

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3343 of 2009

IN THE MATTER OF :

An application under section 115(4) of the Code of
Civil Procedure

-And-

In the Matter of:

Md. Joydhar Ali

... Defendant-Petitioner

Versus

Karamjan Bibi

... Plaintiff-Opposite Party

None

... For the Parties

Judgment on: 02.09.2026

Md. Riaz Uddin Khan, J:

At the instance of the Defendant leave was granted to decide the question raised against the judgment and order dated 13.07.2009 passed by the Additional District Judge, 8th Court, Dhaka in Civil Revision No. 68 of 2008 affirming the judgment and order dated 10.02.2008 passed by the Assistant Judge, Dohar, Dhaka in Title Suit No. 81 of 2003 was illegal as passed without applying the judicial mind.

At the time of granting leave all further proceedings of Title Suit No. 81 of 2003 pending before the Court of Assistant Judge, Dohar, Dhaka was stayed initially for a period of 04(four) months which was lastly extended for a period of 06(six) months by order dated 05.08.2013 since then there is no order of stay upon the proceeding of Title Suit No. 81 of 2003.

Facts for disposal of this revision in substance are that the opposite party No.1 Karamjan Bibi being plaintiff filed Title Suit No. 81 of 2003 before the Court of Assistant Judge, Dohar, Dhaka against the present petitioner and opposite party Nos.2-8 for cancellation of deed of gift submitted in Title Suit No. 22 of 1989 regarding 1.4 decimals of land and *ex parte* decree dated 21.09.1993 of that suit and also for partition of the said suit land. In the plaint it was contended that one Abdul Majid and Lal Bhanu instituted Title Suit No. 22 of 1989 in the Court of Assistant Judge, Dohar regarding the suit land measuring 1.47 acres of land and obtained *ex parte* decree on 21.09.1993. Thereafter the present plaintiff Karamjan Bibi along with present defendant Nos.1-8 filed Title Suit No. 86 of 1993 before the Court of Assistant Judge, Dohar, Dhaka against the said Abdul Majid and Lal Bhanu for a suit for partition and cancellation of the *ex parte* decree passed in Title Suit No. 22 of 1989. The Title Suit No. 86 of 1993 was transferred to the Court of Assistant Judge, Nawabgonj and renumbered as Title Suit No. 82 of 1995 which was ultimately decreed on contest on 19.03.1998 in preliminary form. Against that judgment and decree dated 19.03.1998 said Abdul Majid preferred Title Appeal No. 235 of 1998 before the District Judge, Dhaka which was ultimately dismissed on 24.10.2000 and thereafter the Title Suit No. 82 of 1995 was decreed finally. The defendant No. 3 (present petitioner before this Court) Joydhar Ali without informing the present plaintiff filed Decree Execution Case No. 02 of 2002 making the present plaintiff as party and tried to take

possession of 3.00 acres of land including the present suit land and being informed the present plaintiff made an application for addition of party in the said Decree Execution Case No. 02 of 2002 which was rejected. Thereafter, the present plaintiff filed Decree Execution Case No. 03 of 2003 before the Court of Assistant Judge, Nawabgonj in which the present petitioner Joydhar Ali filed objection. At one stage both the Title Execution Case No. 02 of 2002 and Title Execution Case No. 03 of 2003 was stayed. Thereafter, the plaintiff filed the instant suit further contending that the defendant Joydhar Ali was the tadbirkar of Title Suit No. 82 of 1995 on behalf of the present plaintiff who obtained plaintiff's thumb impression in Blue paper, Cartridge paper, unwritten stamp and created a forged deed of gift, hence the suit.

The present petitioner as defendant appeared before the Court and filed written statement denying all the material averments made in the plaint contending *inter alia* that the schedule 'Ka' land was joint property of the plaintiff and the defendant. The plaintiff earlier filed Title Suit No. 86 of 1993 which was ultimately renumbered as Title Suit No. 82 of 1995 and in that suit the plaintiff by an affidavit on 16.06.1998 affirmed the deed of gift (*heba*) by which the plaintiff gifted her property to the defendant Joydhar Ali and others. The defendant further contented that he filed Execution Case No. 02 of 2002 in which the present plaintiff wanted to be an addition of party which was rejected and thereafter the plaintiff filed Execution Case No. 03 of 2003 which was also stayed hence the present suit is liable to be dismissed.

