

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 346 of 2017

In the matter of:

Most. Fatema Bewa and others
... Appellants

-Versus-

Most. Salema Bewa and others
... Respondents

Mr. Golam Ahmed, Advocate
... For the appellants

Mr. Md. Alamgir Mostafizur Rahman, Advocate
... For the respondent nos 1, 6, 9

**Heard on 24.10.2024 27.10.2024
and Judgment on 27.10.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the plaintiffs in Other Class Suit No. 227 of 2013, this appeal is directed against the judgment and decree dated 18.09.2017 passed by the learned Joint District Judge, 1st court, Rajshahi in the said Suit allowing the application so filed by the defendants-respondents under Order 7 Rule 11 of the Code of Civil Procedure allowing the same resulting in rejected the plaint.

The short facts leading to preferring this appeal are:

The present appellants as plaintiffs filed the aforesaid Other Class Suit seeking following reliefs:

(ক) নালিশী (ক) তপশীল বর্ণিত সম্পত্তির (খ) তপশীল বর্ণিত দলি ত ৬১৬৯ একর সম্পত্তি বাবদ দলিল গুলি ভুয়া, যোগসাজসী, সৃজিত বাদীগনের উপর বাধ্যকর নহে মর্মে বিজ্ঞাপনী ডিক্রী দিতে;

(খ) নালিশী (ক) তপশীল বর্ণিত সম্পত্তিতে বাদীপক্ষের উত্তম স্বত্ত্ব রহিয়াছে মর্মে বিজ্ঞাপনী ডিক্রী বাদীপক্ষের অনুকূলে এবং বিবাদীপক্ষের বিরুদ্ধে ;

(গ) মোকদ্দমার যাবতীয় খরচার ডিক্রী দিতে;

(ঘ) আইন ও ইকুইটি মূলে বাদীপক্ষ তার আর যে যে প্রতিকার পাইতে হকদার হন, তাহার ও ডিক্রী বাদীপক্ষের অনুকূলে এবং বিবাদীপক্ষের বিরুদ্ধে

The precise facts so described in the plaint are that, the plaintiffs filed a suit for declaration that the deed bearing no. 33420 dated 24.10.1977 and its 2 correction deeds bearing no. 7652 dated 04.09.1999 as well as 402 dated 10.10.1990 executed and registered in favour of the defendants are illegal inoperative and not binding upon the said plaintiffs with a further prayer that the plaintiffs got indefeasible title and exclusive possession over the suit property which has been mentioned in schedule 'ka' to the plaint.

The defendants-respondents after appearing in the suit filed an application under Order 7 Rule 11 of the Code of Civil Procedure contending *inter alia* that the self-same plaintiffs had earlier filed Title Suit being no. 130 of 2010 making similar prayer as of the instant suit. However, after hearing the application filed by the defendants the learned judge rejected the plaint holding that, the principal of the plaintiffs named Most. Rani Bibi since died during pendency of the suit so the power of attorney furnished in favour of the plaintiffs to proceed with the suit has

ceased to exist and on that count, the plaint of Title Suit No. 130 of 2010 was rejected. Taking no steps in challenging the said judgment and decree rejecting the plaint, the plaintiffs subsequently filed another suit being Title Suit No. 286 of 2010 calling in question the propriety of the sale deed and those of two corrected deeds and also for declaration of title in the suit land. In the suit, the defendants then filed application under Order 7 Rule 10 of the Code of Civil Procedure for return of the plaint holding that, since the valuation of the sale deed is only taka 2,00000/- and the suit so filed before the learned Joint District Judge showing the valuation of the suit at 5,01000/- so the same cannot be sustained and the learned judge upon considering the said assertion of the defendants returned the plaint. It has further been asserted that, even no step was taken by the plaintiffs against the order returning the plaint by preferring any appeal, the plaintiffs again filed the instant suit being Other Class Suit No. 227 of 2013 on the self-same prayer that is, for declaration of title in the suit land with a consequential relief as of permanent injunction. At this the defendants again filed an application for injunction of plaint. Though against that application for rejection of the plaint, the plaintiffs did not file any written objection, the learned judge after taking into consideration of the assertion so made by the defendants in their application for rejection of plaint, rejected the same holding that, since no appeal has been preferred against the order of rejection of the plaint in Title Suit No. 130 of 2010 and that of the order returning the plaint in Other Class Suit No. 286 of 2012 and there are several causes of action in all the 3 suits so plaint is liable to be rejected and thus rejected the plaint vide impugned judgment and decree dated 18.09.2017. It is at that stage, the plaintiffs

came before this court and preferred this appeal. After preferring the appeal, the appellants also filed an application for injunction on which this court vide order dated 15.11.2017 directed the parties to maintain status quo in respect of possession and position of the suit property till disposal of the appeal.

