

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 1671 of 2021

Md. Montaj Mollah

.....petitioner

-Versus-

Md. Rafique and others

..... Opposite parties

Mr. Md. Mohaddes Ul Islam, Advocate

..... For the petitioner

Mr. Md. Ikram Hossain, Advocate

..... For the Opposite Parties

Heard on: 09.10.2023, 16.10.2023,
05.11.2023 and

Judgment on 06.11.2023

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and order dated 23.03.2021 passed by the learned Senior District Judge, Patuakhali in Title Appeal No. 28 of 2020 reversing the order No. 59 dated 10.09.2020 passed by the learned Assistant Judge, Baufal, Patuakhali in Other Class Suit No. 284 of 2014 rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure 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 instant petitioner as plaintiff instituted Other Class Suit No. 284 of 2014 before the court of Assistant Judge, Baufal, Patuakhali for declaration of title in the suit land impleading the instant opposite parties as defendants in the suit. During pendency of the suit the instant opposite party as defendant in the

suit filed an application under Order 7 Rule 11 (d) of the Code of Code of Civil Procedure, 1908 praying for rejection of plaint summarily. After hearing the application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendant, the trial court upon hearing both parties rejected the application under Order 7 Rule 11 of the CPC by its judgment and order dated 10.09.2020. Being aggrieved by the judgment and order dated 10.09.2020 passed by the trial court the defendants in the suit as revisioners filed a Civil Revision No. 28 of 2020 which was heard by the Senior Judge, Patuakhali. The revisional court after hearing both parties allowed the civil revision filed by the defendants and thereby reversed the judgment and order of the trial court and rejected the plaint by its judgment and order dated 23.03.2021. Being aggrieved by the judgment and order of the revisional court the plaintiff in the suit as petitioner filed a civil revisional application before this bench which is instantly before this bench of disposal.

Since the instant civil revision arises out of an application under Order 7 Rule 11(d) of the Code of Civil Procedure filed by the defendants in the suit therefore this matter must be adjudicated on point of law and there is no need to enter into the factual merits and demerits of the case.

Although the matter appeared in the list for several days, when the matter was taken up for hearing none appeared for the

petitioner. However learned advocate Mr. Md. Ikram Hossain appeared for the opposite parties.

Learned Advocate Mr. Md. Ikram Hossain for the opposite parties opposes the Rule. He submits that the trial court without going into any details unjustly rejected the plaint under Order 7 Rule 11 of the Code of Civil Procedure. He points out to the judgment of the appellate court and submits that however the appellate court upon detailed discussion of the issues relating to the application under Order 7 Rule 11 of the Code of Civil Procedure correctly rejected the plaint summarily. He submits that it is clear from the materials and the plaint itself that the plaintiff himself admitted that 33 decimals land which comprises of the suit land the fate of such 33 decimals of land has already been decided in another suit. He points out to the judgment and order of the appellate court and submits that the appellate court correctly found that the fate of the so called release deed claimed by the plaintiff was already decided in a previous suit. He points out that it is admitted fact in the plaint that the plaintiff originally sold the 33 decimals of land to the defendants. He argues that however the plaintiff later upon resorting to fraudulent activities created a 'release deed' claiming that at one stage the defendants agreed to return the 33 decimals of land to the defendants upon execution of a release deed. He contends that such an unregistered release deed is devoid of any lawful bases. He also points out that it is clear from the judgment of the appellate court

and also in the plaint that although the plaintiff claimed that they gave consideration money for return of the 33 decimals by way of a release deed but however such claim of giving consideration money Tk. 110,000/- (one lac ten thousand) is not manifested by any evidences whatsoever. He submits that therefore it is as clear as day light as per the plaint also that since the original sale of the decree is admitted and the fate of the release deed has already been decided in a subsequent suit therefore the plaintiff has no more case to place and the plaint is liable to be rejected summarily. He points out to the records and to the judgment of the appellate court wherefrom he shows that upon fraudulently relying on the invalid Release Deed the plaintiff mutated the 33 decimals of land in the office of the AC land and the AC land allowed such mutation. He points out that however from the judgment it is clear that being aggrieved by the order of mutation by the AC land the instant defendants as plaintiffs instant filed Title Suit No. 44 of 1992 before the concerned court and which title suit was allowed. He points out that the instant plaintiff as petitioner filed Title Appeal No. 136 of 1993 which was however dismissed. He also points out that it is evident from the materials that against such dismissal of the appeal the plaintiff did not resort to any higher forum. He contends that therefore in the absence of resort to the higher forum the judgment and decree in Title Suit No. 44 of 1992 followed by Title Appeal No. 136 of 1993 are valid and binding on the parties. He reiterates that since

it is evident from the plaint that the subject matter of Title Suit No. 44 of 1992 followed by Title Appeal No. 136 of 1993 is the same land therefore it is clear as broad daylight that the fate of the land has already been decided in another suit previously. He submits that therefore the instant suit is barred under the doctrine of resjudicata since the fate of the suit has already been decided in another previous suit. He concludes his submissions upon assertion that the appellate court gave a correct judgment upon correct appraisal of the issues and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocate for the opposite parties, also perused the application and materials. It is admitted fact that the plaintiff sold the 33 decimals of suit land to the defendants originally which is not denied. The plaintiff's contention is that subsequently at one stage they executed a release deed for return of the suit land of the 33 decimals of suit land by way of executed unregistered Akranama between the plaintiff and the defendant.

However since this civil revision arises out of an application under Order 7 Rule 11 (d) of the Code of Civil Procedure it is not my duty to examine the unregistered Iqrar Nama. Rather it is the duty of this court to examine the statements in the plaint along with the record. After perusal of the plaint and examining the records it appears that the instant plaintiff relying on the so called unregistered Iqrar Nama filed a

miscellaneous case for mutation of the land in the concerned AC land office and the AC land allowed such mutation. Against such mutation order passed by the AC land the instant defendants filed Title Suit No. 44 of 1992 in the concerned court and which suit was allowed and the order of the AC land was declared unlawful by a judgment and order dated 31.07.1993. Against the judgment and order of the trial court the instant plaintiff filed Title Appeal No. 136 of 1993 which was heard but dismissed by the order of the concerned court on 15.10.1995. It is also evident from the records and other materials that the instant plaintiff petitioner did not resort to any higher forum against the judgment of the appellate court.

It is not denied by the plaintiff that the subject matter of the previous suit comprises of an order of a mutation arising out of 33 decimals of land and the said 33 decimals of land is in GL No. 107, Kashipur Mouza corresponding to S.A No. 56 Khatian is the same subject matter. Therefore it is clear that the subject matter of that Title Suit No. 44 of 1992 and the subject matter of the instant suit are the same land comprising of 33 decimals in the same dag, same mouza and same khatian.

Declaring a suit to be barred under Resjudicata cannot be allowed in a flippant manner. The argument of a suit being barred under the principles of resjudicata ought to be examined carefully because resjudicata is also a matter of fact and must be scrutinized. As a general Rule courts are careful while deciding a

matter upon the doctrine of resjudicata. However in the instant case it is clear as broad day light that the instant matter has already been decided in Title Suit No. 44 of 1992 followed by Title Appeal No. 136 of 1993. Regrettably, the trial court gave a very superficial view and did not scrutinize the issues thoroughly. However the appellate court thoroughly discussed the relevant issues.

Under the facts and circumstances and relying on the findings of the judgment of the appellate court, I do not find any merits in the Rule.

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

The order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court Record at once.

Communicate the order at once.

Shokat (B.O)