

Present:

**Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam**

First Appeal No. 11 of 2023

In the Matter of:

Ainuddin Haider & Foyzunnessa Waqf Estate.
.....Plaintiff-appellant.

-Versus-

Abdur Rahman being dead his heirs:
Md. Soleman and others.
...Defendant-respondents.

Mr. Md. Omar Faruk, Advocate

.....For the appellant.

Mr. Md. Khalilur Rahman, Advocate with
Mr. Mehrab Hasan, Advocate

.....For the respondents.

Mr. Md. Md. Yousuf Ali, D.A.G. with
Ms. Kamrunnahar Lipi, A.A.G with
Ms. Israt Jahan, A.A.G.

..... For the Government respondents.

**Heard on 12.03.2025 and
Judgment on 19. 03.2025.**

Sheikh Abdul Awal, J:

This First Appeal at the instance of plaintiff, Ainuddin Haider & Foyzunnessa Waqf Estate is directed against the Judgment and decree dated 27.11.2022 (decree signed on 30.11.2022) passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 560 of 2019 allowing the application dated 19.03.2020 filed by the defendant Nos. 1,7 and 11 under Order VII Rule 11 read with section 151 of the Code of the Civil Procedure rejecting the plaint.

The relevant facts briefly are that Ainuddin Haider & Foyzunnessa Waqf Estate as plaintiff filed Title Suit No. 560 of 2019 in the Court of the learned Joint District Judge, 2nd Court, Dhaka impleading the defendants for declaration of title and recovery of Kash possession stating inter-alia, that the plaintiff, Ainuddin Haider & Foyzunnessa Waqf Estate in fact is the real owner of the suit property as described in the schedule-“ A” and “B” of the plaint and those properties were wrongly recorded in the name of the defendant Nos. 1 to 21 and wrongly enlisted in the Projabili Gazette. The plaintiff claimed that they are superior land lord and the land in question cannot be recorded or settled in favour of the defendants.

Defendant Nos. 1,7 and 11 entered appearance in the suit and filed an application for rejection of the plaint under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure stating that the land as described in the schedule of the plaint is admittedly property of Projabili Gazette and all the records of right prepared in the name of the defendants Proja. The suit is clearly barred by P.O. 90 of 1972, the contents of the plaint do not disclose any cause of action for the suit, the suit is hopelessly barred by limitation.

The plaintiff resisted the said application by filling written objection stating that the suit property is Waqf property and the plaintiff has direct interest over the suit land, the suit is not barred by limitation. The contents of the plaint do disclose cause of action for the suit and that there is no reason to reject the plaint without framing any issues

whatsoever. Earlier the plaintiff, Ainuddin Haider & Foyzunnessa Waqf Estate having filed Other Class Suit No. 75 of 1956 in the Court of the then Subordinate Judge, 2nd Court, Mymenshingh and got a decree in their favour which was affirmed by the then Supreme Court of Pakistan and therefore, the suit land can never being a Projabili property.

The learned Joint District Judge after hearing the parties by the impugned judgment and order dated 27.11.2022 allowed the application under order VII, Rule 11 read with section 151 of the Code of Civil Procedure rejecting the plaint.

Aggrieved thereby the plaintiff, Ainuddin Haider & Foyzunnessa Waqf Estate has preferred this First Appeal before this Court.

The learned Advocate for the appellant has taken mainly 4 grounds before us in memo of appeal namely. (i) the acquisition of rent receiving interest in another projabili property of the Plaintiff, Waqf Estate having been challenged by filing other class Suit No. 75 of 1956 in the concerned Subordinate Judge , Mymenshing and the Plaintiff Waqf Estate having got decree in its favour in the year 1956 which was affirmed by the then High Court of East Pakistan as well as by the then Supreme Court of Pakistan in their respective Judgments in the year 1965 and 1970, as such the plaintiff Waqf Estate cannot be taken away by P.O. 90 of 1972 as projabili property and the learned Joint District Judge has illegally rejected the plaint of Plaintiff's Title Suit No. 560 of 2019 giving reference of P.O. 90 of 1972. So, the Plaintiff has

