

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 1633 of 2024

In the matter of:

Ruhul Amin and others.

...Petitioners.

-Vs-

Md. Mamudali Sheikh being dead his legal heirs;

1. Md. Masud Ali Sheikh and others.

....Opposite parties.

Present
Mr. Justice Mamnoon Rahman

Mr. Md. Nurul Amin, Sr. Adv. with
Mr. Md. Mohammad Mozibur Rahman, Adv.
Mr. Tanveer Awal, Adv.
...For the petitioners.
Mr. Zaman Akter, Adv.
...For the opposite party Nos. 1-13.

Heard on: **20.01.2025, 21.01.2025 & 17.02.2025**

And

Judgment on: **The 26th February, 2025**

Rule was issued calling upon the opposite party Nos. 1-13 to show cause as to why the impugned judgment and order dated 27.04.2022 passed by the learned District Judge, Kushtia in Civil Revision No. 37 of 2019 dismissing the civil revision and thereby affirming the judgment and order dated 12.09.2019 passed by the learned Joint District Judge, 1st court, Kushtia in Title Suit No. 37 of 2013 rejecting the application under Order 7 Rule 11 of the Civil Procedure Code, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts relevant for the disposal of the instant rule, is that, the predecessor of the opposite party Nos. 1-7 and opposite party Nos. 8-

13 as plaintiffs instituted Title Suit No. 37 of 2013 in the court of Joint District Judge, 4th Court, Kushtia impleading the petitioner and others as defendants for declaration of title by way of adverse possession. The suit property as claimed by the present plaintiff measuring an area .36 decimals of land situated in C.S. Plot No. 3999 appertaining to C.S. Khatian No. 877 as claimed by the plaintiffs. The defendant Nos. 1-7 entered appearance and contested the suit by filing written statement denying all the material allegations made in the plaint. Thereafter, the defendant pressed an application under Order 7 rule 11 read with section 151 of the CPC for rejection of plaint on question of resjudicata. The trial court after hearing the parties and considering the facts and circumstances vide judgment and order rejected the application. Being aggrieved the petitioner moved before the learned District Judge, Kushtia by way of Civil Revision No. 637 of 2019 and eventually the same was heard and disposed of by the learned District Judge, Kushtia who vide the judgment and order discharged the revision and thereby affirmed the judgment and order passed by the trial court. Being aggrieved by and dissatisfied with the same the petitioners moved before this court and obtained the present rule.

The opposite party entered appearance in the instant rule and contested the same by filing counter-affidavit.

Mr. Md. Nurul Amin, the learned senior counsel appearing on behalf of the petitioners submits that the trial court as well as the revisional court without applying their judicial mind and without

considering the facts and circumstances as well as the very provisions of law, most illegally and in an arbitrary manner passed the impugned judgment and order which requires interference by this court. He submits that this is a fit case for interference under Order 7 rule 11 of the Civil Procedure Code, 1908 as the matter has already been settled up to the apex court to the country. He further submits that admittedly the present petitioner filed a suit impleading the present opposite party as defendants and lost in both the trial court as well as appellate court but ultimately they succeeded in revision before the High Court Division as well as on appeal and review before their lordships of our apex court. He submits that it is crystal clear from the averments made in the present plaint as well as the previous plaint that the later suit was filed by the same parties who were party in the previous suit and for the self-same property in question. The learned counsel submits that in the present case in hand the petitioner in the earlier suit claimed .36 decimals of land in Dag No. 3999 corresponding to C.S. Khatian No. 877 and at the time of filing of the previous suit the same was for simple declaration of title but subsequently they made amendment so far it relates to .9 decimals of land as they were dispossessed during pendency of the suit. He further submits that it is very much clear from the language of their lordships of the High Court Division while making the rule absolute to the effect that the High Court Division declared title of the plaintiffs in .36 decimals of land including direction of recovery of possession. He also submits that their lordships of our apex court in appeal as well as review affirmed the

judgment and order passed by the High Court Division. The learned counsel also referred a Civil Revision being No. 3981 of 2019 wherein one of the parties filed a separate suit claiming .3 decimals of land out of .36 decimals of land in question wherein the lower appellate court allowed the appeal and rejected the plaint. Against which the present opposite party moved before the High Court Division and High Court Division after detailed discussion discharged the rule and affirmed the order passed by the courts below under Order 7 rule 11 of the Civil Procedure Code, 1908. He further submits that admittedly the opposite party raises certain question regarding possession/dispossession the manner of amendment, the specification of the property in question, schedule and other aspects. But in the later suit, namely the present suit the plaintiffs are claiming only .27 decimals of land which is not at all attracts any recovery of possession and the property is situated in southern side of the plot in question and as such the instant rule is liable to be made absolute for ends of justice. The learned counsel referred the decisions reported in 53 DLR(AD)12, 61 DLR(2009) 502 and 11 BLT(2003) 379 respectively.

