

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

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 714 of 2019.

Md. Fajlul Haque and others

...Appellants.

-Versus-

1(a) Saiara Begum and others

....Respondents.

Mr. Md. Al-Amin, Advocate

... For the appellants

Ms. Rahima Khatun, Advocate

... For the respondents.

Heard on: 11.08.2026.

Judgment on: 16.08.2026.

Md. Badruzzaman, J:

This appeal is directed against the judgment and decree dated 20.08.2019, decree whereof was signed on 24.11.2019, passed by the learned Joint District Judge, 2nd Court, Dinajpur, in Title Suit No. 38 of 2007, whereby the plaint was rejected.

The relevant facts for disposal of the appeal are that the appellants, as plaintiffs, instituted the aforesaid suit seeking a decree of declaration of title to the suit land. Their case, in substance, was that their predecessors-in-interest had acquired the suit property from Hanuman Das Agarwala and others by a deed of exchange dated 01.05.1951, followed by a power of attorney dated 15.05.1951.

Defendant Nos. 1(Ka)-1(Chha) contested the suit by filing written statement, denying the plaintiffs' title and claiming their title to the suit property on the basis of certain registered deeds.

Defendant Nos. 2-4, the Government, also filed written statement denying the plaintiffs' title.

After framing of issues, the plaintiffs examined three witnesses. Thereafter, they filed an application for amendment of the plaint, seeking to introduce an alternative plea that they had acquired title to the suit property by adverse possession. The application was allowed by order dated 13.06.2017, whereafter the defendants filed additional written statements.

Subsequently, without any application having been filed by any of the defendants, the trial Court *suo-motu* fixed the suit for admission hearing and, by the impugned order, rejected the plaint by invoking its inherent jurisdiction under section 151 of the Code of Civil Procedure.

Mr. Md. Al-Amin, learned Advocate appearing for the appellants, submits that the plaintiffs' claim of title on the basis of the deed of exchange, coupled with an alternative plea of acquisition of title by adverse possession, cannot by itself constitute a ground for rejection of the plaint either under Order VII, rule 11 or section 151 of the Code. He submits that a plaintiff may take alternative and, in an appropriate case, even inconsistent pleas, and that the question whether the plaintiffs acquired title under the deed relied upon or by adverse possession is a matter to be determined upon consideration of the pleadings and evidence. He further submits that the trial Court, having allowed the amendment and after the plaintiffs had

examined three witnesses, acted illegally in *suo motu* rejecting the plaint under section 151 of the Code.

In support of his contention, the learned Advocate has referred to the decision in Ruhul Amin and others Vs. Bangabandhu Sheikh Mujib Medical University (BSMMU) and others, 18 BLC 182, as well as the decision in Mortuz Ali Khalifa Vs. Jobeda @ Kalu Bibi and others, 20 BLC (AD) 3.

On the other hand, Ms. Rahima Khatun, learned Advocate appearing for respondent Nos. 1-7, submits that, upon proper consideration of the materials on record, the trial Court rightly rejected the plaint and committed no illegality in doing so.

Learned Advocate further submits that a decree for declaration of title on the basis of certain documents and a claim of title by way of adverse possession cannot be sought simultaneously. She submits that a claim of title by adverse possession must be specifically pleaded in the pleadings and duly established by evidence.

Learned Advocate further submits 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, in an appropriate case, exercise its inherent jurisdiction under Section 151 of the Code of Civil Procedure and reject the plaint.

In support of her submissions, the learned Advocate has referred to the decisions in Salma Khatun and others Vs. Zilla Parishad, Chittagong and another, 51 DLR (AD) 257; Abdul Jalil and others Vs. Islamic Bank Bangladesh Limited and others, 53 DLR (AD) 12; and Pushpa Rani Saha Poddar Vs. Rash Mohan Saha and others, 10 MLR (AD) 345.

We have heard the learned Advocates for the respective parties and perused the plaint, the application for amendment, the written statements and additional written statements, the impugned order and other materials on record.