rightly filed the present Title Suit No. 560 of 2019 for declaration of title in the suit property and also for further declaration that the S.A. R.S. and Dhaka City Jarip record as to the suit property prepared in the name of its projas (defendants) are illegal and also for recovery of khas possession. In the facts and circumstances the learned Joint District Judge most illegally rejected the plaint of Title Suit No. 560 of 2019 giving reference of P.O. 90 of 1972. (ii) the question of barred by Limitation in a suit of this nature is a mixed question of law and fact, which can be decided only at the trial on taking evidence and in this case the Learned Joint District Judge, 2nd Court, Dhaka without framing any issues and without taking evidence has committed an error in rejecting the plaint on the ground of Limitation. (iii) The learned Joint District Judge has also failed to apply section-10 of the Limitation Act before rejecting the plaint on the ground of limitation wherein it has been laid down that the suit would not be barred by any length of time in case of recovery of filing of the suit for khas possession of Waqf property. (iv). The contents of the plaint do disclose cause of action for the suit and without framing any issues it is not at all possible to decide whether the plaint is barred by law or barred by limitation. Ref: 50 DLR (AD) 99. The learned Joint District Judge in deciding the application under Order VII Rule 11 CPC has travelled beyond the pleadings of the plaint which is not legally permissible.

Mr. Md. Khalilur Rahman, appearing for the respondents, on the other hand, supports the impugned

judgment, which was according to them just, correct and proper. Mr. Md. Khalilur Rahman in the course of argument takes us through the impugned judgment and other materials on record and then submits that the contents of the plaint are preposterous in nature, which in fact do not disclose any cause of action for the suit. He further submits that as per averments of the plaint admittedly the suit land is Projabili property and all records of right prepared in the name of Proja defendants and thus, the instant suit is plainly barred by P.O. 90 of 1972, the trial Court rightly relying on the decisions reported in 33 DLR (AD) 13 and 53 allowed the application for rejection of the plaint. The learned Advocate further submits that as per admitted contents of the plaint the suit is plainly barred by limitation and thus, the learned Joint District Judge rightly came to the conclusion the suit is barred by limitation.

Having gone through the record including the memo of appeal, impugned judgment, plaint of the suit and other materials on record, the only question that falls for our consideration in this appeal is whether the learned Joint District Judge, 2nd Court, Dhaka committed any error in rejecting the plaint by the impugned judgment and order. To justify the decision of the learned Joint District Judge, we have studied the plaint of the suit and the application under Order VII Rule 11 together with written objection filed by the defendants to the best of our ability.

It appears that Ainuddin Haider & Foyzunnessa Waqf Estate as plaintiff filed Title Suit No. 560 of 2019 praying the following reliefs:-

“ উপরোক্ত অবস্থা এবং কারণাধীনে বাদী পক্ষে প্রার্থনা এই যেঃ-

(ক) নালিশী ক ও খ তফশিলে বর্ণিত ভূমিতে বাদীপক্ষ আইন উদ্দিন হায়দার ও ফয়জুনুসা ওয়াকফ এস্টেট একক মালিক মর্মে স্বত্ব ঘোষণার রায় ও ডিক্রী দিতে;

