Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice A.K.M. Rabiul Hassan

First Appeal No. 325 of 2007
In the Matter of:
Memorandum of appeal from the original decree.
-and-
In the Matter of:
Md. Serajul Islam and others.
.....Plaintiff-appellants.
-Versus-
Sree Sree Ma Bhabani Bigroha represented by Nripendra Nath Das and others
...Defendant-respondents.
Mr. M. Khaled Ahmed, Advocate with
Mr. Md. Ashikur Rahman, Advocate
……. For the appellants.

Mr. Probir Neogi, Senior Advocate with
Mr. Arobinda Kumar Roy (Ananda), Advocate
.....For the respondent Nos. 1 and 2.

Mr. Mohammad Ruhul Quddus Patwary (Munna), D.A.G. with
Mr. Md. Kamruzzaman Selim, A.A.G.
…… For the Government.

Heard on: 31.08.2026,07.09.2026,10.09.2026

and Judgment on 28.10.2024.

Sheikh Abdul Awal, J:

This first appeal at the instance of the plaintiff-appellants is directed against the judgment and decree dated 26.07.2007 (decree signed on 16.09.2007) passed by the learned Joint District Judge,1st Court, Bogra in Other Suit No. 28 of 2006 rejecting the plaint.

The brief fact relevant for disposal of this appeal is that the appellants as plaintiffs filed Other Class Suit No. 28 of 2006 in the court of learned Joint District Judge, 1st Court, Bogra impleading the respondents as defendants praying the following reliefs:

> ক) নিম্ন তপশীল বর্নিত সম্পত্তি বাবদ বগুড়া যুগ্ম জেলা জজ ১ম আদালতের ১/২ নং বিবাদীর বাদীত্বে আনীত ৩৯/২০০২ অন্য মামলার ইং ৩১/৮/২০০৫ তারিখের রায় ইং ৬/৯/২০০৫ তারিখের ডিক্রী বে আইনী, বেদাড়া, অন্যায়, ষড়যন্ত্র মূলক, যোগসাজসী, শঠতামূলক, প্রতারনা মূলক, বলফলহীন, অকার্যকরী উক্ত রায় ও ডিক্রী বাদী গনের উপর কার্য্যকর ও বাধ্যকর নহে। (Not Binding upon the Plaintiffs) মর্মে বাদী গন বিবাদী গনের বিরুদ্ধে ঘোষনামূলক ডিক্রী পায়।
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> খ) আইন ও ইকুইটি মুলে বাদী গন আর যে যে প্রতিকার পাইতে হকদার বিবাদী গনের বিরুদ্ধে তাহার আদেশ পায়।
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> গ) অত্র মামলার খরচা আদায় কালতক সুদ সহ বিবাদীগনের বিরুদ্ধে ডিক্রী পায়।

Plaint case in short is that the properties as described in the Schedule to the plaint are recorded in Government Khas Khatian No. 1. Since time immemorial, the local inhabitants, including the plaintiffs, have been peacefully possessing and enjoying the said properties openly and to the knowledge of the general public of the locality. Landless, destitute and displaced persons of the locality have also been occupying and enjoying the said properties. The plaintiffs and other occupants have obtained settlement of the Government Khas properties through registered Kabuliyat deeds and have been possessing and enjoying the same pursuant to such settlements and in this way acquired lawful rights and interests therein and remaining in possession thereof. The Government has also been leasing out the pond properties comprised in the suit Dag through public tender

notices in accordance with the Government rules and regulations, and the respective lessees have been enjoying possession thereof; that on 03.02.2006, corresponding to the 21st day of Magh, 1412 B.S., Defendant No. 1, accompanied by several other persons, appeared at Bhabanipur Mouza and openly declared that the defendants had obtained a decree from the Court in respect of the properties described in the Schedule to the plaint. Thereafter, defendant No. 1 asked the plaintiffs to vacate and surrender possession of the said properties, the plaintiffs were astonished and taken aback. The plaintiffs informed Defendant No. 1 that they had obtained settlement from the Government properties and had been possessing and enjoying the same accordingly, and that the current record of rights had also been prepared in their names. In reply, defendant No. 1 stated that the plaintiffs' settlement documents would be of no avail, as they had already obtained a decree from the Court and would soon take possession of the properties. Defendant No. 1 further threatened that his men would come, demolish the plaintiffs' dwelling houses and forcibly and evict them from the properties.