Mr. Zaman Akter, the learned counsel appearing on behalf of the opposite party vehemently opposes the rule. He submits that both the courts below on proper appreciation of the facts and circumstances, materials on record as well as provisions of law has rightly rejected the prayer for rejection of plaint and thus the same is requires no interference by this court. The learned counsel submits that the question

of resjudicata is a mixed question of fact and law which can only be decided by adducing evidence both oral and documentary. He submit that in such circumstances it is wise to frame an specific Issue regarding the question of resjudicata and the trial court if so found can dismiss the suit on question of resjudicata. The learned counsel placed the counter-affidavit as well as necessary papers and documents and drawn my attention to the decision of the lower appellate court of the previous suit wherein the lower appellate court disbelieved with the case of the present petitioner in every possible way. By referring the same as well as the numerous applications for amendment made by the present petitioner in the previous suit he submits that the same are not even specified, vague and not enforceable in the eye of law. Hence, the learned counsel prays for discharging the rule with cost.

I have heard the learned Advocates for the petitioners as well as opposite parties. I have perused the impugned judgment and order passed by the revisional court as well as the trial court, revisional application, grounds taken thereon as well as necessary papers and documents annexed herewith, counter-affidavit, provisions of law and the decisions as referred to.

On perusal of the same, it transpires that admittedly a suit is pending in the court of Joint District Judge, 4th court, Kushtia being Title Suit No. 37 of 2013. It transpires that the present petitioners who are the defendants in the suit entered appearance by filing power and contested the same. Subsequently, the present petitioners pressed an application

under Order 7 rule 11 read with section 151 of the Civil Procedure Code, 1908 for rejection of plaint. The main contention of the present petitioners in the said application are that the present suit is barred by resjudicata as because the parties to the present suit instituted previous suit being Title Suit No. 253 of 1986 re-numbered as Title Suit No. 82 of 1990 relates to the self-same property which attracts C.S. Plot No. 3999 corresponding to C.S. Khatian No. 877 to the extent of .36 decimals of land and though both the trial court and lower appellate court dismissed the suits. But ultimately on revision the High Court Division made the rule absolute by declaring right and title of the present petitioners in the suit property along with an order of recovery of possession. Secondly, the matter travelled up to our apex court by way of appeal and review wherein their lordships affirmed the judgment and order passed by the High Court Division. Thirdly, one of the party filed a suit claiming .3 decimals of land arising out of .36 decimals of land in the said Khatian wherein an application was pressed under Order 7 rule 11 of the Civil Procedure Code, 1908 though the trial court rejected the same. But ultimately the lower appellate court rejected the plaint and also on revision the High Court Division discharged the rule and affirmed the rejection of plaint by the lower appellate court.

It is admitted that a plaint can be rejected under Order 7 rule 11 of the Civil Procedure Code, 1908 if the parties can show fulfillment of the conditions stipulated thereon for such rejection. The court of law while considering such application shall consider the plaint itself and on the

basis of the same if the trial court is satisfied that a plaint can be rejected on fulfillment of the conditions stipulated in the provisions of law then the court of law has the authority to reject the plaint. Admittedly, resjudicata is a ground for which a plaint can be rejected. However, in numerous decisions this court as well as our apex court also came to a conclusion that resjudicata being an issue relates to the mixed question of fact and law which requires further evidence to establish the question of resjudicata. Most of the cases the court of law discourages rejection of plaint fully on the question of resjudicata without further investigation. Obviously, in exceptional cases it cannot be said that the court of law has no authority to reject a plaint on question of resjudicata. Order 7 rule 11 of the Civil Procedure Code, 1908 has given ample power to the court of law to see whether the continuation of the suit is at all necessary if the party can show the fulfillment of any one or other conditions.

In the present case in hand the petitioner no doubt raises the question of resjudicata. So, it transpires from the papers and documents that the party in the present suit instituted Title Suit No. 253 of 1986 which was re-numbered as Title Suit No. 82 of 1990 relates to .36 decimals of land appertaining to C.S. Khatian No. 877 and C.S. Plot No. 3999. So, it is very much clear from the language of the plaint and other aspects that the said Khatian and Dag contained .36 decimals of land. Admittedly, in the previous suit the plaintiff prayed for simple declaration of title. But on perusal of the counter-affidavit, it transpires that since the petitioner-plaintiffs were dispossessed from 9 decimals of

land they made application for amendment for recovery of possession of 9 decimals of land. I have also perused the judgment and order passed by the High Court Division in Civil Revision No. 885 of 2004 and also the judgment and decree passed by both the courts below in the previous suits.