(খ) নালিশী ক তফশিল বর্ণিত বসুপাড়া মৌজার এস, এ, খতিয়ান নং- সাবেক-২, সাবেক-১৫/১ হালে ৮, সাবেক ১৩৭ হালে ১০ ও ১ আর, এস, খতিয়ান নং-১,১৭,২৩ সিটি জরীপ খতিয়ান নং-১, ৩৮,৫৭, ১৯০, ২০০, ৩৭৪, ৩৭৫, ৫১৬, ৪৫, ১৪২, ১৬৩, ৪৭৯ এবং খ তপশিলে বর্ণিত নন্দার বাগ মৌজার এস, এ, খতিয়ান নং- সাবেক ৪/১ ও ৩৬, আর, এস, খতিয়ান নং -১৩ ৫ সিটি জরীপ খতিয়ান নং-১, ২১, ১৫২, ৩৯, ১৪২ ও ১২ সম্পূর্ণ ভুল ও ভ্রমাত্মক ভাবে বিবাদীদের নামে প্রস্তুত হইয়াছে মর্মে এক ঘোষণা মূলক ডিক্রী প্রদান করিতে;

(গ) আদালতযোগে বিবাদীপক্ষকে নালিশী ক ও খ তফশিল বর্ণিত সম্পত্তি হইতে উচ্ছেদ করিয়া বাদী পক্ষের বরাবর খাস দখল বুঝাইয়া দেওয়ার ডিক্রী প্রদান করিতে এবং বাদীপক্ষ অনুরূপ ভ্রমাত্মক রেকর্ড প্রতিপালন করিতে বাধ্য নহে মর্মে ডিক্রী দিতে;

(ঘ) মোকদ্দমার খয় খরচ বাদীর অনুকূলে এবং বিবাদীদের প্রতিকূলে আদেশ দিতে;

(ঙ) আইন ও ইকুইটি মতে বাদী আর যে যে প্রতিকার পাইতে হকদার তৎমর্মে বাদীর অনুকূলে এবং বিবাদীদের প্রতিকূলে ডিক্রী দিতে;”

The defendant Nos. 1, 7 and 11 entered appearance in the suit and filed an application under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure for rejection of the plaint mainly on the grounds that the suit is barred by P.O. 90 of 1972, barred by limitation and the contents of the plaint do not disclose any cause of action for the suit. The plaintiff-appellant resisted the said application by filing written objection stating that Ainuddin Haider & Foyzunnessa Waqf Estate is the real owner of the suit property and the records of right wrongly prepared in the name of the defendants, the suit is not barred by limitation and not barred by P.O. 90 of 1972. The learned Joint District Judge after

hearing both the parties by the impugned judgment and order dated 27.11.2022 allowed the application under Order VII Rule 11 read with section 151 of the Code of the Civil Procedure holding that-“ বাদীপক্ষের আরজির স্বীকৃত মতেই বাদীর আরজিটি পি, ও, ৯০/১৯৭২ এর বিধান মতে বারিত। কারণ পি, ও, ৯০/১৯৭২ এর বিধান মতে “যদি কোন আদালত পি,ও, ৯০/১৯৭২ জারীর পূর্বে কোন প্রকার ডিক্রী, আদেশ ইত্যাদি প্রদান করিয়া থাকে তবে সেই ডিক্রী ও আদেশ বাতিল বলিয়া গন্য হইবে”। পি, ও, ৯০/১৯৭২ জারীর সুদীর্ঘ ৪৯ বৎসর পর বাদীপক্ষের অত্র দেওয়ানী মোকদ্দমাটি দায়েরের কোন কারণ উদ্ভব হয়নি মর্মে আদালতের নিকট প্রতীয়মান হয়। মাননীয় সুপ্রীম কোর্ট 33 DLR (AD) , pg-13 and 53-এ আপীল বিভাগ এর রায়ে পি, ও, ৯০/১৯৭২ এর বিধান মতে প্রাক্তন জমিদার, ওয়াকফ এস্টেট ও দেবতা প্রজাবিলিকৃত সম্পত্তিতে মালিকানা দাবী করিলে ঐরূপ দাবী উক্ত পি,ও, ৯০/১৯৭২ দ্বারা বারিত হইবে মর্মে নিম্নরূপ সিদ্ধান্ত দেন।” The learned Joint District Judge also observed that admittedly the suit land was recorded in the name of the defendants in City Jorip and all other records within the period of 40 -50 years back and thus the suit is clearly barred by Section 3 of the limitation Act. The learned Joint District Judge also observed that the contents of the plaint do not disclose any cause of action for the suit.

