IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Appeal No. 06 of 2020

In the matter of:

Hosne Ara Begum

… Appellant

-Versus-

M/S Shilpi Food Products Limited and others

…Respondents

Mr. Md. Mainul Islam, Advocate for
Ms. Tahmina Sahrin, Advocate

…For the appellant

Mr. Md. Shamsul Islam, Advocate

...For the respondent no. 6

Mr. Md. Nazmul Haque, Advocate

...For the respondent no. 3

Mr. Md. Ataul Gani, Advocate

....For the respondent nos. 7,9, 10, 12 and 19

Heard on 22.02.2024 29.02.2024
and Judgment on 29.02.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

This appeal is directed against the judgment and decree dated 26.08.2019 passed by the learned Joint District Judge, 3rd court, Dhaka in Title Suit No. 190 of 2009 allowing an application filed by the defendant nos. 6,7, 9-14, 15(ka)-15(jha) 16 and 19 under Order 7 Rule 11 of the Code of Civil Procedure.

The short facts leading to preferring this appeal are:

The present appellant as plaintiff originally filed the aforesaid suit against the present respondents seeking following reliefs

(i) To pass a decree in favour of the plaintiffs and against the defendant nos. 1-4 and 6-20 declaring the plaintiffs 16(sixteen) annas right title and interest in the 'A' schedule property.

(ii) To pass a decree for declaration that the exparte decree dated 15.03.2004 and on 22.03.2004 obtained by the defendant nos. 1-2 in the Suit No. 60 of 2003 (formerly Title Suit No. 100 of 1992) of the Paribesh Adalat, Dhaka is illegal fraudulent, collusive void and is of no legal effect or all and not binding upon the plaintiffs.

(iii) To pass a decree for declaration that the registered deeds described in Schedule-"B" and "C" are void ab-intio collusive and are of no legal effect and not binding upon the plaintiffs and the defendant Nos. 1 to 4 and 6-20 have got no right title and interest by the said deeds.

(iv) To pass a decree for declaration that the decree passed in Title Suit No. 54 of 1987 of the Court of Narayangonj Sub-Ordinate Judge, Court No. 1 is not binding upon the plaintiffs; and pass a decree for permanent injunction restraining the defendant nos. 3

and 4 from evicting the plaintiffs from the Chitta Plot No. 53 of C.S. plot No. 479(p) in execution of Title Execution Case No. 155 of 2003 now pending in the Artha Rin Adalat No. 3, Dhaka and/or any other way disturbing the lawful possession of plaintiff No. 1.

(v) To pass a decree for declaration that R.S. Khatian No. 632 with plot No. 55 is not binding upon the plaintiffs.

(vi) To pass a decree declaring that written khatian Nos. 1078,1076,1074,1080 and 1079 in Zote nos. 82/6, 80/6, 84/6 and Zote No. 83/6 respectively are not binding upon the plaintiffs.

(vii) To direct the defendant Nos. 1-4 and, 6-20 to hand over the possession of the schedule A-1 out of "A" schedule property to the plaintiffs within 30 (thirty) days from the date of judgment and decree and failure of which the plaintiffs shall be entitled to get possession of the same by the operation of law.

(vii) To award all the costs of the suit.

(ix) To grand such other relief or reliefs plaintiffs are entitled to get under law and equity.

In order to contest the suit the defendant nos. 15-16 as well as defendant no. 3 filed written statement denying all the material averment so made in the plaint. When the suit was at the stage of peremptory hearing, the defendant nos. 6,7,9-14, 15(ka)-15(jha) 16 and 19 as well as

defendant no. 3 filed two separate sets of application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint stating inter alia that, there has been no cause action in the suit and it is barred under section 20 of the Artha Rin Adalat Ain, 2003 as the defendant no. 3 already obtained a decree in Title Suit No. 54 of 1987 vide judgment and decree dated 18.11.2007 as well as 27.11.1987 and in order to execute the decree an Artha Execution Case No. 155 of 2003 is pending for disposal before the Artha Rin Adalat No. 3, Dhaka. Against the said application for rejection of the plaint, the plaintiff filed written objection denying all the material averment so made in the application for rejection of the plaint stating inter alia that, the title suit was filed before the enactment of Artha Rin Adalat Ain, 1990 even though the plaintiff claimed the suit property through a *heba* deed and since there has been a cause of action in the suit, so the application filed for rejection of plaint is liable to be rejected. The learned judge of the trial court took up the said application as well as written objection filed theiragainst for hearing and vide impugned judgment and decree dated 26.08.2019 allowed the application for rejection of plaint holding that the suit is barred under the provision of section 20 of the Artha Rin Adalat Ain, 2003 as well as principle of *resjudicata*. It is at that stage the plaintiff came before this court by preferring this appeal.

