

**Present:**  
**Mr. Justice Sheikh Abdul Awal**  
**and**  
**Mr. Justice Md. Mansur Alam**

**First Appeal No. 197 of 2015**

In the Matter of:  
Memorandum of appeal from the original  
Decree.

-and-

In the Matter of:

Din Islam Sikder.

.....Plaintiff-appellant.

-Versus-

Abdur Rahman being dead his heirs Most.  
Suraia Rahman and others

.....Defendant-respondents.

Mr. Sk. Shaifuzzaman, Advocate

..... For the appellant.

Mr. Md. Mozibur Rahman, Advocate.

.....For the respondents.

**Heard on 03.11.2024, 07.11.2024,**  
**11.11.2024 and**

**Judgment on 13.11.2024.**

**Sheikh Abdul Awal, J:**

This first appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 05.03.2015 (decree signed on 12.03.2015) passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka in Civil Suit No. 43 of 2006 allowing the application under Order VII Rule 11 read with section 151 of the Code of Civil Procedure rejecting the plaint of the suit.

The relevant facts of the case in brief are that the appellant as plaintiff filed Civil Suit No. 43 of 2006 in the Court of the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka impleading the defendant-respondent praying the following reliefs:

- ১) নালিশী তপশীল বর্ণিত সম্পত্তিতে বাদীর ষোল আনা স্বত্ব আছে মর্মে এক ঘোষনামূলক ডিক্রী দিতে;
- ২) বিবাদী কর্তৃক অবৈধ পন্থায় এস,সি,সি মোঃ নং ৪/৯৭ তে হাসিলকৃত রায় ও ডিক্রী বাদীর উপর বর্তাইপে না মর্মে এক ঘোষনামূলক ডিক্রী দিতে;
- ৩) আইন ইকুইটি মতে বাদী আরও যে যে ভাবে যে যে প্রতিকার পাইতে পারে সেই মর্মে ডিক্রী দিতে হুজুরের মর্জি হয়;

The plaint case in short is that the defendant-respondent purchased the suit land on 20.06.1955 by registered deed No.3247. Thereafter, the defendant-respondent and others took loan from I.F.I.C Bank, Motijheel, C/A, Dhaka by giving mortgage the suit land through the Registered mortgaged deed No. 2434 dated 07.06.1987. Thereafter, they failed to pay the loan amount and for recovery of the said loan money IFIC Bank filed Civil Suit No.41 of 1998 before the 3<sup>rd</sup> Artha Rin Court, Dhaka who decreed the suit exparte by its judgment and decree dated 12.02.2000. Then IFIC Bank filed decree execution Case No. 13 of 2001 and the learned Court declared auction sale by giving advertisement in the daily news paper. Accordingly auction took place on 01.12.2002 in which highest bidder Mr. Khairul Enan Faruqui and Zinat Ashrafee purchased the suit land and then took possession over the suit land and mutated their name through namzari case and paid rent to the Government. Thereafter, on 03.03.2005 they sold the said land to the plaintiff-appellant by registered deed No. 3147 and thereafter the plaintiff mutated his name through namjari case and paid rent to the Government and took gas and electric connections in his name. Moreover, the appellant handed over the said land to a developer

company for construct a building. In this backdrop on 16.03.2006 the defendant-respondent by showing an eviction order passed in SSC Case No.4 of 1997 tried to evict the appellant through police force and hence, the suit.

The defendant contested the suit by filing written statement denying all the material allegations made in the plaint stating, inter-alia, that IFIC bank filed Civil Suit No. 41 of 1998 before 3rd Artha Rin Adalat, Dhaka, who decreed the suit exparte preliminary on 07.09.1999 and finally decreed on 12.02.2000. Thereafter, the decree execution Case No. 13 of 2001 was filed and in the execution Case the executing Court ordered for sale of the suit land in auction. In this backdrop the dependant respondent against the said exparte decree filed Miscellaneous Case No.79 of 2003 under section 19(2) of Artha Rin Adalat Ain, 2003 before the Artha Rin Adalat, 3<sup>rd</sup> Court, Dhaka, who set-aside the exparte preliminary and final decree. Thereafter, on 05.09.2004 upon hearing the parties the learned Court dismissed the suit by its judgment and decree dated 05.09.2004. Against the said judgment and decree dated 05.09.2004 IFIC Bank filed Artha Rin Appeal No. 21 of 2004 and upon hearing same the learned Additional District Judge, 7<sup>th</sup> Court, Dhaka by modifying the judgment and decree of the trial Court allowed the appeal by its judgment and Decree dated 23.03.2005 against the respondents, who filed Civil Revision No. 2581 of 2005 before the High Court Division of Bangladesh Supreme Court against the said judgment and decree dated 23.03.2005 and upon hearing the parties the said rule was made absolute in Civil Revision No.2581 of 2005, vide judgment and order dated 04.06.2008 affirming the judgment and decree of the trial Court. Thereafter, against the said judgment and order dated 04.06.2008 IFIC Bank filed Civil Petition for leave to Appeal No.2306 of 2009 before the Appellate Division of

Bangladesh Supreme Court, who upon hearing the parties dismissed the said Civil Petition for leave to Appeal by its judgment and order dated 08.04.2012 and in view of the said judgment and order dated 08.04.2012 the plaintiff has/had no right, title in the suit land and as such, the suit is liable to be dismissed.

Thereafter, while the suit was in progress the defendants filed an application under Order VII, Rule 11 of the Code of Civil Procedure for rejection of the plaint.

The learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka upon hearing the parties by the impugned judgment and order dated 05.03.2015 rejected the plaint holding that:- “যেহেতু বাংলাদেশের সর্বোচ্চ আদালত কর্তৃক বাদীপক্ষের দাবীকৃত নালিশী সম্পত্তিতে বাদীর বায়ার স্বত্বের ভিত্তি অর্থাৎ নিলাম বিক্রয় নাকচ করা হইয়াছে। সেহেতু পরবর্তীতে হস্তান্তর গ্রহিতা হিসাবে বাদীর অত্র মোকদ্দমায় কোন প্রতিকার লাভের সম্ভাবনা আছে মর্মে দেখা যায় না। অত্র মোকদ্দমার ফলাফল সহজেই পূর্বানুমান করা যায় এবং অত্র মোকদ্দমা চালাইয়া গেলে আদালতের মূল্যবান সময় ও রাষ্ট্রের অপচয় ঘটিবে মর্মে আদালতের নিকট প্রতীয়মান হয় সেকারণে বিবাদীপক্ষ কর্তৃক দাখিলকৃত আরজি খারিজের দরখাস্তটি পরিবর্তীত আকারে মঞ্জুরযোগ্য মর্মে আদালত সিদ্ধান্ত গ্রহন করিলেন।”

Being aggrieved by and dissatisfied with the aforesaid impugned judgment and order dated 05.03.2015, the plaintiff-appellant preferred this appeal.

Mr. Sk. Shaifuzzaman, the learned Advocate appearing for the plaintiff-appellant submits that admittedly the plaintiff purchased the suit land by registered deed and thereafter, he constructed semi paka tin-shed house and took all utility connections including electricity and gas connection in his name and it is on record that the Hon'ble Appellate Division of the Bangladesh Supreme Court in its judgment passed in Civil Petition for Leave to Appeal No. 2306 of 2009 did not discuss anything as to auction sale as well as right, title and possession of the plaintiff in the suit land. Moreover, the plaintiff

appellant was not made party in Civil Suit No.41 of 1998 although the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka without considering all this factual aspects of the case mechanically rejected the point, which occasioned a failure of justice. Finally, the learned Advocate submits, it is well settled principle that in deciding an application under Order VII, Rule 11 of the Code of Civil procedure the Court is not permitted to travel beyond the averments made in the plaint and in this case it is apparent that the contents of the plaint do disclose the cause of action for the suit but the trial court most illegally in exercising its power under Order VII, Rule 11 traveled beyond the statements made in the plaint which resulted in an error in the impugned decision occasioning failure of justice. The learned Advocate to fortify his submissions has relied on the decisions reported in 3 ALR 92, 5 ALR 346, 13 ALR 66, 2 ALR 99, 4 ALR 44, 62 DLR (AD) and 68 DLR 255.

Mr. Md. Mozibur Rahman, the learned Advocate appearing for the defendant-respondents, on the other hand, supports the impugned judgment and order, which was according to him just, correct and proper. He submits that as per judgment of the Hon'ble Appellate Division it is clear like day-light that the plaintiff's baya lost his right, title over the suit land and therefore, the plaintiff's so-called right, title and possession also became baseless and illegal. The learned Advocate further submits that since the suit is a fruitless litigation as like as day-light the same should be buried at its inception so that no further time is consumed in a fruitless litigation. The learned Advocate to fortify his submission has relied on the decisions reported in 25 BLC 92 and 9 BLT 70.

Having heard the learned counsels for both the parties and having gone through the materials on record, impugned judgment

and order including the application under Order VII Rule 11 read with section 151 of the Code of Civil Procedure, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding that in the facts and circumstances the suit is a fruitless litigation and thus the plaintiff of the suit is liable to be rejected.

On a reading of the plaint, it appears to us that the contents of the plaint do disclose the cause of action of the suit. The proposition of law is by now well settled that in exercising the power under Order VII, Rule 11 of the Code the Court can look into the statements in the plaint alone, it cannot consider any fact stated in any document produced by the defendant without framing any issue which can be decided only at the trial on taking evidence.

It is found the plaintiff's baya named Din Islam purchased the suit land in auction and the Hon'ble Appellate Division of Bangladesh Supreme Court in its judgment passed in Civil Petition for Leave to Appeal No.2306 of 2009 did not discuss anything as to auction sale or purchase of the suit land.

In the given facts and circumstances of the case and the decision of the highest Court as cited above as well as the above submission of the learned Advocate for the appellant, we have no hesitation to hold that to decide the truth of the matter evidence is necessary which can be available only in the course of trial of the suit. It is indeed unfortunate that the learned Joint District Judge did not at all consider all these aspects of the case both on law and fact in deciding an application under Order VII, Rule 11 of the Code of Civil Procedure for rejection of the plaint and non-consideration of the same has caused a great miscarriage of justice. We are, therefore,

of the opinion that the judgment and decree of the Joint District Judge does not deserve to be sustained.

In view of my discussions made in the foregoing paragraphs it is by now clear that the instant appeal must succeed.

In the result, the appeal is allowed. The impugned judgment and decree dated 05.03.2015 passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka in Civil Suit No. 43 of 2006 rejecting the plaint is set-aside.

The trial Court concerned is, however, directed to proceed with the suit expeditiously in accordance with law.

Let a copy of this judgment along with lower Court's record be sent down at once.

**Md. Mansur Alam, J:**

I agree.