Mr. Golam Ahmed, the learned counsel appearing for the appellants upon taking us to the impugned judgment and decree at the very outset submits that, since the plaintiffs have got statutory right to prefer appeal against rejection of plaint as has been provided in section 2(2) of the Code of Civil Procedure, so there has been no illegality in preferring the instant appeal as the assertion taken by the trial court is not tenable in law and therefore the learned judge erred in law in rejecting the plaint. The learned counsel by referring to the cause of action in Other Class Suit No. 286 of 2012 and that of the instant one that is, Other Class Suit No. 227 of 2013 also contends that since the date of arising cause of action of these two suits are different so did the prayers in both the suits hence there has been no reason on the part of the learned judge to reject the plaint because a plaint can only be rejected if there has been no cause of action in the plaint when admittedly in the instant suit a clear cause of action has been described in paragraph no. 5 thereof so the plaint can never be rejected as per clause (a) of Order 7 Rule 11 of the Code of Civil Procedure. The learned counsel then contends that, the instant suit is also not barred by any law as per clause (d) of Order 7 Rule 11 of the Code of Civil Procedure. On those two legal submissions, the learned counsel finally prays for allowing the appeal enabling the plaintiffs to proceed with the suit.

On the contrary, Mr. Md. Alamgir Mostafizur Rahman, the learned counsel appearing for the defendant-respondent nos 1, 6, 9 very vehemently opposes the contention so taken by the learned counsel for the appellants and submits that, the learned Joint District Judge has very perfectly come to a decision that, in spite of having authority for the plaintiffs to file a suit afresh but in its present form the instant suit cannot continue and on that very legal proposition the plaint has rightly been rejected which is liable to be sustained. The learned counsel in addition to that also contends that, under Order 7 Rule 13 of the Code of Civil Procedure even the plaintiff could have filed a separate suit on the self-same cause of action but without doing so the plaintiff preferred the appeal which is not tenable in the eye of law.

The learned counsel also asserts that, since it has been found by the learned judge while rejecting the plaint in Title Suit No. 130 of 2010 that since there had been no existence of any power given by the principal in favour of the plaintiffs so from the very beginning the suit itself was not entertainable even though that very legal point has not been taken into consideration by the learned judge while rejecting the plaint. Overall, the learned counsel finally prays for dismissing the appeal on sustaining the impugned judgment and decree.

We have very meticulously gone through the plaint of both the Other Class Suit No. 286 of 2012 and that of Other Class Suit No. 227 of 2013. Additionally we have also examined the provision so have been postulated in Order 7 Rule 11 of the Code of Civil Procedure on which a plaint can be rejected. On going through the said provision of law, we find amongst others, on 2 specific grounds as enumerated in clause (a) and

clause (d) of the said order, a plaint can be rejected that is to say, if there has been no cause of action in the plaint and if on the face of the plaint it is found that, the suit is barred by any law. On going through the impugned judgment and order, we find that, on 2 different reasons, the learned judge of the trial court rejected the plaint firstly, the plaintiffs have not preferred appeal against two orders earlier passed by the trial court one against rejection of plaint in Other Class Suit No. 130 of 2010 and another against order returning the plaint passed in Other Class Suit No. 286 of 2012. From the impugned order we find that the learned judge wanted to say that the instant suit is barred by law since no appeal has been preferred against two earlier orders. But we are not at one with the said assertion because whether the plaintiffs would prefer appeal against an order or not it can not be termed as barred by law as there has been no legal bar to file a suit afresh if from the plaint it shows that there has been a explicit cause of action and from the prayer so sought in the suit is found to be different from earlier one. Then again, in comparison of the plaints of Other Class Suit No. 286 of 2012 and Other Class Suit No. 227 of 2013 we also find the date of arising cause of action to be distinct from one another. Furthermore, in the instant suit the plaintiffs have not only prayed for declaration of title in the suit property by challenging the propriety of a sale deed rather they also prayed for permanent injunction in the suit property. In that aspect, the learned counsel for the respondents submits that, since that very prayer for injunction has been made as of prayer 'kha' so it would be construed as consequential relief not any substantive one and thus the prayer made in both the suits are same and hence the plaint of subsequent suit should be rejected and the learned

judge has rightly found so. But we disagree with that submission because no plaint can be rejected for having similar prayer if there remains separate cause of action in two suits rather a plaint can only be rejected if there has been no cause of action. Furthermore, a suit can be termed as barred by law if the plaintiff does not avail next forum by challenging any order of the trial court. It has already been settled even a plaint cannot be rejected on account of principle of resjudicata or on the point of limitation which can be decided in a suit by framing particular issues not it can be termed as barred by law. So we don't find any illegality in pursuing a separate suit as of instant one by the plaintiffs even if they did not prefer any appeal against earlier two orders in two other class suits stemmed from rejection of plaint as well as return of plaint when the cause of action as well as the prayer of both the suit are totally different.

Regard being had to the above facts and circumstances we don't find any shred of substance in the impugned order which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to costs.

Resultantly, the plaint of Title Suit No. 227 of 2013 is restored to its original file and number and the same will continue.

The order of status quo granted earlier on 15.11.2017 passed by this court stands recalled and vacated.

The learned judge of the trial is hereby directed to proceed with the suit and dispose of the same as expeditiously as possible preferably within a period of 06(six) months from the date of receipt of the copy of this order.

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.

Kawsar /A.B.O