidences on record also no such material can be found showing that all the necessary parties are not impleaded in this suit. Thus, the plea of defect of parties, as raised by the defendants, is found to be vague and without any substance.

Hence, these three issues are decided in favour of the plaintiffs and accordingly disposed of.

ISSUE NOS. 4,5 & 6:-

9. Again for the sake of brevity and conciseness and to avoid unnecessary repetitions, these three issues are taken up together for discussion.

In the present case in hand, the plaintiffs have prayed for partition of their shares with respect to the schedule 'ka' property and the schedule 'kha' property. The plaintiffs have stated that they have 4/5th share at the schedule 'ka' property jointly and at plot no. 375 they have 17 satak property out of 25 satak property. The plaintiffs' case is that all these properties actually belonged to their predecessor-in-interest namely Afijuddin, from whom the plaintiffs have inherited their shares in the suit schedule properties.

In support of their claim, the plaintiffs have produced the LRRORs in the name of Afijuddin (**marked as Exbt. 2 and Exbt. 3 respectively**), along with the ground rent receipts (**marked as Exbt. 1**).

On the other hand, the defendants have also admitted that said Afiduddin was the owner of the suit schedule properties who died leaving behind his five sons ie., the plaintiff no. 1 to 4 and the defendant no. 1 along with the daughter, who subsequently transferred her inherited share in favour of her five brothers.

10. In this regard, let me refer the evidence adduced by PW-1, in which he deposed in his cross-examination that, ***"All the suit properties originally belonged to my father Afijuddin. The defendant no. 2 is possessing 8 decimals of land in plot no. 375. He has purchased the same. I don't know from whom he purchased."*** it has been further deposed by him that ***"Afijuddin has five son and one daughter namely Forman Ali, Haidar Ali, Abdul Khalek, Mohosin Ali, Obaidur***

Rahaman and Begam Bibi. I cannot recollect the year of death of Afijuddin but he died about 12 to 13 years ago during the lifetime of my father all my brothers used to reside in the same mess and resident. At present I reside separately in separate mess. I myself residing in a separate house and the rest four brothers are residing in a same house but in separate mess. My brothers are residing on plot no. 1656 and I am residing in a vested land.”

Thus, from the careful scanning of the evidence of the PW-1 it appears that even in his cross-examination he has substantially corroborated the case made out by the plaintiffs in their plaint.

On the other hand, DW-1 namely Porman Ali @ Forman Ali deposed in his cross-examination that “*Earlier the suit property belonged to Afijuddin, who was my father. He is no more. Afijuddin died leaving behind five sons namely Haidar Ali, Abdul Khalek, Mohosin Ali, Obaidur Rahaman and myself Porman Ali and a daughter namely Begam Bibi. My sister Begam Bibi transferred her share in favour of our five brothers vide registered sale deed no. 1665 of 2007. All our five brothers have been possessing our ancestral property in ejmali. After the demise of our father and after aforesaid transfer by our sister, the plaintiffs, being my four brothers jointly 4/5th share and I got 1/5th share.*” DW-1 also deposed that, “*defendant no. 3 Ojeda Bibi is my wife. I transferred 8 decimals of plot no. 375 in favour of my wife.*”

Thus, from the foregoing discussions it is found that there is no dispute that the suit properties belonged to Afijuddin , after whose death those properties were inherited by his five sons and one daughter. It is also admitted position that the daughter of Afijuddin, namely, Begam Bibi transferred her share in favour of her five brothers.

11. It is important to be noted here that although the plaintiffs do not produce any such material evidence regrading the title of Afijuddin in the suit properties, but in the present case in hand, the title of Afijuddin is not at all in dispute . The plaintiffs are claiming to have inherited 4/5th share in the schedule ka properties and their joint possession in the same, whereas the defendants no. 1 and 3 are claiming that the suit schedule properties are not their joint proprieties and besides the 1/5th share of the defendant no.1 in the said properties, the defendant nos. 1 and 3 have purchased 17 satak property at suit plot no. 375 of Balarampur mouza under a separate deed from Afijuddin and they are possessing their properties separately by way of amicable partition.

Therefore, the crux of the dispute lies in this suit regarding the extent of the shares of the parties and their possession in the suit properties. In this regard, let me here refer Section 58 of the Indian Evidence Act, which reads as follows:

“No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or

which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings;

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission.”

The principle on which this section is based is that a court sits to decide only disputed facts. Facts not in dispute need not, therefore, be proved. Therefore, considering the averments of the pleadings together with the evidences on record, I am of the humble opinion that the suit schedule properties previously belonged to Afijuddin.

It is worthy to be noted here that originally the present suit was filed with respect to the properties mentioned in the schedule ‘ka’ of the plaint and subsequently, the schedule ‘kha’ has been inserted in the plaint by way of amendment, but the plaintiffs did not specifically pray for any relief with respect to schedule ‘kha’ properties, except suit plot no. 375 of Balarampur mouza.

12. The plaintiffs have contended that they jointly have 17 satak property at suit plot no. 375 , which has been described in the schedule ‘kha’ of the plaint. But the defendants have claimed that Afijuddin, during his lifetime, transferred 17 satak property in favour of the defendant no. 1 and defendant no. 3 under a registered deed. In support of this, the defendants have produced the certified copy of the said deed, which has been marked as **Exbt. C** along with their LRRORs (**marked as Exbt. D**).

