

9 SCOB [2017] HCD 127**HIGH COURT DIVISION**

Civil Revision No. 915 of 2015

**Rokeya Begum Bina and others
Vs.
Habib Ahsan (Hobi) and others**Mr. Md. Shafiqul Islam Dhali, Advocate
with
Ms. Mariam Begum, Advocate
Ms. Umme Kulsum, Advocate
.....For the petitionersMr. Kingshuk Das, Advocate
.....For the opposite partiesHeard on: 12.05.2016, 19.05.2016,
25.05.2016
and Judgment on: 01.06.2016.**Present:****Mr. Justice Soumendra Sarker
And
Mr. Justice Md. Ashraful Kamal****Code of Civil Procedure, 1908****Order 7, Rule 11:****The trial Court can exercise the power under Order 7 Rule 11 of the Code of Civil Procedure at any stage of the suit before registering the plaint or after issuing summons to the defendants at any time before the conclusion of the trial. ... (Para 15)****For the purposes of deciding an application under clauses (a) and (b) of Order 7 Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendants in the written statement would be wholly irrelevant. ... (Para 16)****Registration Act, 1908****Section 17B:****It is crystal clear from the reading of the plaint that as per sub-clause (ii) of Clause (a) of Section 17B of the Registration Act, the plaintiff –opposite parties nor present the contract for sale itself for registration within six months from the date of coming into force of that section i.e. 1st July, 2005 neither instituted a suit for specific performance of the contract within six months next after the expiry of the period mentioned in clause (a). So, after the expiry of the period mentioned in clause (b) of section 17B, the contract for sale (affidavit dated 03.04.1995) in question stand void. ... (Para 22)****Judgment****Md. Ashraful Kamal, J:**

1. This Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the judgment and order dated 02.03.2015 passed by the Joint District Judge, Court No. 2, Munshigonj in Title Suit No. 600 of 2012 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Brief facts, necessary for the disposal of this Rule, are as follows;

Opposite party Nos. 1-3 had filed Title Suit No. 600 of 2012 in the Joint District Judge, Court No. 2, Munshigonj for a declaration of Title in respect of land measuring 171 decimals against the petitioners and others contending *inter alia* that one Rajjab Ali Mollah was the owner of the suit land. The said Rajjab Ali Mollah died living behind 2 (two) sons and 1 (one) daughter namely Abdul Aziz Mollah, Abdul Majid Mollah and Masuda Khatun respectively and accordingly they became the owners of the land in question. Thereafter, A. Aziz Mollah sold his portion to A. Mozid Mollah vide sale deed No. 24917 dated 25.08.1977. After that Abdul Aziz Mollah entered into an oral agreement with his three sons plaintiffs (opposite parties herein) for sale by taking Tk. 2 (two) lac from them as consideration money and handed over possession to them. In respect of the aforesaid oral agreement for sale, Abdul Aziz Mollah made an affidavit on 03.04.1995. But, due to the death of the said Abdul Aziz Mollah, the plaintiff did not get the registered Kabala in respect of the said land in question. In the meantime on 21.01.2001, Masuda Khatun orally gifted her portion to the plaintiffs and accordingly handed over the possession of the same. In this way the plaintiffs opposite parties are became the owner of the land in question by purchase and oral gift. When the plaintiffs are enjoying their right, title and interest over the property in question peacefully, then on 19.09.2012, the defendants-petitioners pronounced in the locality that they are the owners of the property in question and they will dispossess the plaintiffs – opposite parties from the suit land. Hence the instant suit.

3. The defendants–petitioners by filling written statements contesting the suit denying the material allegations of the plaint contended *inter alia* that the plaintiffs and defendant Nos. 9-10 are full brothers and sisters and defendant No.8 is their mother, on the other hands defendant Nos. 2-7 are full brothers and sister and defendant No.1 is their mother. Abdul Majid Mollah, the predecessor of both the parties was the owner of the property in question. He died living behind the plaintiffs and the defendant Nos. 1-10 as his heirs and they have been possessing the said property in Ejmali. The plaintiffs falsely mutated their names and collusively obtained a chairman certificate as they are the only heirs of late Abdul Majid Mollah. Against the said mutation, the defendant Nos. 1-7 had filed an objection and accordingly plaintiffs so called mutation was cancelled. The suit land is Ejmali one. Abdul Majid Mollah did not transfer or hand over the possession of the suit land to anyone at his life time or did not make any oral agreement in respect of the suit land and so called affidavit of Masuda Khatun dated 21.01.2002 is also false and fabricated one.

