

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

First Appeal No. 315 of 2020

In the Matter of:

Memorandum of appeal from the original order.

-and-

In the Matter of:

Mohammad Ali Khan.

.....Plaintiff-appellant.

-Versus-

National Bank Foundation and another

...Defendant-respondents.

Mr. Md. Mahabubur Rashid, Advocate

..... For the appellant.

Mr. Rais Uddin Ahmad, Advocate.

.....For the respondent.

Heard and Judgment on 22.10.2024.

Sheikh Abdul Awal, J:

This first appeal at the instance of the defendant-appellant is directed against the judgment and decree dated 01.09.2020 (decree signed on 06.09.2020) passed by the learned Joint District Judge, Additional Court, Gazipur in Title Suit No. 206 of 2015 rejecting the plaint.

The relevant facts of the case in brief are that the appellant as plaintiff filed a suit in the Court of the learned Joint District Judge, Gazipur being Title Suit No. 576 of 2010 against the defendant-respondents praying the following reliefs:

ক) নালিশী দলিল তিনটি প্রথম হইতেই বাতিল, অকার্যকর, জাল জালিয়াতিপূর্ণ ও নালিশী জমি সম্পর্কে বাদীগণের উপর বাধ্যকর নহে মর্মে ঘোনার ডিক্রী দিতে;

খ) আর এস ১৩৯ নং খতিয়ান মিয়াজ উদ্দিন ও মালেক জান
বিবির নামে হওয়াটা ভুল মর্মে ঘোষনার ডিক্রী দিতে;

গ) নালিশী ষোল আনা জমিতে বাদীগণের স্বত্ব ঘোষনাক্রমে
বাদীগণের অনুকূলে এক খাস দখলের ডিক্রী দিতে;

ঘ) আইন ইকুইটি মতে বাদীগণ আরও যে যে ভাবে যে যে
প্রতিকারের ভাজন হন তারও ডিক্রী দিতে মর্জি হয়;

After institution of the suit the plaintiff-appellant filed an application for amendment of the plaint and the said application for amendment of the plaint was allowed on 21.03.2019 and thereafter, the trial Court directed the plaintiff to file a fresh plaint as per his amendment of the plaint. Thereafter, the plaintiff filed a copy of fresh plaint wrongly stating oral gift dated 01.08.2015 instead of 01.08.2003 and thereafter, on 10.02.2020 the plaintiff-appellant filed another application for amendment of the plaint as to date of oral gift. In this background the defendants filed an application for rejection of the plaint stating that the suit is barred by section 17A of the Registration Act as the plaintiff filed the suit challenging unregistered oral gift dated 01.08.2015.

The learned trial Judge upon hearing the parties the impugned judgment and order dated 01.09.2020 allowed the application under Order VII, Rule 11 of the Code of Civil Procedure rejecting the plaint.

Being aggrieved by and dissatisfied with the aforesaid impugned judgment and order dated 01.09.2020, the plaintiff-appellant preferred this appeal.

Mr. Md. Mahabubur Rashid, the learned Advocate appearing for the plaintiff-appellant submits that the trial Court

below without applying its judicial mind into the facts of the case and law bearing on subject most illegally allowed the application for rejection of plaint although the plaintiff at first in his amendment application correctly stated that oral gift dated 01.08.2003 and thereafter as per direction of the trial Court while the plaintiff filed a fresh type copy of the plaint as per his amendment wrongly stating oral gift dated 01.08.2015 instead of 01.08.2003 which was clearly a clerical mistake and soon thereafter, on 10.02.2020 the plaintiff-appellant filed another application for amendment of the plaint as to date of oral gift but the trial Court below ignoring to such facts of the matter mechanically rejected the said application and abruptly allowed the prayer for rejection of the plaint on the ground that the suit is barred by section 17A of the Registration Act as the plaintiff filed the suit challenging unregistered oral gift, which occasioned a failure of justice. Finally, the Advocate submits that in the facts and circumstances of the case unless the impugned judgment and order is set-aside the innocent plaintiff-appellant will suffer irreparable loss and injury for no fault of his own.