At one stage of the present suit on 13.11.2007 the defendant Joydhar Ali filed an application under Order-VII, Rule-11 read with Section 11 of the Code of Civil Procedure for rejection of the plaint against which the plaintiff filed written objection.

The trial court after hearing both the parties by his order dated 10.02.2008 was pleased to reject the application filed under Order-VII, Rule-11 read with Section 11 of the Code of Civil Procedure. Against the said order dated 10.02.2008 passed by the Assistant Judge the defendant-petitioner filed Civil Revision No. 68 of 2008 before the District Judge, Dhaka which was ultimately heard by the Additional District Judge, 8th Court, Dhaka who after hearing was pleased to reject the Revision by his impugned judgment and order dated 13.07.2009.

Being aggrieved by and dissatisfied with the said judgment and order dated 13.07.2009 the defendant filed the instant Civil Revision under section 115(4) of the Code of Civil Procedure before this Court and obtained the leave and order of stay as stated at the very outset.

No one appears to press or oppose this leave granting order when this matter was taken up for hearing.

I have gone through the revision application along with the documents annexed therewith. I have also carefully examined the order passed by the trial court as well as the impugned judgment and order passed by the Additional District Judge.

The defendant-petitioner took as many as seven grounds to assail the judgment and order passed by the

courts below. The main contention of the defendant-petitioner is that the present suit is barred by Section 11 of the Code of Civil Procedure as *res judicata* since the matter was earlier substantially adjudicated between the parties. The further contention of the petitioner is that the matter in dispute was finally dissolved in Title Suit No. 82 of 1995 earlier hence the suit is barred by the principle of *res judicata*. The further contention of the petitioner is that since two execution cases are pending being Execution Case No. 02 of 2002 and Execution Case No. 03 of 2003, those two execution cases should be first disposed of before this suit. The last contention of the petitioner is that from the averments of the plaint it is clear that the present suit is barred by principle of *res judicata*.

At this stage it would be profitable if we see Section 11 of the Code of Civil Procedure which deals with the principle of *res judicata* reads as under:

Section-11. *Res Judicata*. "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

From plain reading of the above provision of law it is clear that this section prohibits adjudication of

the same issue between the same parties more than once. This is intended to save litigants from being vexed twice and is based on the public policy that there should be a finality in litigation. The maxim that no one shall be vexed twice presupposes that the issue has been fairly and finally decided in a former suit. Once an issue has been finally decided, it cannot be re-agitated between the same parties.

In the present case the petitioner neither annexed the plaint of the Title Suit No. 82 of 1995 nor any copy of the decree of that suit. However, it appears from the record that the present plaintiff along with the present defendant-petitioner Joydhar Ali and 07 others filed Title Suit No. 82 of 1995 and got decree of 5.39 acres of land and there was no partition between the present plaintiff and present defendant of that suit regarding their ejmali property. Moreover, the plaintiff in her plaint further claimed that she did not execute any *heba* (gift) deed and did not made any affidavit before any notary public and the defendant Joydhar Ali created those documents which are forged. The trial court observed that the issue in Title Suit (partition suit) No. 82 of 1995 and the issue of the present suit No. 81 of 2003 are completely different hence the trial court rejected the application under Order-VII, Rule-11 of the Code of Civil Procedure. It further appears from the judgment of the lower revisional court that it observed that the prayer/issue of the Title Suit (Partition Suit) No. 82 of 1995 and the issue of the present suit are different.

On careful examination of the materials on record available before this Court I find that the earlier suit was for partition wherein the present plaintiff Karamjan Bibi and the present defendant Joydhar Ali both were plaintiffs hence it is absurd to say that in the earlier suit the dispute between the present plaintiff Karamjan Bibi and the present defendant Joydhar Ali was in any way dissolved. Furthermore, the present plaintiff raised a question of forgery against the defendant Joydhar Ali hence the defendant's contention that the present suit is barred by the principle of *res judicata* has no substance at all as the issues are different.

In the facts and circumstances and the position of law as discussed above I find no substance in the present civil revision which is liable to be discharged for devoid of merit which is destined to fail.

Resultantly, the Leave/Rule is discharged with cost.

The order of stay earlier granted by this Court stands vacated.

The trial court is directed to dispose of the present Title Suit No. 81 of 2003 expeditiously as early as practicable keeping in mind that the present suit is of in the year of 2003. The Execution Case No. 02 of 2002 and the Execution Case No. 03 of 2003 shall remain stayed till disposal of Title Suit No. 81 of 2003.

Communicate the judgment and order at once.