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

CIVIL REVISION NO. 1089 OF 2019

In the matter of:
An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Sultana Khan alias Sultana Choudhury alias Sultana Runi Khan, wife of late A.S.M Sadeq Khan alias Sadek Khan of House No.11, Road No. 67, Flat 3-B, Gulshan-2, Dhaka, represented by her constituted attorney (appointed through Power of Attorney No. 3092 of 2018) Md. Habibur Rahman, son of Late Shamsul Huda of 300/5/A/1, Bir Uttam C.R. Datta Road, Hatirpool, Dhaka.

.... Petitioner

-Versus-

Mosammat Nasima Tofayel alias Nasima Khasur and others.

....Opposite parties

Mr. S.K Morshed, Senior Advocate with
Mr. Niaz Murshed
Mrs. Ayesha Morshed and
Mr. Rashidul Alam (Sugan), Advocates
... For the petitioner

No one appears
....For the opposite parties

Heard and Judgment on 27.04.2025.

Present:

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

Md. Mozibur Rahman Miah, J:

At the instance of Defendant No.6 of Title Suit No. 332 of 2018, this rule was issued calling upon the opposite party nos. 1-3 to show cause as to why the judgment and order no. 12 dated 22.001.2019 passed by the learned Joint District Judge, 1st Court, Dhaka in the said suit rejecting an application filed by the said defendant under order VII, rule 11(a) and (d) read with section 151 of the Code of Civil Procedure, should not be set aside and why the plaint of the said suit should not be rejected and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of Title Suit No. 332 of 2018 was stayed for a period of 06(six) months. The said order of stay was subsequently extended from time to time and it was lastly extended on 30.08.2022 till disposal of the Rule.

The salient facts leading to issuance of the rule are:

The present opposite party nos. 1-3 as plaintiffs filed the aforesaid suit seeking following reliefs:-

ক) নালিশী ‘‘ক’’ তফসিল বর্ণিত সম্পত্তিতে বাদীপক্ষ এক ষোল আনা মালিক ও দখলকার মর্মে এক ঘোষনা মূলক ডিক্রি দিতে;

খ) নালিশী ‘‘ক’’ তফসিল বর্ণিত সম্পত্তির উপর সৃজিত ‘‘খ’’ তফসিল বর্ণিত রেকর্ড বাদীগ নামে না হইয়া ভ্রমাত্মক/ভূলভাবে ৬ নং বিবাদীর নামে রেকর্ড হইয়াছে মর্মে এক ঘোষনা মূলক ডিক্রি দিতে;

গ) নালিশী "গ" তফসিল বর্ণিত রায় ও ডিক্রি Null, Void, illegal, তঞ্চকতাপূর্ণ এবং তৎদ্বারা বাদী পক্ষ বাধ্যকর ন না মূলক ডিক্রি দিতে;

ঘ) বাদীনির অনুকূলে এবং বিবাদীগনের প্রতিকূলে এক খরচের ডিক্রি দিতে;

ঙ) বাদীপক্ষ আইনতঃ ও ন্যায়ত আর যে যে প্রতিকার পাওয়ার হকদার তৎমর্মে এক ডিক্রি দিতে।

However, the said suit was filed claiming the suit properties measuring an area of 19 *Katha* of land, equivalent to 33.4 decimals as described to schedule nos. "ক" and "খ" to the plaint. The precise facts so have been described in the plaint is that the defendant No.6 offered to sell the suit property to the predecessors of the present opposite Party nos. 1-3 named, Al- haz Mohammad Khasru and his wife Mrs. Rahimunessa Khatun fixing the consideration at Tk. 4,00,000/- (Four lakh) and then on 23.09.1974 a deed of agreement for sale (বায়নানামা)was executed in their favour when the Defendant No.6 received an amount of Tk.50,000/- and subsequently Tk. 1,50,000/-. Thereafter in order to register a deed of sale of the said property, she (the defendant no.6) also executed a Power of Attorney on 01.09.1974 in favour of the said vendees. However, ultimately the defendant no.6 did not come forward to register the sale deed, when the plaintiffs came to learn that the properties so have been described in schedule "ক" to the petition has wrongly been recorded in the name of defendant no.6 in the city survey (সিটি জরিপ) and upon obtaining information slip to that effect on 19.07.2016, the plaintiffs then filed the suit for declaration of title and other reliefs as has been stated in the prayer as mentioned therein above. To contest the said suit, the defendant no. 6 therein the petitioner, on 14.08.2018 filed written statement as well as an

