

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

Present:

**Mr. Justice S. M. Saiful Islam**

**Civil Revision No. 1568 of 2021**

IN THE MATTER OF:

An application under section 115(1) of the  
Code of Civil Procedure (Against Decree).

And

IN THE MATTER OF:

Aptar Ali Khan.

---- Defendant-Respondent-Petitioner.

-versus-

Abdul Razzak Howlader.

---- Plaintiff-Appellant-Opposite Parties.

No one appears

---- For the Petitioner.

Mr. Tapan Kumar Chakraborty with

Mr. Tushar Banik, Advocates

--- For the Plaintiff-Appellant-O.Ps.

**Heard On: 14.01.2026 and 18.01.2026.**

**Date of Judgment: 27.01.2026.**

**S. M. Saiful Islam, J.**

This Rule was issued calling upon the plaintiff-opposite parties to show cause as to why the judgment and decree dated 11.11.2020 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Barisal in Title Appeal No. 166 of 2014 reversing the judgment and decree dated 26.8.2014 (signed on 28/08/2014)

passed by the learned Senior Assistant Judge, Bakerganj, Barisal in Title Suit No. 199 of 2012 should not be *set aside* and/or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the plaintiff-opposite parties filed Title Suit No. 199 of 2012 in the Court of the learned Assistant Judge, Bakerganj, Barisal praying for a declaration to the effect that the disputed auction sale described in schedule 'Ka' to the plaint in respect of the 'Kha' scheduled land is void, collusive, forged and illegal. The defendant petitioner filed a written statement as well as an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint. In that petition for rejection of plaint defendant- petitioner contended that the plaintiff had not filed any document regarding the disputed auction sale. That the plaintiff admittedly filed Title Suit No. 03 of 2009 against the transferees of the defendant petitioner which was dismissed on contest and plaintiff then filed Title Appeal No. 71 of 2012 (renumbered as 42 of 2012) which was also disallowed on contest on 25/08/2012. That the plaintiff failed to prove his title and possession in the suit land in that suit and the present suit is thus barred by the principles of *res-judicata*. That the suit is barred by the law of limitation and also by the provisions of section 42 of the Specific Relief Act. For these reasons, defendant petitioner prayed for rejection of plaint.

Learned Senior Assistant Judge, Bakergonj, Barisal, after hearing of both the parties, allowed the petition and rejected the plaint by order dated 26.08.2014. Learned Trial Court held that the plaintiffs earlier filed Title Suit No. 03 of 2009 respecting the suit land which was dismissed and Appeal against that judgment was also disallowed. That the plaintiffs have filed this suit

respecting the same land praying for different relief to harass the defendants. That the plaintiffs have not filed the relevant documents regarding the auction sale which has been challenged in the present suit. That the plaint does not disclose specific cause of action and thus the suit is not maintainable.

Against that order, plaintiff-opposite party filed Title Appeal No. 166 of 2014 before the Court of the learned District Judge, Barisal and on transfer it was heard by the learned Additional District Judge, 2<sup>nd</sup> Court, Barisal who allowed the Appeal and thereby *set aside* the order of the trial court. Learned Appellate Court held that the cause of action has been specifically mentioned in the plaint and filing of documents relating to auction sale is a matter of trial and the plaintiffs have scope to give explanation for not filing the documents. Appellate Court further held that the Suit No. 03 of 2009 was a suit for permanent injunction and the present suit is a suit for declaration against an auction sale and thus the earlier suit differs from present suit regarding issues and reliefs. As a result, The Appellate Court found that the present suit is not barred by *res-judicata*. Learned Appellate Court below referred to the case of *Rawshan Jamil -Vs- Adiluzzaman* [19 BLC (AD) 129] and allowed the Appeal for reasons mentioned above.

In the facts and circumstances, defendant-petitioner filed this revisional application and obtained the Rule.