Upon hearing such threats, the plaintiffs made inquiries through the Court's record-keeping staff and, upon investigation, came to learn that Defendant Nos. 1 and 2 instituted Other Class Suit No. 39 of 2002 before the Court of the 1st Joint District Judge, Bogura, impleading the Government as the defendant. The plaintiffs further discovered that, without the knowledge or participation of the plaintiffs, and despite the fact that the

plaintiffs have been subsisting rights, interests and possession over the suit properties and constructed and maintained their dwelling houses thereon, Defendant Nos. 1 and 2 deliberately omitted to implead the plaintiffs as parties to the said suit and, by collusion and conspiracy, obtained an unlawful and fraudulent decree on 31.08.2005. Thereafter, on 28.03.2006, corresponding to the 14th day of Chaitra, 1412 B.S., the plaintiffs obtained certified copies of the judgment passed in Other Class Suit No. 39 of 2002 from the Court of the 1st Joint District Judge and, upon having the same read and explained to them by others, came to know the full particulars of the said judgment and decree. The plaintiffs then discovered that Defendant Nos. 1 and 2 instituted the said declaratory suit containing entirely false and fabricated statements and descriptions concerning the Schedule properties. Although the plaintiffs were permanent settlement holders in respect of the said properties and having constructed dwelling houses thereon and were residing therein, they deliberately did not implead them as defendants in the suit. In this way, the defendant Nos. 1 and 2, by secretly colluding with and unduly influencing the concerned Government officials, managed to procure a collusive, fraudulent, motivated and ineffective decree behind the plaintiffs' backs. As a matter of fact, the properties described in the Schedule to the plaint were originally recorded in C.S. Khatian No. 1. Subsequently, during the preparation of the M.R.R. Khatian, the said properties were recorded in Government Khas Khatian No. 1 in the name of the Government of former East Pakistan. While the Government was the lawful

owner and in possession of the said Khas properties, it granted permanent settlement of portions thereof in favour of the plaintiffs and various other persons through duly registered Kabuliyat deeds, Sale and Agreement deeds and other settlement documents. Certain pond properties were also leased out by the Government through public tender in accordance with Government rules and regulations, and the respective lessees have been enjoying possession thereof.

Contrary to the statements made in the plaint filed by Defendant Nos. 1 and 2, the Schedule properties are neither Debottar properties nor properties dedicated to any deity or religious endowment. The said properties are not in the possession or enjoyment of any Debottar estate or deity. The plaintiffs have no connection whatsoever with any such Debottar or deity in respect of the suit properties. The plaintiffs in the present suit have no right, title, interest or possession over the properties, nor do they have any connection with the same. The plaintiffs have never possessed or enjoyed any portion of the suit properties. On the contrary, the plaintiffs have been openly and peacefully possessing and enjoying the suit properties for more than twelve years, to the knowledge of the defendants, and continue to reside thereon after by constructing their respective dwelling houses. Defendant Nos. 1 and 2 had full knowledge of the fact that the respective occupants had obtained settlement of the Schedule properties from the Government through duly registered deeds and constructed dwelling houses thereon and were residing with their respective family members. Such

possession and occupation, particularly in respect of Dag No. 132, had been openly established and continued for a considerable period.