application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure for rejection of the plaint contending inter alia, that, she had earlier filed a suit being Title Suit No. 149 of 1992 before the then sub-ordinate Judge, Commercial Court No.2, Dhaka for declaration of title and recovery of Khah possession on the self same suit property so described in schedule "ka" and "Kha" to the plaint, where, the predecessors of the present opposite party nos. 1-3 as defendant nos. 1- 2 contested the same and ultimately the said suit was decreed on contest against those two defendants vide judgment and decree dated 26.09.2000. And, challenging the said judgment and decree, they themselves and their predecessors (that is the predecessors of the present opposite party nos. 1-3) also preferred an appeal being First Appeal No. 45 of 2001 before this Court and ultimately the said appeal was dismissed vide judgment and decree dated 12.11.2009, affirming the judgment and decree passed by the Trial Court. Those appellants then preferred an appeal being Civil Petition for Leave to Appeal No. 2067 of 2010 before the Appellate Division and it vide Judgment and order dated 02.02.2012 dismissed the appeal as well affirming the judgment and decree passed by the trial Court as well this Court. Eventually, the present opposite party No.1 as sole petitioner filed a Civil Review Petition No. 59 of 2012 before the Appellate Division and the said review petition was also dismissed vide judgment and order dated 30.11.2014. After exhausting was all the above forums, the present petitioner who was plaintiff in the suit as decree holder then filed an Execution Case being Title Execution Case No. 24 of 2012 before the trial Court and by virtue of the decree, the possession of the suit land was handed over to the decree holder-

petitioner by the advocate commissioner who after handing over possession to the decree holder submitted his report dated 12.02.2015 and since then the present petitioner has been in possession over the suit property. It has also been stated that the suit so filed the opposite party Nos. 1-3 as plaintiffs cannot be sustained in law which has only been filed to harass the petitioner in enjoying peaceful possession in the suit property and therefore, the same is liable to be dismissed on allowing the application filed under Order VII, Rule 11 of the Code of Civil Procedure.

However, against the said application, so filed by the defendant no.6 under Order VII Rule 11 of the Code of Civil Procedure, the plaintiffs filed a written objection denying all the averments so made in the application stating, inter alia, that the predecessor of the plaintiffs herein opposite party nos. 1-3, did not prefer any appeal in the High Court Division as well as in the Appellate Division rather by impersonating the appellants, those appeals have been shown to have filed and contested and then prayed that, the application under Order VII, Rule-11 of the Code of Civil Procedure by the defendant no. 6 is liable to be rejected.

However, the learned Judge of the Trial Court took up the said application for hearing and vide impugned judgment and order dated 22.01.2019 rejected the same holding that the assertion so have been made by the defendant no.6 in the application filed under Order VII Rule 11 of the Code of Civil Procedure cannot be considered until and unless evidence of the parties are taken.

Being aggrieved by and dissatisfied with the said judgment and order, the defendant no.6 as petitioner then came before this Court and obtained instant Rule and order of Stay as stated herein above.

Mr. Sk. Md. Morshed, the learned senior counsel appearing for the petitioner upon taking us to the impugned judgment and order and all other documents so appended with application, at the very outset submits that the learned Judge of the Trial Court has failed to appreciate the legal assertion so have been made both in the written statement as well as the application for rejection of plaint and thereby committed an error of law is not allowing the application. To supplement the said submission, the learned counsel further contends that since the dispute steamed from the suit property has finally been adjudicated upon up to the Appellate Division, so there is no scope to reopen the said dispute again by filling a separate suit by the opposite party nos. 1-3 which is barred by principle of resjudicata. The learned Counsel further contends that though the plaintiffs in the suit have solely based upon the agreement for sale dated 23.09.1974 which both the Trial Court in Title Suit No.149 of 1992 as well as this Court in First Appeal No. 45 of 2011 have disbelieved its authenticity finding categorically that-

> "We find that the defendant no.2 have not appoint right title interest in the suit land and that the same did not execute the agreement of sale and power of Attorney same and thus impliedly where as document including to effected sale deed become void. Already, we have found that no consideration money was paid and that the

> evidence of sale, power of Attorney and none received not executed by the plaintiff by the trial Court declared that the plaintiff 561 in the suit property, then automatically those documents to be declared forged, fraudulent and void."

So on the basis of such definite finding, there has been no scope on the part of the plaintiffs to file the instant suit for declaration of title basing on the agreement for sale and of power of attorney alleged to have furnished by the defendant No.6 veracity of which has already been set at rest by the Appellate Division even in the review petition.