Upon perusal of the certified copy of the alleged deed of sale **(marked as Exbt. C)** it appears that Afijuddin, under the said deed, by way of sale transferred 17 satak property out of 25 satak property at plot no. 375 of Balarampur mouza to Porman Ali and Ojeda Bibi . It further appears from the LRRORs of the defendants **(marked as Exbt. D and Exbt. E)** that the said property has already been recorded in their names in the LRROR.

The plaintiffs have neither challenged the said Deed of the defendants , nor uttered a single word about the LRRORs of the defendants. As such, in absence of any substantiate evidence to the contrary, it can be safely concluded that under the said deed (marked as Exbt.C) the defendant no. 1 and 3 got 17 satak property at suit plot no. 375 from Afijuddin .

However, although the defendants have claimed that they have been possessing their properties distinctly by way of amicable partition, but there is no such substantive evidence adduced by them in this regard. On the contrary, from the evidences on record, particularly from the cross-examination of DW-1 it appears that the legal heirs of Afijuddin are in joint possession at the properties of Afijuddin. Even for the sake of argument on the basis of the deposition of PW-1 if it is assumed that the parties are having their separate houses at the suit plots, then also the basic character of the suit property being an ejmali property will not be automatically changed , because unless and until a property is partitioned

by metes and bounds either by a deed of partition or by a decree of partition, it remains a joint property and mere separate possession of the co-sharers cannot be treated as partition of the joint property by metes and bounds as per law and thereby, cannot dispense with the requirements of legal partition.

It is important to be noted here that the defendants, in one hand have contended that Afijuddin orally transferred his properties except the property at suit plot no. 375 in favour of his five sons, but in his cross-examination DW-1 deposed that after the death of Afijuddin, his five sons and one daughter inherited the properties of Afijuddin and thereby, contradicts their claim of any oral transfer by Afijuddin.

Be that as it may, considering the evidences on record, it can be safely concluded that after the death of Afijuddin, his five sons and one daughter inherited the schedule 'ka' property and later on, the daughter of Afijuddin, namely, Begum Bibi transferred her inherited share in favor of her five brothers. Thus, the plaintiff no. 1 to 4 along with the defendant no.1 got 1/5th share each in the schedule 'Ka' property, as claimed by the plaintiffs.

13. But, so far the schedule 'kha' property is concerned, as it has been pointed earlier that, the claim of the plaintiffs with respect to the said property does not appear to be very clear. In other words, the language of the plaintiff regarding their prayer with respect to schedule 'kha' property appears to be ambiguous, because in the first prayer, mentioned

in the plaint, the plaintiffs have only prayed for partition of their 4/5th share in the schedule 'ka' property and 4/5th share in the 17 satak property out of 25 satak property at plot no. 375. These implies that except suit plot no. 375 of Balarampur mouza, the plaintiffs are not praying for any relief with respect to the other plots mentioned in the schedule 'kha' of the plaint. Moreover, it has already been discussed earlier that by virtue of a registered deed, defendant nos. 1 and 3 already got 17 satak property at suit plot no. 375. On the other hand, the plaintiffs themselves, in their plaint have stated that 8 satak property at suit plot no. 375 is recorded in the name of the defendant no. 2, although there is no specific averment in the plaint as to how the said 8 satak property was recorded in the name of defendant no. 2, neither any evidence in this regard has been adduced by the plaintiffs.

Thus, from the foregoing discussions it is already found that the plaintiffs have no share in the suit plot no. 375 of Balarampur mouza. As such, the plaintiffs are not entitled to get any relief with respect to the properties described in the schedule 'kha' of the plaint, including the said suit plot no. 375.

With this observation, these three issues are also decided in favour of the plaintiffs and accordingly disposed of.

Thus, all the issues are decided and accordingly disposed of.

14. Therefore, from the above discussions, it appears that the plaintiffs have been able to prove that they have 4/5th share in the properties

described as the schedule 'ka' property in the plaint, but on account of absence of any specific prayer with respect to the properties mentioned in the schedule 'kha' of the plaint, except plot no. 375 of Balarampur mouza, in which the plaintiffs failed to prove their share, the plaintiffs are not entitled to get any relief with respect to the schedule 'kha' property. Therefore, in view of the outcome of the foregoing discussions, in my humble opinion the plaintiffs are entitled to get a decree of partition, but in part.

15. In the result the plaintiffs' case succeeds, but in part.

Court fees paid is correct.

Hence, it is

ORDERED

That the present suit, being Partition Suit No. 134 of 2015, be and the same is decreed in part on contest against the defendant nos. 1 and 3 and ex-parte against the defendant no. 2, however no order as to cost.

Therefore the suit is hereby decreed in preliminary form to the effect that the plaintiffs do have their 4/5th share in the schedule 'ka' property and the defendant no. 1 has the remaining 1/5th share in the said property.

The parties hereto are directed to get the schedule 'ka' properties amicably partitioned by metes and bounds amongst them

within 03 months from the date of this order, failing which, either of the parties would be at liberty to approach this Court for execution of the decree by appointment of Ld. Advocate Commissioner who shall divide the suit property by metes and bounds following the established rules of partition.

Thus, the suit is disposed of.

Note in the CIS and the relevant register.

Dictated and corrected by me.

**Civil Judge (Sr. Divn.),
Chanchal, Dist.-Malda.**

**(Soroshi Goswami)
(WB01145)
Civil Judge (Sr. Divn.),
Chanchal, Dist.-Malda.**