Defendant Nos. 1 and 2, having deliberately omitted to implead the actual owners and persons in possession of the suit properties, indirectly sought relief in the prayer portion of the earlier suit in a manner prejudicial to the principles of natural justice. Since Defendant Nos. 1 and 2 did not implead the present plaintiffs as parties to the earlier suit, the judgment and decree passed therein are not legally binding upon or enforceable against the plaintiffs. Nevertheless, Defendant Nos. 1 and 2 have been creating obstructions and hindrances to the plaintiffs' lawful rights and peaceful possession by relying upon the said purported judgment and decree. By furnishing certain false and fabricated documents, concealing the material facts and practicing fraud upon the Court regarding the actual ownership, title and possession of the suit properties, defendant Nos. 1 and 2 managed to obtain an ineffective judgment and decree. By concealing the true facts and relying upon the said purported decree to assert claims over the suit properties and by demanding that the plaintiffs remove their dwelling houses therefrom, Defendant Nos. 1 and 2 have cast a cloud upon the plaintiffs' lawful rights, title and interests in the suit properties. The said judgment and decree passed in Other Class Suit No. 39 of 2002 are legally inoperative and ineffective against the plaintiffs and are neither enforceable nor binding upon them.

Hence, the plaintiffs have been compelled to institute the present suit seeking a declaration to that effect.

By acting cunningly and deliberately, and through mutual collusion, fraud, misrepresentation and deceit, Defendant Nos. 1 and 2 kept the plaintiffs completely unaware of the proceedings and fraudulently procured the decree dated 31.08.2005 in Other Class Suit No. 39 of 2002. The said judgment and decree are illegal, unlawful, collusive, fraudulent and the result of a conspiracy. The same are not enforceable against or binding upon the present plaintiffs. The cause of action for filing the present suit first arose particularly on 31.08.2005, when the judgment was passed in Other Class Suit No. 39 of 2002 by the Court of the 1st Joint District Judge, and on 06.09.2005, when the decree was drawn up. The cause of action further arose on 03.02.2006, when Defendant No. 1 disclosed the existence of the said decree and asserted a claim over the suit properties, threatening to dispossess the plaintiffs therefrom. The cause of action is continuing and still subsists and hence, the suit.

The defendants entered appearance in the suit and filed written statements denying the entire material averments made in the plaint contending, inter alia, that the suit is not maintainable in this present form and manner. The suit is barred by limitation and the plaintiffs have/ had no right, title and possession in the suit land. The plaintiffs filed the suit on false averments and as such, the suit is liable to be dismissed.

Soon thereafter, defendants filed an application under Order VII, Rule 11 CPC for rejecting the plaint in the following language:

১/২ নং বিবাদী পক্ষে বিনীত নিবেদন এই যে, এই বিবাদীগনের বাদিত্বে ৩৯/০২ অন্য মোকদ্দমা আনায়ন করা হয়। উক্ত মোকদ্দমায় সরকার বিবাদী হিসাবে ও বাদ দিয়া মোকদ্দমায় Contest করা অবস্থায় উভয় পক্ষের সাক্ষ্য প্রমানাদী অন্তে মোকদ্দমা বাদী পক্ষে ডিক্রী হয়। অর্থাৎ সরকার Contest করিয়া হারিয়া গিয়াছে। সরকারে ৩৯/০২ অন্য মোকদ্দমার আবশ্যকীয় পক্ষ ছিল না। যেহেতু সরকার স্বয়ং মোকদ্দমা Contest করিতেছে। সেই হেতু সরকারের পিপির সরকারের হারজিতের উপর নির্ভরশীল এখানে সরকার মোকদ্দমার হারিয়া যাওয়ার পর সরকারের অধীনে পিপি অত্র ডিক্রী রদ করার মোকদ্দমা আনয়ন করার কোন অধিকার নাই। ইহা ছাড়া সরকার পক্ষ উচ্চ আদালতে আপীল করিয়াছে বলিয়া সরকারী আইনজীবী মৌখিকভাবে বলিয়াছে। এই বিবাদী এখন ও কোন নোটিশ প্রাপ্ত হয় নাই। এমতাবস্থায় অত্র মোকদ্দমার আরজী নাকোচ করার প্রার্থনা করিতেছে।

বিধায় প্রার্থনা হুজুর বাহাদুর দয়া করিয়া উল্লেখিত এবং বাদী বিশেষভাবে বিবেচনা করতঃ অত্র মোকদ্দমা maintainable নহে মর্মে আরজি নাকোচ করিয়া দিয়া সুবিচার করিতে মর্জি হয়। ৯/৪/০৭ ইং

The learned Joint District Judge after hearing the parties by the impugned judgment and decree dated 26.07.2007 allowed the application for rejecting the plaint under Order VII rule 11 of the Code of Civil Procedure.

