

18 SCOB [2023] HCD 49**HIGH COURT DIVISION****Civil Revision Number 3451 of 2016****Tapan Chowdhury and others****Vs.****Government of Bangladesh and others**

Mr. Md. Alamgir Hossain, Advocate

... for the petitioners

Ms. Rahima Khatun, Deputy Attorney

General with Mr. Md. Ruhul Amin and

Ms. Sandha Gosh, Assistant Attorney

Generals

... for the opposite parties

Judgment on 05.06.2022

Present:**Mr. Justice Md. Ruhul Quddus****And****Mr. Justice Kazi Ebadoth Hossain****Editors' Note:**

In the instant civil revision the petitioner challenged the order of the trial court rejecting the application for rejection of plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908 on the ground of *res judicata*. The High Court Division after scrutinizing the record upheld the trial court's decision finding that question of fact arose in the suit cannot be decided on an application under Order VII, rule 11 of the Code and the suit land of the previous suit was different. The High Court Division also found that the suit property was declared as forest by a Gazette notification in 1952 and held that when a forest or land under Jaminder was acquired as forest by government and notified in the official Gazette, it would be sufficient to determine the character of the land on that basis. Finally, the Court expressed its dissatisfaction over how the suit was conducted by the concerned public servants in the trial Court and directed the concerned authority to take steps for protecting public property and environment. Consequently, the rule was discharged.

Key Words:

Rejection of plaint; Order VII, rule 11 of the Code of Civil Procedure ; The Forest Act, 1927; Sections 3, Sub-Section (2) and Section 20, Sub-Sections (2a) (iii) and (6) of the State Acquisition and Tenancy Act;

Declaration of a particular land as forest under the Forest Act when not necessary:

If a forest belonged to any Jaminder is acquired by the Government under the State Acquisition and Tenancy Act, declaration of the said land as forest under the Forest Act is not necessary. The procedures to be followed under the two Acts are quite different and they are independent of each other, so far it relates to acquisition and declaration of forest. (Para-15)

Section 3 (2) of the State Acquisition and Tenancy Act:

Gazette Notification mentioning a particular land as forest would be sufficient to determine the character of the land:

It thus appears that the Department of Forest under wrong notion proceeded for further declaration of the same land as forest, which was already a forest under the Jaminder and subsequently acquired as forest by the Government and notified in the Gazette as forest under the State Acquisition and Tenancy Act. The subsequent

proceedings of the Forest Department under whatever notion, or for whatever reasons will not invalidate the earlier Gazette, nor will it create any right in favour of any new claimant who did not challenge the earlier Gazette of 1952. If any Gazette Notification mentioning a particular land as forest is published under Section 3 (2) of the State Acquisition and Tenancy Act, that would be sufficient to determine the character of the land, unless the Gazette notification is challenged and its correctness is rebutted.

(Para-15)

Order VII, rule 11 of the Code of Civil Procedure:

Whether the petitioners are persons under the said Manjurul Alam and others being a question of fact is to be decided on evidence relating to transfer of title. Such question of fact cannot be decided on an application under Order VII, rule 11 of the Code. Besides, the land in CS Plots Number 85 and 69 was not the subject matter of the previous suit, but included in the present suit. We do not think that the learned trial Judge committed any error of law in rejecting the petitioner's application.

(Para 16)

In the greater public interest, it is expected that all concerned shall take special initiative for prosecuting the lawsuits relating to public property and environment, especially the Forests and Rivers all over the Bangladesh and recover the forests which are illegally occupied:

We express our strong disapproval to the conduct of the concerned public servants in Mymensingh and the learned Advocate of the Forest Department, who were entrusted to protect the public property and preserve the environment in the greater public interest at the material time. Since the litigations are pending for adjudication, we refrain ourselves from referring them to appropriate authority for taking appropriate action mentioning specific allegation against them, but expect from the public servants and lawyers who are now so entrusted, to conduct the lawsuits properly, draft the plaint and applications carefully and take necessary steps that are required to be done in discharge of their official duties. In the greater public interest, it is also expected that the Ministry of Forest, the Ministry of Law, Justice and Parliamentary Affairs, Law Division and its Solicitor Wing, and the Office of the Attorney General for Bangladesh will take special initiative for prosecuting the lawsuits relating to public property and environment, especially the Forests and Rivers all over the Bangladesh and recover the forests which are illegally occupied.