On meticulous perusal of the judgment and order passed by the High Court Division, it transpires that the High Court Division after thread bare discussion of the facts and circumstances, evidence both oral and documentary made the rule absolute with the following directions;

“The Title Suit No. 82 of 1990 is decreed on contest without any order as to cost. The title of the plaintiff in schedule Ka to the plaint are declared and the defendants are directed to handover vacant possession in schedule Kha land to the plaintiffs within 30(thirty) days from date, failing which the plaintiffs would be at liberty to take recovery of khash possession through process of court”.

So, it transpires that the High Court Division not only declared the title of the petitioners in .36 decimals of land but also decreed for recovery of possession and made a direction for recovery of possession so far it relates to 9 decimals of land arising out of .36 decimals of land. On perusal of the order passed by their lordships of our apex court in Civil Petition for Leave to Appeal No. 725 of 2009 it transpires that their lordships after detailed discussions came to a conclusion in the following language;

“Considering the materials and evidence on record and the depositions and the discussions made in the judgment by the High Court Division, we are of the view that the High Court Division on proper consideration of the materials on record made the rule absolute decreeing the suit and hence no interference in the impugned judgment and order is called for”.

So, it transpires that their lordships affirmed the judgment and order passed by the High Court Division. It further transpires that a review petition was filed by the present opposite party but their lordships dismissed the same and affirmed their lordships own judgment and order passed in Civil Petition for Leave to Appeal No. 725 of 2009. So, it is apparent not from any materials on record but from the judgment of the High Court Division as well as our apex court. The High Court Division as well as our apex court decreed the suit in favour of the petitioners in the previous suit so far it relates to .36 decimals of land as well as recovery of 9 decimals within that .36 decimals of land. When there is a specific decision of the superior court no further investigation is required to settle the issue in question. Admittedly the learned counsel for the opposite party submits that the courts below in the present suit passed an order from framing specific Issue on resjudicata and would be wise to settle the matter giving opportunity to the party to place their case. But in the present case in hand it has been mentioned earlier that resjudicata is very much clear from the papers and documents annexed herewith, namely the judgment and order passed by the High Court Division in civil revision and the order passed by their lordships of our

apex court in Civil Petition for Leave to Appeal and the Review. Apart from that it is also crystal clear that another suit was also barred under Order 7 rule 11 of the Civil Procedure Code, 1908 and the same was affirmed up to the High Court Division in civil revision. It has been mentioned earlier that though the learned counsel for the opposite party raises the question of recovery of possession and other aspects but considering the plaint of the previous case and the present case side by side it transpires that the claim of the present suit so far it relates to 27 decimals of land in the southern side of the plot in question though the opposite party contended the question of recovery of possession but they are not claiming the entire suit land and especially the disputed land so far it relates to 9 decimals of land in the northern side. The decision reported in 61 DLR (2009) 502 it transpires that the court of law has the ample authority to see the legality and propriety of a proceeding of the case and consider the same in an application under Order 7 rule 11 of the Civil Procedure Code, 1908. Also in the decision reported in 11 BLT(2003) 379 it transpires that the court has the authority to dispose of any issue on the basis of the plaint and which needs no evidence either oral and documentary to establish the factum of dispossession for the law to take its own course. I do not find any reason to disagree with the decisions as referred by the learned counsel for the petitioners. It has been mentioned earlier that in an appropriate case the court of law can reject a plaint exercising the power conferred under Order 7 rule 11 of the Civil Procedure Code, 1908.

Order 7 rule 11 of the Civil Procedure Code, 1908 prescribes certain conditions which required to be fulfilled for rejection of a plaint. Apart from the conditions stipulated in the provision of law, namely Order 7 rule 11 of the Civil Procedure Code, 1908 a plaint can also be rejected exercising the power conferred under section 151 of the Civil Procedure Code, 1908 when it is crystal clear that the proceeding is a fruitless litigation. In the decision reported in 53 DLR(AD)12 their lordships of our apex court came to a clear conclusion that it is well settled proposition of law is that where a plaint cannot be rejected under Order 7 rule 11 of the Civil Procedure Code, 1908 the court may invoke its inherent jurisdiction and reject the plaint taking recourse to section 151 of the Civil Procedure Code, 1908. In the said judgment their lordships clearly gave emphasized regarding the maintainability and proceeding of the suit and came to a conclusion that a fruitless litigation should be buried at its very inception. In the present case in hand there is no doubt or any scope to deny that the property so far it relates to .36 decimals of land appertaining to C.S. Khatian No. 877 corresponding to C.S. Plot No. 3999 has already been settled up to their lordships of our apex court. Other extenuating circumstances or grounds as cited by the learned counsel for the opposite party cannot stop the decisions of the court in rejecting the plaint as because it is crystal clear in view of the decisions made up to our apex court the present proceeding is nothing but a fruitless litigation. Hence, I find substance in the instant rule.

Accordingly, the instant rule is made absolute. The impugned judgment and order passed by the courts below are hereby set aside and the plaint be rejected.

Communicate the order at once.

(Mamnoon Rahman,J:)

Emdad.B.O.