On a reading of the plaint, memo of Appeal together with the impugned judgment and order dated 27.11.2022, it appears to us that the property in question as described in the schedule of plaint are admittedly Projabili property. In this connection, we feel it necessary to quote hereunder P.O. 90 of 1972 for having a better view of the dispute in question, which reads as follows:

“Notwithstanding anything contained in any other law for the time being in force, on the

commencement of this Order, all or continuing or deemed to be pending or continuing in any court against the Government of the People's Republic of Bangladesh in which the legality or validity of the State Acquisition and Tenancy Act, 1950 (E.B.Act No. XXVIII of 1951), or of the Ordinance, 1956 (E.B.Ord. No. III of 1956), or of any other law making any amendment in the said Act, or of the acquisition of any property made under any provision thereof is challenged or called in questions shall abate, and all orders, including orders of injunction and other interlocutory orders, passed in such suits appeals, applications and other legal proceedings shall cease to have any effect; and no court shall entertain, and no person shall bring, any fresh suit, appeal, application or other legal proceedings in which the legality or validity of any such law or acquisition is challenged or called in question.”

In the case of People's Republic of Bangladesh, represented by the Deputy Commissioner, Sylhet and others Vs. Sri Sri Madan Gopal Jew Bigraha and others reported in 33 DLR (AD)13 it has been held that:-

“It is to be observed that prayers as set out in the plaint clearly challenge the notification made under section 3 of the Act as null and void and as such all consequences following therefrom on the acquisition of the Debutor property were also

challenged and so an injunction was sought for. It is to be further observed that it is now well settled on the authority of *Jalil Ahmed Vs. The Province of East Pakistan*. 19 D.L.R. 106 decided by a Special Bench and affirmed by the Supreme Court of Pakistan in *Tanvir Ahmed Siddiky Vs. The Province of East Pakistan* (1968) 20 DLR (SC) 144-P.L.D. 1968 S.C. 185. That on the publication of the notification under section 3 of the Act, all rent receiving interests including that of Debutter and waqf estate stood acquired and all non-retainable khas land also stood vested in the Government”. This part of the proposition was overlooked by the Courts below.”

From a combined reading of the P.O. 90 of 1972 together with above quoted decision, we find a clear view of law as it stands today that all rent receiving interest including Waqf and Debottor property stood acquired and all non retainable kash land also stood vested in the Government. Therefore, we find no reason to differ with the view taken by the Court bellow that the suit is clearly barred by P.O. 90 of 1972.

By the way it may be observed that after passing the last Judgment dated 17.06.1970 by the then Supreme Court of Pakistan, P.O. 90 of 1972 was promulgated by the president of newly independent country Bangladesh barring previous Zamindars including the Waqf Estate from claiming any sorts of right in the projabili property cited in the projabili property

Gazette and also declared that the previous Judgment passed against wholesale acquisition of rent receiving interest is of illegal and as such, the said alleged previous Judgment of the Supreme Court of Pakistan dated 17.06.1970 in respect of some other projabali property will not be a weapon for acquiring right in the admitted projabali suit property, rather the direction as given in P.O. 90 of 1972 will prevail of the said judgment and the plaint of Title Suit No. 560 of 2019 filed by the Plaintiff-Appellant, Waqf Estate will be struck down as per said P.O 90 of 1972 and also as per direction of our Apex Court namely 33 DLR (S/C) page-13 and 53.