Mr. Md. Mainul Islam, the learned counsel appearing for the plaintiff-appellant upon taking us to the impugned judgment and decree and other materials available in the paper book, at the very outset submits that, the learned judge while disposing of the application for rejection of

plaint very erroneously found the application so have been filed by the plaintiff that gave rise to Miscellaneous Case No. 20 of 2015 as of addition of party even though that very application was filed under Order 21 Rule 58 read with section 90 of the Code of Civil Procedure.

The learned counsel further contends that, though the plaintiff-appellant did not challenge the propriety of the judgment and decree of the Artha Rin Adalat but he in a misconceived manner allowed the application for rejection of plaint giving his entire reliance on the provision of section 20 of the Artha Rin Adalat Ain, 2003.

The learned counsel further contends that, the learned judge of the trial court has very whimsically rejected the plaint by misapplied his reliance in clause (d) of Order 7 Rule 11 of the Code of Civil procedure.

The learned counsel lastly contends that, since as many several prayers were sought in the plaint apart from prayer no. 4 that encompasses the judgment and decree passed in Title Suit No. 54 of 1987 as well as Artha Execution Case No. 155 of 2003 yet the learned judge without considering the said aspect rejected the plaint entirely which cannot be sustained in law and prayed for allowing the appeal by setting aside the impugned judgment and decree.

Conversely, Mr. Md. Shamsul Islam, the learned counsel appearing for the respondent no. 6 by taking us to different documents so appended in in the paper book at the very outset submits that, since the present respondent filed Title Suit No. 54 of 1987 predominantly claiming money from the defendants of the suit, and though the said suit was decreed before coming into effect of Artha Rin Adalat Ain, 1990 yet as per section

9 of that Artha Rin Adalat Ain, 1990 the proceedings of the suit initiated will be regarded to have continued under Artha Rin Adalat Ain, 1990 and therefore section 20 of the Artha Rin Adalat Ain, 2003 will also be applicable in rejecting the plaint and the learned judge of the trial court has rightly passed the impugned judgment and decree.

The learned counsel by referring to the provision of section 20 of the Artha Rin Adalat Ain, 2003 further adds that, since the execution case being Artha Execution Case No. 155 of 2003 is pending in the Artha Rin Adalat so the said execution proceedings will be construed as the proceeding (কার্যধারা) within in the meaning of section 20 of the Ain, 2003 and therefore the judgment and decree passed in Title Suit No. 54 of 1987 and that of the proceeding of Artha Execution Case No. 155 of 2003 cannot be called in question by filing subsequent suit by the plaintiff-appellant and therefore the learned judge of the trial court has perfectly rejected the plaint.

The learned counsel by referring to the judgment and order passed by this court in respect of Writ Petition No. 7505 of 2008 as well as Civil Petition for Leave to Appeal No. 1150 of 2009 dated 21.05.2009 and 03.02.2010 respectively also contends that since the present plaintiff as petitioner challenged the propriety of the Artha Execution Case No. 155 of 2003 and since the rule in writ petition was discharged with a cost of taka 20,000/- and that very judgment of the High Court Division was also upheld by the Appellate Division in the said Civil Petition for Leave to Appeal only reducing the cost at taka 10,000/- so under no circumstances

can the proceedings of the execution case be challenged by filing a separate suit.

The learned counsel by referring to the saving clause provided in section 60 of the Artha Rin Adalat Ain, 2003 also contends that, since after enacting Artha Rin Adalat Ain, 2003 the proceedings of the suit filed under Artha Rin Adalat Ain, 1990 has been transferred and proceeded under Artha Rin Adalat Ain, 2003 so the judgment and decree passed in Title Suit No. 54 of 1987 has been merged with Artha Execution Case No. 155 of 2003 and therefore the judgment passed in the Title Suit No. 54 of 1987 also cannot be called in question in filing a subsequent suit by the plaintiff-appellant. On those legal counts, the learned counsel finally prays for dismissing the appeal.

In contrast, Mr. Md. Nazmul Haque, the learned counsel appearing for the respondent no. 3 bank at the very outset submits that, since on the basis of an application filed by the appellant an order of status quo was granted that gave rise to Civil Rule No. 206(F) of 2000 and order of status quo is still existing on the schedule land, so for that obvious reason, further proceedings of the execution case has been halted.