Aggrieved plaintiffs then preferred this First Appeal before this Court.

Mr. M. Khaled Ahmed the learned Advocate along with Mr. Md. Ashikur Rahman the learned Advocate appearing for the appellants in the course of argument takes us through the plaint of the suit and other materials on record and then submits that the proposition of law is by now well settled that in deciding an application for the rejection of a plaint under Order VII, Rule 11 of the Code of Civil Procedure (CPC), the court must restrict

its inquiry solely to the averments made in the plaint and it cannot be travelled beyond the plaint although in this case the trial court without entering into the contents of the plaint most illegally rejected the plaint relying on the defense case and papers and as such, the impugned judgment and decree is liable to be set aside. Mr. Khaled further relying on the decision reported in 33 DLR (AD) 13 submits that all rent receiving interest including waqf and debuttor property stood acquired by and vested in the Government, as such decree passed in Title Suit No. 39 of 2002 by the 1st Joint District Judge, Bogra and thereafter affirmed by the Hon'ble High Court Division in F.A. 316 OF 2007 which also later affirmed by Appellate Division in C.P. No. 242 of 2012 by dismissing it on point of delay/ limitation which is per incurium and which does not carry any legal value as per decision reported in 56 DLR (AD) 264. He further submits that under section 108 of the Transfer of Property Act a registered deed and hand over the delivery of possession the lessee holds right being admittedly heritable and transferable, the Government cannot cancel the allotment order without cancelling the lease deed, as such the petitioners right in the land was finally acquired. Ref: 14 BLD (AD)254, 52 DLR(AD)119. Lastly, Mr. Khaled submits that the decision passed by Hon'ble Appellate Division is not on merit rather it passed in on the ground of delay/ Limitation. The Title Suit being No. 39 of 2002 filed by the respondents as plaintiffs by suppressing the facts, particularly Appellants are in possession in the suit land on the basis of a registered lease deed. Therefore earlier suit was also not maintainable. Ref: 66 DLR (AD) 176.

Mr. Probir Neogi the learned Senior Advocate along with Mr. Arobinda Kumar Roy (Ananda) the learned Advocate, on the other hand, appearing for the plaintiffs respondents submits that the trial court after considering the facts that in earlier suit the Government lost up to the Appellate Division in respect of the suit land and it is on record that the suit property had been leased out by the Government in favour of the plaintiffs and therefore, the suit is absolutely fruitless litigation which should be buried at its inception so that no further time is consumed in a fruitless litigation as the Government, proforma respondent Nos. 3-6 have/ had no legal footing to transfer the land through lease deed in favour of the plaintiffs and the trial court below rightly on assigning sound reason rejected the plaint by the impugned judgment and decree, which must be affirmed. Mr. Neogi to strengthen his argument relying on the decision reported in 53 DLR (AD) 12.

Having heard the learned Advocates for both the sides and gone through the materials on record together with plaint as find thereto.

On scrutiny of the record, it appears that in this case at the very initial stage the trial court below without framing any issue rejected the plaint holding that " অর্থাৎ বিরোধীয় সম্পত্তি বিষয়ে মহামান্য হাইকোর্ট বিভাগে মোকদ্দমা বিচারাধীন থাকায় অত্র মোকদ্দমা রেসসাবজুডিস দ্বারা বারিত।"

While rejecting the plaint the learned Joint District Judge also observed: "৩৯/০২ নং অন্য মোকদ্দমার বিবাদী সরকার পক্ষ প্রতিদ্বন্দ্বিতা করে হেরে গেছে এবং বিবাদী সরকার পক্ষ তদবিরুদ্ধে মহামান্য হাইকোর্ট বিভাগে আপীল দায়ের