It further appears learned Joint District Judge also held that the suit is barred by limitation on the findings : “ নথি দৃষ্টে আরো দেখা যায় যে, বাদীপক্ষের স্বীকৃত মতেই বিবাদীপক্ষের নামে এস,এ, আর, এস, ও ঢাকা সিটি জরীপ রেকর্ড চূড়ান্ত ভাবে প্রকাশ হয়েছে এবং বিবাদীপক্ষগণ নালিশী তফশিল বর্ণিত সম্পত্তিতে দখলে আছেন। সেকারণে, দৃশ্যতঃ যে, এস, এ, আর, এস, ও ঢাকা সিটি জরীপ রেকর্ড সৃষ্টির সুদীর্ঘ ৫০ বছর, ৪০, বছর এবং ১২ বৎসরের অধিকাল পর দায়েরকৃত অত্র মোকদ্দমাটি তামাদিতে বারিত। বাদীপক্ষ তিনটি চূড়ান্ত ভাবে প্রকাশকৃত রেকর্ডকে চ্যালেঞ্জ করে সুদীর্ঘ ৫০,৪০ এবং ১২ বৎসর পর অত্র মোকদ্দমা রুজু করেছেন। তাছাড়া বাদীপক্ষের দাবী মতেই বাদীপক্ষ তৎকালীন পাকিস্তানের সুপ্রীম কোর্টের রায় প্রাপ্ত হন বিগত ১৭-০৬-১৯৭০ খ্রিষ্টাব্দ তারিখে আর বাদীপক্ষ অত্র মোকদ্দমাটি রুজু করেছেন বিগত ০৬.০৮.২০১৯ খ্রিষ্টাব্দ তারিখে অর্থাৎ ৪৯ বৎসর পর। বাদীপক্ষের আরজির বর্ণনা মতেই বাদীপক্ষের আরজিটি তামাদি আইনের ৩ ধারার বিধান মতে বারিত ও খারিজযোগ্য মর্মে আদালতের নিকট প্রতীয়মান হয়। বাদীপক্ষের অত্র মোকদ্দমার প্রার্থিত প্রতিকার আইনগতভাবে রক্ষণীয় নয়।”

These findings of the learned Joint District Judge are well founded in law and fact inasmuch as it is on record that the plaintiff in his plaint of Title Suit No. 560 of 2019 stated

that the property in question was "Projabili Property" under the Plaintiff Waqf Estate and cited in the Projabili Property Gazette 25.03.1954 and also admitted that the said property have been recorded in the names of projas, the Defendants, in the concerned S.A, R.S and Dhaka City Jarip record on the basis of said projabili property Gazette of the Plaintiff Waqf Estate and as such, the suit is barred by the provision of State Acquisition and Tenancy Act, 1950 as well as by P.O. 90 of 1972. Further, the Plaintiff Waqf Estate has been admitted in his plaint that the Defendants are in possession before the S.A record of right and the S.A. R.S and Dhaka City Jarip record has been prepared in the names of the Defendants on the basis of projabili property Gazette dated 25.03.1954 and as such, the suit is also barred by limitation as limitation to file suit for recovery of possession within 12 years and limitation to file suit for declaration of record of right of 6 year having been expired long ago on 06.08.2019 of filing the present Title Suit No. 560 of 2019 and as such, the present suit is barred by Limitation Act. We find no flaw in the reasonings of the learned Joint District Judge or any ground to assail the impugned Judgment. In a suit of this nature the learned Joint District Judge rightly observed that the contents of the plaint do not disclose any cause of action for the suit relying on the decisions reported in 33 DLR (AD) page 13 and 53. Therefore, we find no substance in either of the grounds as taken in the memo of appeal.

In view of our discussions made in the forgoing paragraphs by now it is clear that the instant first appeal must fail.

In the result, the appeal is dismissed. The impugned judgment and decree dated 27.11.2022 (decree signed on 30.11.2022) passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 560 of 2019 allowing the application dated 19.03.2020 filed by the defendant Nos. 1,7 and 11 under Order VII Rule 11 read with section 151 of the Code of the Civil Procedure rejecting the plaint is hereby maintained.

In the facts and circumstances of the case there will be no order as to costs.

Send down the LC Records at once.

Md. Mansur Alam, J:

I agree.