(Para 17)

JUDGMENT

Md. Ruhul Quddus, J:

1. This rule was issued calling in question the order dated 17.07.2016 passed by the Joint District Judge, Third Court, Mymensingh in Other Class Suit Number 62 of 2008 rejecting the petitioners' application for rejection of plaint under Order VII, rule 11 read with Section 151 of the Code of Civil Procedure.

2. This civil revision has a checkered history. Earlier the Government in the Department of Forest represented by the Divisional Forest Officer, Mymensingh and two other officials of the Forest Department (opposite parties number 1-3 herein) being plaintiffs had instituted Other Class Suit Number 17 of 2001 against one Manjurul Alam, Abdus Salam, Abdul Malek and Abdul Khaleque (predecessors of the present petitioners) for declaration of title over 58.00 acres of land out of total 101.27 acres appertaining to CS Plot Number 134, Khatian Number 01, Mouza Jamirdia, Police Station Bhaluka, Mymensingh (Annexure-C to the revisional application). The said suit was dismissed for default by order dated 10.08.2004.

3. Thereafter, opposite parties number 1-3 filed an application for restoration of the suit under Order IX, rule 9 read with Section 151 of the Code on 03.09.2004, which was registered as Miscellaneous Case Number 17 of 2004. Learned Judge by order dated 03.10.2004 rejected the said miscellaneous case as being not maintainable on the ground of not quoting the correct provision of law and depositing the cost as required under the law.

4. Subsequently, opposite parties number 1-3 being plaintiffs instituted another suit being Other Class Suit Number 11 of 2005 against the same set of defendants for declaration of title of the same land, which was decreed ex-parte by judgment and decree dated 19.02.2007.

5. The same set of plaintiffs instituted the present Title Suit Number 62 of 2008 against the present petitioners seeking declaration of title over 18.72 acres of land out of 58.00 acres in CS Plot Number 134, and 22.14 acres in CS Plot Number 85 and 4.20 acres in CS Plot Number 69 within Jamirdia Mouza, Police Station Bhaluka as described in the schedule of the plaint in the present suit.

6. The petitioners being defendants number 1-4 were contesting the suit by filing a written statement denying the material allegations of the plaint. They also filed an application under Order VII, rule 11(a) and 11 (d) read with Section 151 of the Code for rejection of the plaint. In the said application, the petitioners took the grounds that earlier Title Suit Number 17 of 2001 was dismissed on the same subject matter between the same parties and the plaintiffs were precluded from bringing any fresh suit on the same subject-matter.

7. Learned Joint District Judge heard the application and rejected the same by the impugned order dated 17.07.2016 on the ground that there is a difference between the subject matter as well as the parties of the two suits, and gave rise to the instant civil revision.

8. Since the petitioners did not make any clear statement about the source of the title of their predecessors, we inquired into the matter and asked their learned advocate to explain their source of title and also asked him as to what steps they took against the ex-parte judgment and decree passed in Other Class Suit Number 11 of 2005. In response, Mr. Alamgir apprises that the suit land was non-retainable raiyoti land of the Jaminder and the then Deputy Commissioner, Mymensingh settled it in favour of their predecessors. Two registered companies named Sqaure Sarah Knight Fabrics Limited and Sqaure Sarah Fashions Limited, wherein the present petitioners are directors, instituted Other Class Suit Number 09 of 2009 in the Third Court of Joint District Judge, Mymensingh for a declaration that the ex-parte decree dated 19.02.2007 passed in Other Class Suit Number 11 of 2005 was illegal and not binding upon them. We then passed an order on 09.02.2022 directing the petitioners to produce the certified copy of the plaint in Other Class Suit Number 09 of 2009, by which they challenged the ex-parte decree passed in Title Suit Number 11 of 2005. In compliance therewith, the petitioners filed an affidavit dated 08.03.2022 annexing the plaint (Annexure-G).