করেছে যা বিচারাধীন আছে। যেহেতু এই বাদীগণ তপশীল বর্ণিত সম্পত্তি লিজমুলে এবং রেজিষ্ট্রীকৃত কবুলিয়ত মূলে সরকার হতে সম্পত্তি পাওয়ার দাবী করেছে এবং সরকার ৩৯/০২ বন্টন মোকদ্দমায় কনটেষ্ট করে হেরে গেছে এবং তপশীল বর্ণিত সম্পত্তি ৩৯/০২ অন্য মোকদ্দমায় দেবোত্তর সম্পত্তি এবং ইহা সরকারের খাস সম্পত্তি নহে এবং সরকার কর্তৃক কোন দলিল করে দেওয়া হলে ইহা বে-আইনী, অকার্যকর মর্মে ঘোষণা করা হয়েছে এবং যেহেতু মহামান্য সুপ্রীম কোর্টের আপীল বিভাগের রুলিং এ বলা হয়েছে-"Lessee of vested property has no locus stand to contest the suit and prefer appeal." সেইহেতু সরকারের অধিনে কবুলিয়ত বা লিজ গ্রহিতা হিসেবে এই বাদীগণের মোকদ্দমা করার কোন কারণ বিদ্যমান নাই মর্মে প্রতীয় হওয়ায় অর্ডার ৭ রুল ১১ মতে বাদীগণের আরজী খারিজযোগ্য মর্মে সাব্যস্থ করা গেল।

It is found that Honorable Judges of the Appellate Division in Civil Petition for Leave to Appeal as well as Civil Review Petition passed the order on the ground of delay/limitation not on merit.

Referring orders of the Appellate Division passed in Civil Petition for Leave to Appeal No. 2426 of 2012 as well as Civil Review Petition 538 of 2016 Mr. Md. Kamruzzaman Selim the learned Assistant Attorney General submits that cases were simply dismissed on the ground of limitation not on merit and therefore, it cannot be said that the Government has /had no legal basis in the suit property and the Government gave lease in favour of the plaintiffs beyond the legal scope, which has been affirmed up to the Appellate Division.

It is true that the Honorable Judges of the Appellate Division dismissed the Civil Petition for Leave to Appeal as well as Civil Review Petition on the ground of delay not on merit. It is also found that the Government transferred the suit property by way of registered deed in favour of the plaintiffs and it is also

found that judgment passed in Other Class Suit No. 39 of 2002 was not affirmed up to the Appellate Division on merit in Civil Petition for Leave to Appeal No. 2426 of 2012 and Civil Review Petition No. 538 of 2016.

The trial Judge in the midst of the impugned judgment stated that; অর্থাৎ বিরোধীয় সম্পত্তি বিষয়ে মহামান্য হাইকোর্ট বিভাগে মোকদ্দমা বিচারাধীন থাকায় অত্র মোকদ্দমা রেসসাবজুডিস দ্বারা বারিত।

This finding is certainly cryptic in nature and unnecessary one.

In a case of this nature as discussed above the trial court below ought to have framed issues of fact and law arising from the pleadings of the parties including issue whether the case is fruitless litigation or barred by principles of res judicata. Further, it is found that in this case the trial court in deciding the application under Order VII, rule 11 CPC travelled beyond the averments of the plaint by ignoring the well established principle of law that the court must examine only the statements and pleadings inside the plaint read as a whole. Furthermore, it is found that the contents of the plaint do disclose the cause of action for the suit. Therefore, we are not persuaded in the submission of the learned Advocate for the respondent Nos.1-2.

In view of our discussion made in the foregoing paragraphs it is by now clear the instant First Appeal must succeed.

In the result, the First Appeal is allowed. The impugned judgment and decree dated 26.07.2007 (decree signed on 16.09.2007) passed by the learned Joint District Judge,1st Court, Bogra in Other Suit No. 28 of 2006 is set aside without any

order as to costs and that the Other Suit No. 28 of 2006 is restored.

Since the matter is an old one of 2006, the trial court concerned is directed to proceed with the suit expeditiously in accordance with law.

Send down the record to the trial Court at once.

A.K.M. Rabiul Hassan, J:

I agree.