4. Thereafter, the Defendant Nos. 1-7 filed an application under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the plaint. The plaintiffs contested the said application by filing written objection. After hearing the said application for rejection of the plaint, the learned Joint District Judge, Court No. 2, Munshigonj rejected the same on 02.03.2015.

5. Being aggrieved by the said judgment and order dated 02.03.2015 passed by the Joint District Judge, 2nd Court, Munshigonj in Title Suit No. 600 of 2012, the defendants-petitioners preferred this revisional application and obtained the present Rule.

6. Mr. Md. Shafiqul Islam Dhali, with Ms. Mariam Begum and Ms. Umme Kulsum, the learned Advocates appearing for the defendant-petitioners submits that the plaintiffs have not taken step according to the Registration Act, (Amendment) 2004 as the basis of their claim is an unregistered oral agreement and on that basis they filed the present suit for Specific Performance of Contract. Mr. Islam submits that there is no written agreement between

Abdul Jalil Mollah and the plaintiff in respect of the suit land. So, according to the section 17(A) of the Registration Act no title has passed in favour of the plaintiffs in respect of suit land in question.

7. He also submits that the plaintiffs stated in the paragraph No. 10 of the plaint that, “(10) অস্তেঃ আঃ মজিদ মোল্লা নালিশী তফসিল বর্ণিত দাগের সম্পত্তিতে ১৬ অংশে মালিক স্বত্ববান ও ভোগ দখলকার থাকাবস্থায় তাহার নগদ টাকার আবশ্যক হওয়ায় তাহার ৩ পুত্র যথা হাবিব আহসান (হবি), মোঃ মোশারফ হোসেন (মনির হোসেন), কামরুল হাসান এর নিকট হইতে ১-৭ নং বিবাদীগনের মধ্যস্থতায় নগদ ২,০০,০০০/- (০৫ মর) VjLj h8Tu; 6eu; 4hNa 04.04.1995 ইং তারিখে লৌহজং সাব রেজিষ্ট্রি অফিসের মাধ্যমে সাব কবলা দলিল সম্পাদনে ও রেজিষ্ট্রি করিয়া দেওয়ার অঙ্গীকার করেন। যাহা B6m j 5 9; j; 0; i U6, f66, Le6; NZ Ab; 1-7 নং বিবাদীগন বিগত ০৩.০৪.৯৫ ইং তারিখের নোটারী পাবলিক চাকা এর সম্মুখে হলফনামার মাধ্যমে স্বীকার করেন।” - that means before the date of execution, the affidavit was shown which is really impossible. He also submits that it is apparent from the plaint that the so-called affidavit is false, fabricated and created one.

8. He also submits that according to section 17B of the Registration Act, the so called affidavit dated 03.04.1995 has no legal force. He finally submits that in the schedule of the plaint boundary of the suit property is vague and unspecified and hence the suit is barred by section 42 of the Specific Relief Act. Moreover, the plaint in question filed with the insufficient court- fees.

9. Mr. Kingshok Das the learned Advocate appearing for the opposite parties submits that though it is suit for declaration by way of adverse possession accordingly suit is not barred under section 17(B) of the Registration Act as a result the application under section 7 rule 11 of the Code of Civil Procedure cannot be sustainable. He further submits that the schedule of the suit property specified with proper boundaries. He finally submits that the father of the plaintiffs took money from the plaintiffs for consideration of the property in question and handed over the possession of the suit property.

10. Order VII rule 11 describes the procedure for rejection of plaint. It is necessary to quote Order VII rule 11 of the Code of Civil Procedure which runs as follows:-

“11. *The 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 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].

[(e) where any of the provisions of rule 9 (1A) is not complied with and the plaintiff on being required by the Court to comply therewith within a time to be fixed by the Court, fails to do so.]

11. On a plain reading of the aforesaid rule it is evident that the plaint shall be rejected on certain grounds: -

a. *If it does not disclose a cause of action or relief claimed is undervalued, but the plaintiff did not correct it within the time allowed;*

- b. or insufficiently stamped, but the plaintiff did not supply the deficit within the time allowed ;*
- c. or it is barred by any law;*
- d. or process fees together with postal charges for serving summons upon the defendant has not been paid along with the plaint.*

12. In the case of *Burmah Eastern Ltd. Vs. Burmah Eastern Employees Union* reported in 18 DLR (Dhaka)-709. In that case Mr. Justice Murshed held that apart from the question of Order 7 Rule 11 of the Code of Civil Procedure, the Court can also exercise its inherent power in order to stop harassing the other party.