9. Mr. Md. Alamgir Hossain, learned advocate appearing for the petitioners submits that earlier the opposite parties number 1-3 filed Other Class Suit Number 17 of 2001 against the predecessors of the petitioners covering the present suit land. The said suit was dismissed for default. The plaintiffs, thereafter, filed an application for restoration of the suit, which was also rejected by order dated 03.10.2004. Thereafter, the plaintiffs neither preferred any appeal against the original order of dismissal nor did they move any civil revision against the order dated 03.10.2004, by which the miscellaneous case was rejected. There was no cause of action for institution of any fresh suit on the selfsame cause of action.

10. Mr. Alamgir further submits that the present suit being a fruitless litigation and having been instituted on wrong cause of action, its plaint is liable to be rejected. Learned Judge of the trial Court without considering this vital aspect of the case, rejected the petitioner's application and committed error of law resulting in an error in the decision occasioning failure of justice.

11. Referring to the plaints of the two suits filed by the present opposite parties (Annexures-A and C to the revisional application), Mr. Alamgir further submits that admittedly Gazette notification number 3123 dated 13.04.1955 was published under Section 4 of the Forest Act, 1927 covering the suit land, in continuation of which objection was invited from the claimants of land, if any, under Section 6 of the Act. In response, petitioners number 1-2 filed application for release of the suit land on holding inquiry under Section 7 of the Act. Without disposing of the said application, completion of the legal procedures and publication of final gazette under Section 20 of the Act, there is no scope to claim the property as forest on the part of the Forest Department.

12. Ms. Rahima Khatun, learned Deputy Attorney General refers to the Gazette notification dated 18.09.1952 published under Section 3, Sub-Section (2) of the State Acquisition and Tenancy Act, 1950 (Annexure-2 to the counter-affidavit) and submits that in the said notification, nature of the suit land is clearly mentioned as forest. So there was no question of settlement of the land to the predecessors of the petitioners by the concerned Deputy Commissioner. Even if any such settlement was made, that would be collusive, fraudulent, against public interest and as such void. A vast forest duly notified in Gazette under the specific provision of law cannot be treated as excess rayoti land of Jaminder. By way of the alleged settlement, no title of the land was conveyed to the predecessors of the petitioners. The suit land being a gazetted forest is an important component of the environment, and it should not be allowed to be damaged by an illegal action of any vested quarter and corrupt public servants, or by wrong framing of suit on wrong/motivated advice of the lawyers of the Forest Department.

13. Learned Deputy Attorney General further submits that apparently the previous suit was instituted against Manjurul Alam and three others and the present suit is against Tapan Chowdhury and three others. The land in CS Plots Number 85 and 69 was not the subject matter of the previous suit. The another plot number 134 was consisting of 101.27 acres of land, out of which 58 acres was the subject matter in the previous suit and 18.72 acres in the present suit. Without investigation through trial, how can it be said that the schedule of previous suit attracts that of the present suit? Under no circumstances, it can be argued that there is no cause of action for bringing a fresh suit. Learned trial Judge rightly rejected the application under Order VII, rule 11 of the Code.

14. We have considered the submissions of the learned Advocate as well as the learned Deputy Attorney General and gone through the record. It appears from paragraph number 2 of the plaint in Other Class Suit Number 9 of 2009 (vide Annexure-G to the affidavit dated 08.03.2022) that the petitioners claimed their title derived from Manjurul Alam, Abdus Salam, Abdul Malek and Abdul Khaleque by way of four registered sale deeds being number 3950, 3951, 3952 and 3953 all dated 12.06.2001, but they did not make any statement regarding the source of their predecessors' title. It further appears that the suit plots number 85, 69 and 134 are mentioned as forest in the Gazette notification dated 18.09.1952 published under Section 3, Sub-Section (2) of the Act, 1950. It is curious that the suit land despite being forest and published as such in the Gazette notification, the petitioners' predecessors were able to get settlement of the land, get their names mutated in the record of right and registered the sale deeds in favour of the petitioners' companies. However, these are the questions to be looked into by the trial Court in adjudicating the suit pending before it.