The learned counsel further contends that, in course of the Artha Execution case the respondent, bank obtained certificates both under section 33(5) 33(7) of the Artha Rin Adalat Ain but due to having an ad interim order passed by this Hon'ble court, the proceedings of the said execution case cannot be continued.

The learned counsel further contends that, since as per section 20 of the Artha Rin Adalat Ain,2003 no proceedings (কার্যধারা) pending in any

Artha Rin Adalat can be challenged by filing a subsequent suit so the proceeding being proceeded before the executing court will come within the ambit of section 20 of the Ain of 2003 as well and therefore there has been no occasion for the plaintiff-appellant to challenge the judgment and decree passed in Title Suit No. 54 of 1987 vis-a-vis the Artha Execution Case No. 155 of 2003 and the learned judge has rightly passed the impugned order which calls for no interference by this Hon'ble court.

The learned counsel by referring to the judgment passed by this court in writ petition no. 5707 of 2008 dated 21.05.2009 as well as Civil Petition for Leave to Appeal No. 1150 of 2009 by the Appellate Division dated 03.02.2010 further contends that, apart from section 20 of the Artha Rin Adalat Ain, that put bar in challenging the proceeding of any Artha Rin Suit but even then since the proceedings of the Execution Case had earlier been challenged before the Appellate Division so under no circumstances can the said execution proceedings be challenged by filing a fresh suit which will tantamount to interfere with the judgment passed by our apex court and for that obvious reason prayer no. 4 to the suit so far as relates to challenging the judgment and decree in Title Suit No,. 54 of 1987 and that of Artha Execution Case no. 155 of 2003 cannot be continued. However, the learned counsel in support of his submission, placed his reliance in the decision reported in 60 HCH 769, 16 BLT HC 476, 6 ADC 594 and finally prays for dismissing the appeal.

Similarly, Mr. Md. Ataul Gani, the learned counsel appearing for the respondent nos. 7,9,10,12 and 19 by adopting the submission so placed by the learned counsel for the respondent nos. 6 and 3 also

contends that, section 20 of the Artha Rin Adalat Ain, 2003 clearly put a bar to challenge any proceedings pending before any Artha Rin Adalat and in view of the said provision of law, the learned judge of the trial court has rightly rejected the plaint. But when we pose a question to the learned counsel with regard to other prayers so have been made in the plaint, the learned counsel then readily submits that, since those very prayers have not come within the purview of the provision of section 20 of the Artha Rin Adalat Ain and there has been a clear cause of action in t he suit so in that event there has been no legal bar to proceed with the suit with other prayers though submits that, a direction may be given to the trial court by giving a time frame to dispose of the suit as expeditiously as possible and finally rays for dismissing the appeal.

We have considered the submission so placed by the learned counsel for the appellant, as well as respondent nos. 3,6, 7,9, 10, 12 and 19. We have also gone through the impugned judgment and decree and all other document appeared in the paper book especially, the application filed by two sets of defendants under Order 7 Rule 11 of the Code of Civil Procedure and the written objection filed thereagainst by the plaintiff-appellant. From the impugned judgment and decree through which the plaint was rejected, we find that the learned judge has very half- heartedly passed the same finding the application so filed by the present appellant before the executing court under Order 21 Rule 50 and 90 of the Code of Civil Procedure as addition of party. Furthermore, the learned judge also has not discussed with regard to having any cause of action in the suit filed by the plaintiff-appellant in spite of the fact that, two sets of

defendant by relying upon clause (a) and clause (d) of Order 7 Rule 11 of the Code of Civil Procedure filed the application. Whether the suit will be barred under clause (a) of the order meaning for having no cause action has not been discussed in the entire impugned judgment. The learned judge by just quoting the provision of section 20 of the Artha Rin Adalat Ain, 2003 found the entire suit barred and accordingly rejected the plaint without bothering to go through the prayers made in the plaint where we find that, as many as 9 different prayers were made. In coming into conclusion in rejecting the plaint, the learned judge also found that, since the plaintiff-appellant had earlier filed a writ petition being writ petition no. 5707 of 2008 and the rule of the writ was discharged with a cost of taka 20,000/- so subsequent suit would be barred under the principle of resjudicata (দোবরা দোষ) but this is not any justified order. Now only point-in-issue to adjudicate the instant appeal is, whether the entire suit filed by the plaintiff will be barred only for challenging the propriety of the judgment and decree passed in Title Suit No. 54 of 1987 and that of Artha Execution Case No. 155 of 2003. On going through the prayer of the plaint we find that, in prayer no. IV the plaintiff-appellant has challenged of propriety of the decree of the title suit as well as the further proceedings of the execution case. It is admitted position that, the title suit being Title Suit No. 54 of 1987 was filed before the promulgation of Artha Rin Adalat Ain, 1990 and for that obvious reason the suit was not registered as any Artha Rin Suit and ultimately that very title suit was decreed ex parte on 18.11.2007 long before, the Artha Rin Adalat Ain, 1990 came in to being. Furthermore, since under section 60 of the Artha