13. Justice Murshed has held as follows;

“The principles involved as twofold: in the first place, it contemplates that a still born suit should be properly buried, at its inception, so that no further time is consumed on a fruitless litigation. Secondly, it gives plaintiff a chance to retrace his steps, at the earliest possible moment, so that, if permissible under law, he may found a properly constituted case.

Order 7 Rule 11 of the Code, as quoted above enumerates certain categories under which the Court is called upon to reject a plaint, but, it is obvious that they are not exhaustive. It appears from the language of rule 11 of Order 7 that it requires that an incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse as not being permitted by law.”

14. For deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the relevant fact which need to be looked into are the averments in the plaint.

15. The trial Court can exercise the power under Order 7 Rule 11 of the Code of Civil Procedure at any stage of the suit before registering the plaint or after issuing summons to the defendants at any time before the conclusion of the trial.

16. For the purposes of deciding an application under clauses (a) and (b) of Order 7 Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendants in the written statement would be wholly irrelevant.

17. The basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint. If on a meaningful and not formal reading of the plaint it is manifestly fictitious and meritless in sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code.

18. The real object of the Order 7 Rule 11 of the Code of Civil Procedure is to keep out of Courts irresponsible suits. If it is found that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

19. Question is whether a real cause of action has been set out in the plaint. Clever drafting created illusion are not permitted in law and a clear right to use should be shown in the plaint.

20. The Court should always be vigilant for scrutinizing the pleadings and materials placed before it to ascertain whether the litigation is frivolous or maintainable at all. The Court must exercise its powers at every stage in order to nip frivolous cases.

21. Coming to the case at hand, the plaintiff-opposite parties claiming the schedule property to the plaintiff on the basis of unregistered contract for sale (affidavit dated 03.04.1995). In this regard it is necessary to quote Section 17B of the Registration Act which was inserted after section 17 by Act No. XXV of 2004, section 4, (with effect from 1st July, 2005), which runs thus:

“17B. Effect of unregistered contract for sale executed prior to section 17A becomes effective – (1) Where a contract for sale of immovable property is executed but not registered prior to coming into force of section 17A-

(a) the parties to the contract shall, within six months from the date of coming into force of that section,-

(i) Present the instrument of sale of immovable property under the contract for registration, or

(ii) present the contract for sale itself for registration; or,

(b) either of the parties, if aggrieved for non-compliance with any of the provisions mentioned in clause (a), shall, notwithstanding anything contained to the contrary in any law for the time being in force as to the law of Limitation, institute a suit for specific performance or recession of the contract within six months next after the expiry of the period mentioned in clause (a), failing which the contract shall stand void.

(2) The provision of sub-section (1) shall not apply to any contract for sale of immovable property on the basis of which a suit has been instituted in civil court before coming into force of section 17A.”

22. It is crystal clear from the reading of the plaintiff that as per sub-clause (ii) of Clause (a) of Section 17B of the Registration Act, the plaintiff –opposite parties nor present the contract for sale itself for registration within six months from the date of coming into force of that section i.e. 1st July, 2005 neither instituted a suit for specific performance of the contract within six months next after the expiry of the period mentioned in clause (a). So, after the expiry of the period mentioned in clause (b) of section 17B, the contract for sale (affidavit dated 03.04.1995) in question stand void.

23. In such a fact situation, in our considered opinion, the court below has fallen into error of law resulting in an error in his decision occasioning failure of justice in rejecting the application under Order 7 rule 11 of Code of Civil Procedure and as such the impugned order is liable to be set aside. If the present suit is allowed to proceed further it is only consume the time, energy and money of all the parties concern, thereafter, this court cannot allowed such frivolous malafidy proceedings continuing further.

24. In the result, the Rule is made absolute. The judgment and order dated 02.03.2015 passed by the Joint District Judge, 2nd Court, Munshigonj in Title Suit No. 600 of 2012 holding the suit to be maintainable is set aside and the plaintiff is rejected under Order 7 Rule 11 of the Code of Civil Procedure. There is no order as to costs.

25. Communicate this judgment and order at once.

Soumendra Sarker, J:

26. I agree.