Mr. Rais Uddin Ahmad, the learned Advocate appearing for the defendant-respondents, on the other hand, supports the impugned judgment and order, which was according to him just, correct and proper.

Having heard the learned counsels for the parties and having gone through the materials on record, the only question that calls for our consideration in this appeal is whether the trial

Court committed any error in finding that the suit is barred by section 17A of the Registration Act.

On a scrutiny of the record, it appears that in the main plaint the plaintiff did not mention any date as to oral gift.

Thereafter, while the suit was in progress the plaintiff filed an application for amendment of the plaint by incorporating the oral gift dated 01.08.2003 and the said prayer was allowed by the learned Joint District Judge and thereafter the learned trial Judge directed the plaintiff to file a fresh type copy of the plaint as per his amendment and thereafter, the plaintiff-appellant as per order of the trial Court filed a fresh type copy of the plaint according to his amendment of the plaint wrongly stating oral gift dated 01.08.2015 instead on 01.08.2003. Soon thereafter, on 10.02.2020 the plaintiff-appellant filed another application for amendment of the plaint as to date of oral gift stating that-

“১। যেহেতু মৌখিক দানের ঘটনা ও তারিখ আরজী সংশোধনের মাধ্যমে আনয়ন করা হয়। কিন্তু ভুলক্রমে ১/৮/২০০৩ এর আরজীতে ১/৮/২০১৫ লিপি করা হয় যাহা ভুল বটে।

২। যেহেতু উক্ত অবস্থার প্রেক্ষিতে আরজীটি নিম্ন লিখিত মর্মে সংশোধিত হওয়ার প্রয়োজন।

৩। যেহেতু নিম্ন লিখিত মর্মে আরজী সংশোধিত হইলে মামলার আকৃতি ও প্রকৃতিতে কোনরূপ পরিবর্তন সাধিত হইবে না।

অতএব প্রার্থনা নিম্ন লিখিত আরজী সংশোধনের আদেশ দানে মর্জি হয়।”

This type of mistake appears to us bonafide in nature. In a suit of this nature the trial Court concerned ought to have allowed the subsequent application for amendment/ correction of the plaint as to oral gift dated 01.08.2003 instead of 01.08.2015.

The proposition of law is by now well settled that there is no legal scope to reject the plaint unless the plaint itself shows the want of cause of action for the suit or the suit being barred by any law. As we have already indicated that in this case at first the plaintiff correctly stated oral gift dated 01.08.2003 in the appellation for amendment of the plaint and it is on record that subsequently as per direction of the trial Court while the plaintiff filed a fresh type copy of the plaint according to his amendment wrongly stating oral gift dated 01.08.2015 instead of 01.08.2003. Mere omission or mistake cannot be a ground to reject the plaint. In exercising the power under Order VII, Rule 11 of the Code the Court can look into the statements in the plaint alone. It cannot consider any fact stated in the application or any document filed by the parties. To decide the truth of the matter evidence is necessary which can be available only in course of trial of the suit. Thus, we are constrained to hold that the reasons given by the learned Joint District Judge, Additional Court, Gazipur for passing the impugned judgment and order in favour of the defendants are not sustainable either in law or on facts.

For the reasons stated above the judgment and order of the lower trial Court does not deserve to be sustained.

In the result, the appeal is allowed. The impugned judgment and decree dated 01.09.2020 passed by the learned Joint District Judge, Additional Court, Gazipur in Title Suit No. 206 of 2015 rejecting the plaint is set-aside. The application dated 10.02.2020 of the appellant, Mohammad Ali Khan is, accordingly, allowed.

The trial court concerned, will, however, expedite the trial of the suit.

Let a copy of this judgment along with lower Court's record be sent down at once.

Md. Mansur Alam, J:

I agree.