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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 2670 OF 2019.

Bikalpa Bahumukhi Samabaya Samity Limited represented by its Secretary.

...Petitioner.

-Versus-

Md. Rafizuddin Bepari and others.

....Opposite parties.

Mr. Abu Yeahia Dulal, Advocate

… For the petitioner.

Mr. Md. Zahedul Bari, Advocate

… For opposite party Nos. 1-11

Heard on: 20.05.2024.
Judgment on: 23.05.2024,

Md. Badruzzaman,J

Upon an application under section 115(1) of the Code of Civil Procedure this Rule was issued in the following terms:

"নথি তলব করা হউক।

যুগ্ম জেলা জজ, ২য় আদালত, ঢাকা কর্তৃক দেওয়ানী মোকদ্দমা নং ৩২৪/২০১৬-এ বাদীর মোকদ্দমার কোন কারণ (Cause of action) না থাকায় বিবাদী-দরখাস্তকারী কর্তৃক দেওয়ানী কার্যবিধির আদেশ ৭ নিয়ম ১১ মোতাবেক দাখিলকৃত দরখাস্ত দোতরফা সূত্রে শুনানী অন্তে না-মঞ্জুরের বিগত ইংরেজী ১৪.০৭.২০১৯ তারিখের আদেশ কেন রদ, রহিত এবং বাতিল করা হবে না এবং অত্র আদালত কর্তৃক সঠিক এবং যথাযথ মনে করলে আরও অন্যান্য বা অতিরিক্ত আদেশ বা আদেশসমূহ কেন প্রদান করা হবে না মর্মে প্রতিপক্ষগণের প্রতি কারণ দর্শানোপূর্বক রুল নিশি জারী করা হল।''

At the time of issuance of Rule this Court vide order dated 16.09.2019 stayed further proceedings of Title Suit No. 324 of 2016 for

a period of 06 (six) months which was, subsequently, extended time to time.

Facts relevant, for the purpose of disposal of this Rule, are that opposite party Nos. 1-11 as plaintiffs instituted Title Suit No. 324 of 2016 on 08.05.2016 against the petitioner and others in 2nd Court of Joint District Judge, Dhaka praying for a decree of declaration that S.A, R.S and City Jarip Khatians as described in the schedule of the plaint were wrong by declaring title of the plaintiffs to the suit land and another decree of recovery of Khas possession of 5.1804 acre land as described in Ka schedule of the plaint.

The positive case of the plaintiffs is that 6.09 acre land including the suit land belonged to Adu Bepari but during S.A, R.S and City Jarip operation, the suit land was wrongly prepared and published in the name of the defendants and their predecessors. The plaintiffs are the successive heirs of said Adu Bepari and they did not transfer any land out of the suit land to anybody else. The plaintiffs after obtaining the relevant Khatians and deeds came to know about the wrong records and they informed the matter to the defendants on 10.01.2016 who denied the claim of the plaintiffs and as such, the suit.

Defendant No. 2 is a Samabaya Samity who filed written statement on 16.07.2018 denying the material averments of the plaint and claiming their title to and possession in a part of the suit property by way of purchase from the successive heirs of C.S recorded tenants and further stated that they were owning and possessing .9975 acre land by purchase vide sale deed No. 2046 dated 06.04.1994 and since said land was within the Pallabi Housing Project, 2nd phase of defendant No. 1, both defendant No. 1 and 2 reached an amicable settlement and as per settlement defendant No. 1 developed said .9975 acre land

against which defendant No. 1 allotted 6 plots measuring total .3305 acre land with common facilities to defendant No. 2 who thereafter, converted said 6 plots into one plot and after approval of plan from RAJUK already completed the construction up to the roof of 2nd floor.

