

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:
Mr. Justice Kazi Md. Ejarul Haque Akondo
And
Mr. Justice Mohi Uddin Shamim

F. A. NO. 700 OF 2019
With
C. Rule No. 05(F)/2021

IN THE MATTER OF

Mustak Ahmed and others

.....Plaintiffs-Appellants

-Versus-

1. Mosammat Juhora Hoque and others

.....Defendant Nos. 1-7
Respondents

2. Haji Syed Abdul Aziz Chunnu

..... Added defendant No. 8
Respondent

Mr. J.K. Paul, Advocate

..... For the appellants

Mr. Mohammad Amir Hosen, Advocate

.....For respondent Nos. 1 and 4

Heard on 26.05.24, 02.07.24, 10.07.24, 25.07.24, and judgment passed
on 30.07.2024

Kazi Md. Ejarul Haque Akondo, J:

This appeal, at the instance of the plaintiffs, is directed against
the impugned judgment and decree dated 27.06.2019 passed by the

learned Joint District Judge, Arbitration Court, Dhaka in Title Suit No. 83 of 2016 rejecting the plaint of the suit.

The present appellants as the plaintiffs filed Title Suit No. 952 of 2014 before the learned Joint District Judge, 2nd Court, Dhaka imp leading the present respondent Nos. 1-7 as the defendants praying for a decree of declaration of title and recovery of khas possession by evicting the illegal possessors. Thereafter, the case was transferred to the Court of Learned Joint District Judge, Arbitration Court, Dhaka, and the same was renumbered as Title Suit No. 83 of 2016. The present respondent No. 1-7 as the defendants entered an appearance and filed a written statement. Thereafter, the present respondent No. 8 being added defendant No. 8 filed a written statement in the suit, and then filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 praying for rejection of the plaint on the grounds that the predecessor of the plaintiffs earlier filed different title suits against the instant added defendant No. 8 which were decreed in terms of solenama, and he owns the suit land by sole-decree, the plaintiffs have no right, title, and possession in the suit land. The plaintiffs filed a written objection

against the said application so filed under Order 7 Rule 11 of the Code stating that the statements made in the application are not at all part of the plaint. After hearing the said application the learned Trial Judge by impugned judgment and decree dated 27.06.2019 allowed the same and rejected the plaint of the suit. Being aggrieved by the same the plaintiffs filed the instant appeal before this Court.

Anyway, Mr. J. K. Paul, the learned Advocate appearing for the plaintiffs-appellants candidly submits that the plaintiffs did not make any averment in the plaint to the effect that the predecessor of the plaintiffs and others earlier filed several suits regarding the suit land against the added defendant No. 8 i.e Title Suit No. 72 of 1977 renumbered as Title Suit No. 34 of 1979 decreed on solenama on 14.09.1981, Title Suit No. 73 of 1977 renumbered as Title Suit No. 251 of 1981 decreed on solenama on 27.11.1981, Title Suit No. 644 of 1985 decreed ex-parte, and Title Suit No. 130 of 1986 decreed on solenama on 28.03.1988 are still in force and binding upon the predecessor of the plaintiffs as such, the application for rejection of the plaint in such averments is not maintainable, for those are the matters of trial.

He also submits that the Trial Court passed the impugned judgment and decree based on fraudulent facts stated in the application filed under Order 7 Rule 11 of the Code of Civil Procedure without considering the facts disclosed in the plaint which is contrary to the provision of law, for the suit land and the land so mentioned in sole decree as well as the ex-parte decree as alleged in the application for rejection of the plaint are different which can only be seen in trial.

He lastly submits that the plaintiffs never stated in four corners of the plaint that the suit land was mortgaged in the Bank of Credit and Commerce International Overseas Ltd. and sold on auction but the Trial Court traveling beyond the plaint rejected the plaint based on the non-pleaded statements in the plaint, as such the impugned judgment and decree is liable to be set-aside.

Conversely, Mr. Muhammad Amir Hosen, the learned Advocate appearing on behalf of respondent Nos. 1 and 4 finds it difficult to oppose the submissions so made by the learned Advocate for the appellants.

Heard the learned Advocates of the parties and perused the materials on record. It appears that the present appellants as the plaintiffs filed the instant suit for a decree of declaration of title and recovery of khas possession. During the pendency of the suit added defendant No. 8 filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 praying for rejection of the plaint on the ground of the non-pleaded statements by the plaintiffs which were not available in the plaint, rather, added defendant No.8 narrated a new fact in the application which cannot fall within the domain of Order 7 Rule 11 of the Code but the learned Trial Judge erroneously passed the impugned judgment and decree rejecting the plaint of the suit and thereby traveled beyond the scope of the law as prescribed in Order 7 Rule 11 of the Code of Civil Procedure, 1908 wherein it has been mentioned that a plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the

valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon a paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not exceed twenty-one days.

In view of the above provision of law a plaint can be rejected only on the grounds stated in the rule and in the absence of any such ground, the question of maintainability can be gone into at the time of hearing of the suit. There is no legal scope to reject the plaint unless the plaint itself shows the want of cause of action or the suit is barred by law. The court will take only the plaint and documents filed therewith into consideration and not what has been urged by

the defendant in a petition or the written statement [53 DLR(AD) 62]. A court cannot take into any document other than the plaint to decide whether the plaint is liable to be rejected. But if there is a serious question to be decided, the proper course is to allow the suit to proceed to a written statement and then determine the matter on preliminary issues [9BLC, 458,600].

Given the above, we find substance in the submissions so made by the learned Advocate for the appellants, and merit in the appeal. Accordingly, the appeal succeeds.

As a result, the appeal is allowed without cost.

The impugned judgment and decree dated 27.06.2019 passed by the learned Joint District Judge, Arbitration Court, Dhaka in Title Suit No. 83 of 2016 rejecting the plaint is hereby set aside.

However, during the pendency of the instant appeal the appellants prayed for an injunction, and after hearing the same this Court passed an order of injunction restraining the respondents from transferring the suit land and also from changing its nature and character till disposal of the instant First Appeal No. 700 of 2019 on

06.01.2021 under Civil Rule No. 05(F) of 2021 is hereby vacated and thus, the Rule is discharged.

Send a copy of this judgment along with the LCR to the Court below at once.

Mohi Uddin Shamim, J:

I agree.

(TUHIN BO)