15. We have also consulted the relevant provisions of law, especially Sections 3, Sub-Section (2) and Section 20, Sub-Sections (2a) (iii) and (6) of the State Acquisition and

Tenancy Act and the relevant provisions of the Forest Act, 1927. If a forest belonged to any Jaminder is acquired by the Government under the State Acquisition and Tenancy Act, declaration of the said land as forest under the Forest Act is not necessary. The procedures to be followed under the two Acts are quite different and they are independent of each other, so far it relates to acquisition and declaration of forest. It thus appears that the Department of Forest under wrong notion proceeded for further declaration of the same land as forest, which was already a forest under the Jaminder and subsequently acquired as forest by the Government and notified in the Gazette as forest under the State Acquisition and Tenancy Act. The subsequent proceedings of the Forest Department under whatever notion, or for whatever reasons will not invalidate the earlier Gazette, nor will it create any right in favour of any new claimant who did not challenge the earlier Gazette of 1952. If any Gazette Notification mentioning a particular land as forest is published under Section 3 (2) of the State Acquisition and Tenancy Act, that would be sufficient to determine the character of the land, unless the Gazette notification is challenged and its correctness is rebutted. However, whether the Gazette notification dated 18.09.1952 attracts the suit land or not, that will be decided by the trial Court in due course of trial.

16. Let us examine the legal validity of the impugned order. Admittedly, the previous suit was instituted against Manjurul Alam, Abdus Salam, Abdul Malek and Abdul Khaleque and the petitioners Tapan Chowdhury, Anjan Chaowdhury, Ranjan Chowdhury and Lt. Colonel (Rtd) Humayun Kabir are impleaded as defendants in the present suit. Whether the petitioners are persons under the said Manjurul Alam and others being a question of fact is to be decided on evidence relating to transfer of title. Such question of fact cannot be decided on an application under Order VII, rule 11 of the Code. Besides, the land in CS Plots Number 85 and 69 was not the subject matter of the previous suit, but included in the present suit. We do not think that the learned trial Judge committed any error of law in rejecting the petitioner's application. In view of the above, the rule does not merit consideration.

17. Before parting, we express our strong disapproval to the conduct of the concerned public servants in Mymensingh and the learned Advocate of the Forest Department, who were entrusted to protect the public property and preserve the environment in the greater public interest at the material time. Since the litigations are pending for adjudication, we refrain ourselves from referring them to appropriate authority for taking appropriate action mentioning specific allegation against them, but expect from the public servants and lawyers who are now so entrusted, to conduct the lawsuits properly, draft the plaint and applications carefully and take necessary steps that are required to be done in discharge of their official duties. In the greater public interest, it is also expected that the Ministry of Forest, the Ministry of Law, Justice and Parliamentary Affairs, Law Division and its Solicitor Wing, and the Office of the Attorney General for Bangladesh will take special initiative for prosecuting the lawsuits relating to public property and environment, especially the Forests and Rivers all over the Bangladesh and recover the forests which are illegally occupied.

18. However, under the facts and circumstance of the present case, we think that in order to avoid future complication and conflicting decisions over the same/similar matter, both the suits should be heard simultaneously and there should be a guiding direction upon the trial Court as well.

19. In the result, the rule is discharged. Learned Joint District Judge, Third Court, Mymensingh is directed to hear Other Class Suit Number 9 of 2009 and Other Suit Number 62 of 2008 simultaneously. In Other Class Suit Number 9 of 2009, the trial Court must examine the legal character and standing of the plaintiff-companies, particularly, as to whether any right, title and interest of the suit property were conveyed to them by way of the sale deeds number 3950, 3951, 3952 and 3953 all dated 12.06.2001 when the Gazette notification dated 18.09.1952 published under Section 3, Sub-Section (2) of the State Acquisition and Tenancy Act, 1950 was/is in force.