Defendant No. 2 on 09.08.2018 filed an application under Order VII rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that there is no cause of action of the suit and as such, the plaint is liable to be rejected under Order VII rule 11(a) of the Code of Civil Procedure. The plaintiffs without filing written objection against the application of rejection of plaint filed an application on 06.02.2019 for amendment of the plaint proposing to introduce the fact as to how they acquired right, title and possession in the suit property from their predecessors as well as stating that the defendants dispossessed them from the suit property. By that amendment the plaintiffs prayed to delete the prayer Ka of the plaint and insert two prayers being prayer Ka-1 and Ka-2. By such amendment the plaintiffs sought for two decrees, that S.A Khatian Nos. 154, 155, 156 corresponding to R.S Khatian Nos. 59, 260, 196 and City Jarip Khatian Nos. 5, 13, 603, 773 and 1202 were wrong and that sale deed No. 2046 dated 06.04.1994, No. 7857 dated 11.12.1994, No. 217 dated 08.01.1995, No. 1118 dated 11.02.1995 and No. 6768 dated 01.11.2013 were ineffective, forged and not binding upon the plaintiffs.

The trial Court took both applications for amendment of plaint and the application for rejecting of plaint and by impugned order dated 14.07.2019 allowed the amendment of the plaint and rejected the application filed by defendant No. 2 for rejection of the plaint.

Being aggrieved by the order of rejection of the application filed under Order VII rule 11 of the Code of Civil Procedure defendant No. 2

has preferred this revisional application under section 115(1) of the Code of Civil Procedure and obtained the instant Rule and order of stay, as stated above.

Plaintiff-opposite party Nos. 1-11 entered appearance and filed counter affidavit to oppose the Rule mainly contending, that the points raised in the application under Order VII rule 11 of the Code of Civil Procedure may be an issue of the suit to be decided by adducing oral and documentary evidence and the plaint cannot be rejected on the ground that there was no cause of action for filing of the suit because of the fact that the plaintiffs in their plaint specifically stated the cause of action of the suit and as such, the trial Court rightly rejected the application filed by defendant No. 2 for rejection of the plaint.

Mr. Abu Yeahia Dulal, learned Advocate appearing for the petitioner by taking us to the plaint, the application for amendment of plaint, the application for rejection of plaint and the impugned order mainly submits that since this is a suit for declaration of title and other declarations with a further prayer of recovery of khas possession the plaintiffs in the plaint must assert the date of their alleged dispossession and the facts that they have filed the suit within twelve years from the date of dispossession but in the plaint as well as in the application for amendment of the plaint the plaintiff stated nothing about the date of dispossession and accordingly, the plaint is liable to be rejected for want of cause of action of the suit. Learned Advocate further submits that though some deeds have been challenged by way of amendment of the plaint but the plaintiffs did not state anything as to when they came to know about the alleged deeds and as such the plaintiffs did not state the cause of action for challenging the deeds and accordingly, the plaint should have been rejected by the trial Court as

there was no cause of action for filing of the suit. In support of his contention the learned Advocate has referred to some decisions of the Appellate Division of the Supreme Court of Bangladesh.

In opposing the submissions of the learned Advocate for the petitioner, Mr. Md. Zahedul Bari, learned Advocate appearing for opposite party Nos. 1-11 submits that the cause of action is a mixed question of law and fact which can only be decided by framing an issue in the suit and upon considering the evidence adduced by the respective parties and a plaint cannot be rejected on the ground that there was no cause of action for filing of the suit and accordingly, trial Court committed no illegality in rejecting the application for rejection of the plaint and as such, interference is not called for by this Court.

We have heard the learned Advocates, perused the plaint, amendment of the plaint, the application filed by defendant No. 2 for rejection of the plaint, the impugned order and other relevant documents available on record.

On perusal of the plaint of Title Suit 324 of 2016 it appears that the plaintiffs though filed the suit for a decree of declaration of title, other declarations and recovery of khas possession but in the plaint they did not state anything as to how and when they have been dispossessed from the suit land by the defendants. Even in the original plaint the plaintiffs did not state anything that they have been dispossessed by the defendants though they made a prayer therein for recovery of khas possession. On perusal of the application filed under Order VI rule 17 of the Code of Civil Procedure for amendment of the plaint, the plaintiffs alleged that the defendants by fraudulent means created some paper transacted sale deeds but they did not state

anything as to how and when they came to learn about those deeds and when cause of action arose in regards of those deeds.

