

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No. 10 of 2018

Md. Sattar Khan being dead his legal heirs-Shahnaz and others

...Appellants

-Versus-

Arafat Mahmud

... Respondent

Mr. Abdul Barek Chowdhury, Advocate

... For the appellant.

Mr. Mostafa Golam Kibria, Advocate

... For the respondent.

Heard and Judgment on 09.03.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 12.10.2017 passed by the learned Joint District Judge, 2nd Court, Dhaka, in Other Suit No.884 of 2015 rejecting the plaint.

Facts in short are that the appellants as plaintiffs instituted above suit for declaration of title for 0.1122 decimal land alleging that Abdul Kader Kha while owning and possessing 1.98 acre land including disputed 0.1122 decimal died leaving four sons plaintiff Nos.1 and 2 and Nannu Kha and Hasen Kha, one daughter Helaa Begum and wife Aklima Begum as heirs and the plaintiffs inherited disputed 0.1122 decimal land and possessing the same by erecting tea shop. On

13.11.2015 at 10:00 A.M. defendant claimed ownership of above property and threatened the plaintiff with dispossession.

Defendant contested above suit by filing a written statement and the suit was fixed for framing of issues. At this stage the defendant submitted a petition under Order 7 Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint alleging that the plaint does not disclose any cause of action and defendant is in possession in disputed 0.1122 decimal land.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Joint District Judge allowed above petition and rejected the plaint vide impugned judgment and decree dated 12.10.2017.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court above plaintiff as appellant moved to this Court and preferred this First Appeal.

Mr. Abdul Barek Chowdhury, learned Advocate for the appellants submits that admittedly R. S. Khatian No.29 was recorded in the name of plaintiffs predecessors Abdul Kader Kha for 1.98 acres land including disputed 0.1122 decimal. Plaintiffs have claimed title in disputed 11.88 decimal land by inheritance. It is true that the defendants have purchased 15 decimal land from Hasan Kha another son of Abdul Kader Kha but plaintiffs are in possession in disputed land as heirs of their father. The defendant having claimed title in

disputed land the plaintiff filed above suit for declaration of title. As far as possession is concerned the plaintiffs initiated a proceedings under Section 145 of the Code of Criminal Procedure, 1908 but the learned Joint District Judge miserably failed to appreciate the provision of order 7 Rule 11 of the Code of Civil Procedure, 1908 and most illegally rejected the plaint which is not tenable in law.

On the other hand Mr. Mostafa Golam Kibria, learned Advocate for the respondent submits that 1.98 acres land including disputed 0.1122 decimal belonged to Kader Kha who died leaving four sons plaintiff Nos.1 and 2 and Hasan Kha and Nannu Kha and one daughter Helena and one wife Aklima as heirs. Defendant has purchased 15 decimal land from Hasan Kha a son of Abdul Kader Kha who was in possession in above land. Plaintiff has instituted above suit for title incorporating above land of the defendant. The plaintiff should have filed a suit for partition and the learned Joint District Judge on correct appreciation of materials on record rightly rejected the plaint which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that 1.98 acres land including disputed 0.1122 decimal belonged to Abdul Kader Kha who died leaving four sons plaintiff Nos.1-2, Nannu Kha and defendant's predecessor Hasan Kha one daughter Helena Begum and one wife Aklima Begum as heirs.

Plaintiffs claim title and possession in disputed 0.1122 decimal land as heirs of Abdul Kader Kha. It is also admitted that defendant purchased 15 decimal land out of disputed plot from Hasan Kha another son of Abdul Kader Kha and claims to be in possession in above land. The claim of the defendant that the plaintiff has infact incorporated the land of the defendants in the plaint is a pure question of facts which cannot be determined without recording and analyzing of evidence.

While dispossessing a petition under Order 7 Rule 11 of the Code of Civil Procedure, 1908 the Court must remain confined within the statements made in the plaint without looking into the written statement or any other document of the defendant.

At Paragraph No.8 of the plaint specific mention has been made that the defendant claimed title over disputed 0.1122 decimal land on 13.11.2015 which created cause of action for the plaintiff to file above suit for declaration of title. It is true that a suit for declaration of title must fail if the plaintiff fails to prove his exclusive possession in the land. But the question of possession is a matter of fact which can be determined on consideration of evidence to be adduced at trial.

It turns out from record that at the instance of the appellant this Court passed an order of status-quo as to the possession of the disputed land on 08.12.2018. The learned Advocate for the respondents and the appellants concurrently submits that both the parties may be directed to maintain above status-quo till disposal of the suit.

On consideration of above facts and circumstances of the case and materials on record we hold that the learned Joint District Judge committed serious illegality and failed to understand the true meaning of Order 7 Rule 11 of the Code of Civil Procedure, 1908 and most illegally rejected the plaint which is not tenable in law. In above view of the materials on record we find substance in this First Appeal which deserves to be made allowed.

In the result, the First Appeal is allowed.

The impugned judgment and decree dated 12.10.2017 passed by the learned Joint District Judge, 2nd Court, Dhaka, in Other Suit No.884 of 2015 is set aside. The learned Joint District Judge is directed to conclude the trial of the case expeditiously within a period of the 6(six) months from the date of receipt of this order. Both the parties shall maintain status-quo as to possession till disposal of the suit.

However, there is no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.