It appears that, by the amendment dated 13.06.2017, the plaintiffs introduced an alternative plea that, having been in possession of the suit property for more than 60 years, they had acquired title thereto by adverse possession.

The trial Court, while rejecting the plaint, appears to have proceeded on the view that the plaintiffs could not simultaneously claim title on the basis of the deed of exchange and by adverse possession, that they had failed to produce the document relating to the alleged exchange, and that the plaint did not contain the necessary particulars to establish adverse possession, including the commencement of hostile possession against the true owners. In our view, the approach adopted by the trial Court is not sustainable in law.

Whether the plaintiffs can ultimately establish their title on the basis of the deed of exchange, and whether they can alternatively establish acquisition of title by adverse possession, are questions to be determined on the basis of the pleadings and evidence. The mere fact that alternative or even inconsistent pleas have been taken does not, by itself, render the plaint liable to rejection. The validity, sufficiency and proof of such pleas are matters for adjudication in the suit.

It is well settled that, while considering rejection of a plaint, the Court is required to examine the averments contained in the plaint and cannot undertake an adjudication of disputed questions of

fact or determine the ultimate merits of the plaintiff's claim at that stage. Order VII, rule 11 of the Code specifies the circumstances in which a plaint may be rejected. The inherent power under section 151 of the Code cannot ordinarily be invoked to circumvent those specific provisions.

Order XIV, Rule 1(5) of the Code provides that at the first hearing of the suit, after considering the pleadings and examining the parties, if necessary, the Court shall ascertain the matters in controversy and frame and record the issues. Thus, framing of issues is an integral part of the first hearing. Thereafter, under Order XIV, Rule 8, the Court is required to fix a date for the final hearing of the suit. Order XV, on the other hand, specifically deals with disposal of a suit at the first hearing in the circumstances contemplated therein.

We find no provision in the Code prescribing a separate stage or proceeding described as an "admission hearing" of an ordinary suit after the issues have been framed. A Court may, of course, hear the parties on any question of law or procedure arising in the suit; but merely fixing a suit for an "admission hearing" does not, by itself, create a jurisdictional basis for rejection of the plaint under section 151 of the Code. Where the suit has already proceeded beyond the stage of framing of issues and is pending for trial, any order bringing the suit to an end by rejecting the plaint must be traceable to a specific provision of the Code or other law conferring such jurisdiction. The inherent power under section 151 cannot be invoked to create a procedure or jurisdiction which is not otherwise provided by law.

The decisions relied upon by the learned Advocate for the appellants are not applicable to the facts and circumstances of the present case.

In the present case, the suit had already proceeded to the stage of recording evidence, and three witnesses on behalf of the plaintiffs had been examined. The application for amendment of the plaint had also been allowed, and the defendants neither challenged the said order of amendment before any higher forum nor raised any objection thereto; rather, they filed additional written statements to contest the amended claim of the plaintiffs. Significantly, none of the defendants filed any application seeking rejection of the plaint. Nevertheless, the trial Court, *suo motu*, fixed the suit for admission hearing and thereafter rejected the plaint by invoking section 151 of the Code of Civil Procedure. If the plaintiffs ultimately fail to establish their title under the deed relied upon, or fail to prove the necessary ingredients of adverse possession, such failure may affect the merits of their claim. It does not, however, furnish a lawful basis for summarily terminating the suit by rejecting the plaint under section 151 of the Code, particularly where the controversy requires adjudication upon evidence.

We are, therefore, of the view that the trial Court committed an error of law in rejecting the plaint by invoking its inherent jurisdiction under section 151 of the Code of Civil Procedure.

Accordingly, we find merit in the appeal.

In the result, the appeal is allowed without any order as to costs.

The impugned judgment and decree rejecting the plaint are set aside. The suit is restored to its original file and number. The trial

Court is directed to proceed with the suit from the stage at which the impugned order was passed and dispose of the same in accordance with law, upon consideration of the pleadings, issues and evidence and after affording the parties reasonable opportunity of hearing.

Send down the L.C.R, along with a copy of this judgment, to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)