Rin Adalat Ain, 2003 all the pending Artha Rin Suit filed under Artha Rin Adalat Ain, 1990 will be transferred to the Artha Rin Adalat established under Artha Rin Adalat Ain, 2003 so under no circumstances can the judgment and decree passed before promulgation of Artha Rin Adalat Ain, 1990 will be regarded as any pending proceedings under Artha Rin Adalat Ain, 2003 and the saving clause provided in section 60 of the Ain, 2003 will not be applicable here. So, the assertion placed by the learned counsel for the respondent no. 6 that section 9 of the Artha Rin Adalat Ain, 1990 will be applicable here is far from any substance. Now question remains, whether the "*proceedings"* (বিচারাধীন কার্যধারা) of Artha Execution Case No. 155 of 2003 will be regarded any proceedings ((বিচারাধীন কার্যধারা) within the meaning of section 20 of the Ain, 2003 or not. Certainly, answer is in the affirmative because that Artha Execution case has been filed under the relevant provision of Artha Rin Adalat Ain, 2003 and the execution case is now pending not before any ordinary civil court rather before an Artha Rin Adalat. So under no circumstances can the proceedings of the Artha Execution Case no. 155 of 2003 be challenged by filing any subsequent suit and in that event section 20 of the Artha Rin Adalat Ain will come as a bar. Now next question remains, since the present plaintiff as appellant had earlier filed a writ petition challenging the propriety of the entire Artha Execution Case no. 155 of 2003 where in, the cause title it has clearly been stated that, the said execution case arose out of the judgment and final decree passed in Title Suit No. 54 of 1987 so in such a view of the matter in the event of discharging the rule in writ petition by this court, as well as affirmed by the Appellate Division, the decree passed in Title

Suit can not be called in question. Because, the Artha Execution Case has been proceedings to execute the decree passed in that Title Suit. However, on that very point, the learned counsel for the contending parties did not place any argument but since the judgment and decree of that Title Suit has also been challenged in prayer no. 4 to the Title Suit, so that point has to be settled. Though in the forgoing discussion and observation we find that, section 20 of the Ain has no manner of application in the judgment and decree passed in Title Suit No. 54 of 1987 but if the propriety of the judgment and decree passed in that title suit is allowed to challenge in that case, there will be no fruitful out come of the Artha Execution Case. Furthermore, since we have already held that there has been no legal bar to proceed with the execution case so if the execution case is proceeded and the judgment and decree of the title remains under challenge, the further proceeding of execution case will be redundant one. So it is our considered view that, though section 20 of the Ain does not attract the judgment and decree passed in Title Suit No. 54 of 1987 but since the said judgment and decree has also been tested by the Appellate Division and the execution of the said judgment is pending so the judgment and decree of the title suit no. 54 of 1987 can not be challenged by filing a separate suit.

Given the above facts and circumstances we find substance to the submission of the learned counsel for the respondent nos. 7,9, 10, 12 to the extent that, the whole plaint can not be rejected other then the prayer no. (4) to the plaint where the plaintiff has challenged the propriety of the

judgment and decree of Title Suit No. 54 of 1987 as well as Artha Execution Case No. 155 of 2003.

In the result, the appeal is allowed-in-part.

The judgment and decree rejecting the plaint so far as it regards to the prayer (4) to the plaint of Title Suit No. 54 of 1987 is thus sustained that is to say, the prayer no. (4) so made in the plaint of that suit is to be struck out and the suit will continue with other prayers so have been made in the plaint of the suit.

The learned judge of the trial court is hereby directed to expunge prayer no. (4) from the plaint and proceed with the suit in accordance with law.

Since all the defendants entered appearance in the suit, the learned judge of the trial court is also directed to dispose of the suit as expeditiously as possible preferably within a period of 06(six) months from the date of receipt of the copy of this judgment and order.

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.

Mohi Uddin Shamim, J.

I agree.

Kawsar/**A.B.O.**