The learned Counsel further contends that though under the provision of Order VII Rule 11 of the Code of Civil Procedure, there have been four specific ingredients basing on which a plaint can be rejected yet under certain special circumstances, the learned Judge of the Trial Court in exercising inherent power can also rejected the plaint if it finds the suit ineffective. In that regard, the learned Counsel has relied upon the decisions reported in 53 DLR(AD)12 as well as 21 BLC(AD)218 and then read out Paragraph No. 12 and Paragraph No.19 and those two decisions respective and finally prays for making the Rule absolute on setting aside the impugned judgment and order by dismissing the suit.

Though the matter has been appearing at the top of the list for hearing yet, the learned Counsel for the opposite party no.1 did not appear to oppose the Rule.

Be that as it may, we have consider the submission of the learned senior counsel for the petitioner and perused the revisional application and

the documents annexed therewith. At the very outset, we would like to take a glance to the provision of Order VII Rule-11 of the Code to grasps ourselves as to under what circumstance a plaint can be rejected.

Order VII Rule-11 of the Code of Civil Procedure

(a) Where it does not disclose a cause of action:

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) Where the relief claimed is property valued, but the plaint is written upon paper insufficiently stamped. And the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so.

(d) Where the suit appears from the statement in the plaint to be barred by any law it.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisites stamp-paper shall not exceed twenty one days"

Though in the application filed by the defendant no.6 under Order VII Rule 11 of the Code of Civil Procedure, she categorically based her assertion under Clause (a) and Clause (d). but in the entire application we don't find any positive assertion under which law a plaint can be rejected, so does the

cause of action. We have also very meticulously gone through the revisional application and finds that the present opposite part nos. 1-3 who are the plaintiffs in the suit have soley banked upon the deed of agreement for sale i.e. *bainapatra* dated 23.09.1974 as well the power of attorney alleged to have executed by the present petitioner in favour of the predecessors of the opposite party nos. 1-3 but since that very *Bainapatra* has been found to be void in earlier suit filed by the defendant no.6 as plaintiff that is, Title Suit No. 149 of 1992 so basing on that void documents, no suit can be instituted let alone continue against the present defendant no.6. Though in the instant suit the plaintiffs herein opposite party nos.3 prayed for 03(three) distinct reliefs but the first two reliefs had earlier been disposed of in favour of the defendant no.6 in her suit she filed earlier, because in earlier suit title was declared in favour of the defendant no.6.

Further, on going to the schedule nos. “ka” and “Kha” so described in the instant plaint and that of the schedule of earlier suit i.e. Title Suit No. 149 of 1992 we find both are same in terms of quantity of the suit property. Since in earlier suit, title was declared if favour of the defendant no. 6 so, there has been no reason to continue the same filed by the opposite party nos. 1-3 let alone dispose of the same by the trial court. Also, in the decree of earlier Title suit no. 149 of 1992, we find that the present opposite party nos. 1-3 were made as defendant nos. 2(ka)-2(ga). So, the present opposite party nos. 1-3 had every knowledge about the decree of earlier suit which went in favour of the defendant no.6 that ended up to the Appellate Division. So knowing everything about the said decree in faovur of the defendant no.6, the present opposite nos. 1-3 very willfully initiated the suit for nothing

other than to harass the present defendant no.6. So we find every nexus with the decision so have been cited by the learned senior counsel for the petitioner reported in 53 DLR (AD)12 as well as 21 BLC(AD)218 with the facts and circumstances of the instant suit whoever it has been clearly held that-

> *" it is well settled that where a plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure the Court may invoke its inherent jurisdiction and reject the plaint taking recourse to section 151 of the Code of Civil Procedure. Here in the present case from the available materials particularly the plaint itself it appears that they failed to get their title declared over this land in the earlier suit."*

In similar vein, in the decision reported in 21 BLC(AD)218 it has also been propounded in paragraph-9 that:

> *"However, the Court can rejected plaint in exercise of inherent powers under section 151 of the Code of Civil Procedure if it is found that on the admitted fact that the plaint is otherwise barred by law. It further held that the Court should not feel helpless in circumstances to* ***substantial justice*** *and make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. If the Court can exercise power for securing ends of justice, it can be said that the powers the court are wide enough and residuary in nature and*

not controlled by any other provisions of the Code of Civil Procedure."

All in all, we find ample substance to the submission of the learned counsel for the petitioner who has perfectly been argued that the impugned judgment and order bears no legal substance.

Resultantly, the rule is made absolute however without any order as to costs.

The impugned judgment and order dated 22.01.2019 passed by the District Judge, 1st Court, Dhaka in Title Suit No. 332 of 218 thus stands set aside, resulting in, the plaint is rejected and the suit being Title suit No. 332 of 2018 is dismissed.

Let a copy of the judgment and decree thus be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Jahangir Alam/B.O