In the application for amendment of the plaint which has been allowed by the trial Court the plaintiffs stated, " নালিশী সম্পত্তি কিছু খালী অবস্থায় বাদীগণের দখলে থাকিলেও কতক সম্পত্তি বিবাদীগণ জোর জবরদস্তি করিয়া বাদীগণকে বেদখল করায় নালিশী সম্পত্তিতে কালিমা পতিত হইয়াছে।" Except this statement, the plaintiffs did not state anything on which date they have been dispossessed by the defendants. Moreover, the plaintiffs stated that they have been dispossessed from a part of the suit land but they did not specify from which portion of the suit land they have been dispossessed. On the face of it, the plaintiffs did not specify the land from which they have been dispossessed by the defendants.

A suit for declaration of title and recovery of Khas possession on the allegation that the plaintiff was dispossessed or discontinued possession is governed by Article 142 of the Limitation Act. Accordingly, the plaintiff of such suit is to prove that the dispossession or discontinuance of possession took place within twelve years before filing of the suit. In order to grant a decree for recovery of possession the Court is required to find on which date the plaintiff was dispossessed from the suit land and whether the suit was filed within twelve years from the date of dispossession of the suit land. Accordingly, in such a suit the plaintiff is required to allege in the plaint that he or she was dispossessed within twelve years of the institution of the suit and if he or she fails to do so he has no cause of action to institute the suit.

In describing the cause of action for filing the suit, the plaintiffs in paragraph No. 11 of the plaint stated as follows:-

> "নালিশের কারণ ঃ- নালিশী সম্পত্তি সংশ্লিষ্ট পর্চা ও দলিল পত্রাদি সই মুহুরী কপি তুলে বাদী গণের নিকট উক্ত ভ্রমাত্মক বিষয়টি দৃষ্টিগোচর হয়।

বিবাদী গণকে নালিশী বিষয়টি জ্ঞাত করলে বিগত ১০/০১/২০১৬ ইং তারিখে বিবাদীগণ বাদী গণের দাবী অস্বীকার করায় মামলার কারণ উদ্ভব হয় এবং মোকদ্দমাটি অত্র আদালতের এলাকাধীন পল্লবী থানার এখতিয়ার ভুক্ত বিজ্ঞ আদালতে দায়ের করা হইল।''

From the statements made in paragraph No. 11 of the plaint it appears that as per the plaintiff's claim the cause of action of the suit arose on 10.01.2016 when the defendants denied the claim of the plaintiffs. Moreover, the plaintiffs by way of amendment of the plaint merely stated that the defendants dispossessed them from a part of the suit land but they did not plead anything in the plaint or in the amended plaint on which date they were dispossessed from the suit land and whether the suit was instituted within 12 years from the date of alleged dispossession. In the absence of averment as to the date of dispossession of the plaintiffs and filing of the suit within twelve years of the alleged date of dispossession the Court will not be able to pass a decree for recovery of khas possession in favour of the plaintiffs even if the plaintiffs by adducing evidence an prove their title. Since there is no averment in the plaint as to the date of the plaintiffs dispossession from the suit land and the suit for declaration and recovery of khas possession was filed within twelve years of the date of dispossession, we are of the view that the plaint does not disclose any cause of action for filing the suit.

On the other hand, the plaintiffs asserted in the plaint that they have been dispossessed by the defendants from a part of the suit land without specifying from which portion of the suit land they have been dispossessed. As such, the suit land is unspecified and undemarcated for which it will not be possible on the part of the Court to give a decree of recovery of khas possession in favour of the plaintiff for such a vague and unspecified land. In that view of the matter this suit is not

maintainable as per provision under Order VII rule 3 of the Code of Civil Procedure.

In that view of the matter the plaint is liable to be rejected under Order VII rules 11(a) and 11(d) of the Code of Civil Procedure. It appears from the impugned order refusing to reject the plaint it appears that the trial Court upon misconception of law and fact illegally rejected the application for rejection of the plaint and as such, interference is called for by this Court.

In view of the above, we find merit in this Rule.

In the result, the Rule is made absolute, however, without any order as to costs.

The application filed by defendant No. 2 under Order VII rule 11 of the Code of Civil Procedure is allowed. The plaint of Title Suit No. 324 of 2016 be rejected.

The order of stay granted earlier by this Court is hereby vacated.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)