Learned Advocate Mr. Tapan Kumar Chakraborty along with learned Advocate Mr. Tushar Bonik, appearing on behalf of plaintiff- opposite parties, submits that the trial Court rejected the plaint without any lawful ground and the learned Appellate Court below has rightly allowed the Appeal reversing the judgment and order of the trial Court by the impugned judgment and order. Plaintiffs' earlier suit was for permanent injunction and the

instant suit is for declaratory decree. Nature of the two suits are different and the present suit cannot be barred by the rules of *res-judicata*. Moreover, the *plea of res-judicata* can only be resolved at the trial after framing an issue and cannot be decided from a reading of the plaint. There is no lawful ground in the instant case under Order 7 Rule 11 for which plaint can be rejected. For these reasons, learned Advocate for the plaintiff-opposite parties prays for discharge of the Rule. In support of his contention, he referred to the cases reported in 25 BLC (AD) 166, 19 BLC (AD) 129 and 13 BLD (AD) 217.

None appears to move the Rule on behalf of the defendant-petitioner. But as the Rule is a long pending one, I think, justice would be best served if it is disposed of on merit.

Heard the learned Advocate for the plaintiff-opposite party. Perused the revisional application along with the annexures, the impugned judgment and order as well as lower Court records.

As to the grounds of revision, defendant-petitioner has stated in the application that the learned Additional District Judge, 2<sup>nd</sup> Court, Barisal has committed an error of law resulting in an error in the decision occasioning failure of justice in reversing the order of the learned trial Court without traversing the reasoning. Learned Appellate Court below has not considered that the subject matter of the instant suit has been decided in an earlier suit and the same facts cannot be decided again. Plaintiff has no legal right and interest in the subject matter of the suit and he cannot get relief as prayed for. For these reasons, defendant-petitioner prayed for making the Rule absolute by *setting aside* the impugned order.

On perusal of the order of the trial Court dated 26/08/2014, it appears that the learned Senior Assistant Judge,

Bakerganj, Barisal rejected the plaint mainly on two grounds; firstly, the suit is barred by the principles of *res-judicata* because the subject matter of the suit has been decided in an earlier suit between the plaintiffs and the transferees of the defendant-petitioner and secondly, the plaint does not disclose any cause of action.

As regards the first point, it is admitted by the defendant-petitioner that the earlier suit was a suit for permanent injunction and the present suit is a suit for declaration against an auction sale. So, *prima-facie* it seems that the matter directly and substantially in issue between the two suits are not same. However, in such a case, whether the suit is barred by *res-judicata* as provided in section 11 of the Code of Civil Procedure can finally be decided at the time of trial after framing issue on that point. Learned Appellate Court below has rightly relied on the decision of our Apex Court in the case of *Rawshan Jamil - Vs- Adiluzzaman* [19 BLC (AD) 129].

Regarding the second point, it appears from the plain reading of the plaint that the cause of action is sufficiently disclosed in the plaint. According to the statement in the plaint, plaintiffs are owning and possessing the suit land on purchase by registered *Kabala* (কবলা) deeds from the successor of the C S recorded tenant and the defendant is denying the title of the plaintiffs on the basis of an auction sale in money execution decree. Plaintiff has therefore filed the suit for declaration against that auction. Thus, it appears from plain reading of the plaint that the cause of action has been sufficiently disclosed. The defendant further claimed in the petition that the suit is barred by limitation. But the question of limitation is a mixed question of law and fact which is to be finally decided at the time

of the trial. According to the statement in the plaint, the suit does not seem to be barred by limitation.

Considering the facts and circumstances, I think learned Appellate Court below has rightly allowed the Appeal and thereby reversed the judgment of the trial Court. Learned Appellate Court has not committed any error of law in the impugned judgment and order. The impugned judgment does not suffer from any legal infirmity, illegality or impropriety and it has not occasioned any failure of justice. Therefore, it does not call for any interference.

In the facts and circumstances, I find no merit in the Rule. So, the Rule is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Lower Court Records be sent to the concerned Courts at once along with a copy of this judgment.