

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Muhammad Abdul Hafiz**  
**Civil Revision No. 5176 of 2022**

Shahidul Islam Shahin  
Defendant No. 21- Petitioner

Versus

Mosammat Aytunnesa being dead her  
legal heirs:

1(a) Nure Alam Siddiqui and others  
Plaintiffs-Opposite Parties

Ahmed Ali and others  
Defendants-Opposite Parties

The Government of Bangladesh,  
represented by the Deputy  
Commissioner, Narayanganj and others  
Pro-forma Defendants-Opposite Parties

Mr. Md. Asaduzzaman, Advocate with  
Mr. Shah Mohammad Ezaz Rahman,  
Advocate  
for the defendant No. 21- petitioner

Mr. Md. Saidul Alam Khan, Advocate  
for the plaintiffs-opposite party Nos. 1-  
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**Judgment on: 17.12.2023**

This Rule was issued calling upon the opposite party Nos. 1-10 to show cause as to why the impugned Judgment and Order dated 03.8.2022 passed by the learned District Judge, Narayanganj in Civil Revision No. 24 of 2022 rejecting the same and affirming the Judgment and Order dated 27.1.2022 passed by the learned

Senior Assistant Judge, 2<sup>nd</sup> Court, Narayanganj in Title Suit No. 939 of 2021 rejecting the application filed by the defendant No. 21-petitioner under Order VII rule 11 of the Code of Civil Procedure for rejecting the plaint should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party Nos. 1-10 as plaintiff instituted Title Suit No. 211 of 2012 renumbered as Title Suit No. 939 of 2021 for declaration that the plaintiffs are the 16 annas owners of the suit land and that preparation of S.A. record relating to the suit land in the name of Baseruddin and R.S. record in the names of Siddik Ali and Ahmed Ali is erroneous and incorrect and that the deeds mentioned in the suit schedule in relation to the suit land are illegal, void, collusive without any consideration, ineffective and not binding upon the plaintiffs.

During pendency of the suit the defendant No. 21 filed an application under Order VII rule 11 of the Code of Civil Procedure for rejection of plaint contending inter alia that the plaintiffs specifically averred that they came to know about the wrong recording of the suit land upon perusal of the plaint of Partition Suit No. 29 of 2008 filed by the defendants and thus, the cause of action arose on 04.2.2008 i.e. when the said partition suit was filed,

but it transpires from the averments made in the plaint that the plaintiffs knew about the wrongful of S.A. and R.S. records on 07.1.1997. In view of the facts under Article 120 of the First Schedule to the Limitation Act the plaintiffs ought to have filed the suit within 06 (six) years from the date when they came to know about wrongful preparation of records, whereas the same has been filed after about 11 (eleven) years from the date when the right to sue accrued and as such, the suit is barred by limitation.

The plaintiffs filed a written objection against the defendant's aforesaid application contending that the limitation period for filing declaration suit will not run from the date of knowledge but from the date when threat comes from the defendant on the basis of wrong record of right and that the plaintiffs may wait and wait until or unless the threat comes from the defendants upon wrong record of right and that the question of limitation and res-judicata are mixed question of facts and law which will be disposed of only after full trial.

The learned Senior Assistant Judge, 2<sup>nd</sup> Court, Narayanganj rejected the aforesaid application vide its Judgment and Order dated 27.1.2022. Against the aforesaid Judgment and Order the defendant No. 21 filed Civil Revision being No. 24 of 2022 before the learned District Judge, Narayanganj who rejecting the same on

03.8.2022 and thereby affirming the Judgment and Order dated 27.1.2022 passed by the learned Senior Assistant Judge, 2<sup>nd</sup> Court, Narayanganj in Title Suit No. 939 of 2021 and hence the defendant No. 21 as petitioner moved this application under Section 115(4) of the Code of Civil Procedure before this Court and obtained this Rule.

During pendency of the Rule the plaintiff-opposite party No. 3 died and accordingly his heirs were substituted.

Mr. Md. Asaduzzaman, learned Advocate appearing with Shah Mohammad Ezaz Rahman learned Advocate, submits that the suit has been filed by the plaintiffs, amongst others for a declaration that preparation of S.A. record relating to the suit land in the name of Baser Uddin (father of defendant No. 1) and R.S. record in the name of Siddik Ali (father of defendant Nos. 2-5) and Ahmed Ali (defendant No. 1) is erroneous and incorrect. The plaintiffs specifically asserted in paragraph No. 8 of the plaint that the wrong recorded of the suit property came to their knowledge on 07.1.1997. Be the case as it may, under Article 120 of the first schedule to the Limitation Act, the suit ought to have been filed within 06 (six) years from 07.1.1997 i.e. within 06.1.2003. But it appears from the record that the suit was filed on 13.4.2008 i.e. about 11 (eleven) years from the date when the right to sue

accrued. Therefore, needless to say that the suit is hopeless barred by limitation.

Mr. Md. Saidul Alam Khan, learned Advocate for the plaintiffs-opposite party Nos. 1-21, submits that it is the very settled proposition of law that against any wrong record of rights, the person whose interest is affected by such wrong recording need not to file a suit, questioning legality of the wrong record so prepared and finally published within a period of six years from said date or from the date of knowledge of such wrong record. The cause of action in such a case arises only and only when the title of the plaintiff is threatened by any person claiming his title on the basis of such wrong record. In the instant case from plain reading of the plaint, it transpires that since 2008 when the defendants filed a partition suit on the basis of wrong record claiming their title and thus causing threat to the title of the plaintiffs, the cause of action of the instant suit arose. Both the Courts below appreciated this facts and law and rightly rejected the application filed by the defendant under Order VII rule 11 of the Code of Civil Procedure.

Heard the learned Advocates for the parties and perused the record.

In the instant case issue of limitation is a mixed question of law and facts. It is the very settled principle of law that a plaint

cannot be rejected on the ground of limitation under Order VII rule 11 as the issue of limitation is a mixed question of law and facts, which is to be determined on the basis of pleadings and evidences at the time of trial.

Considering the facts and circumstances of the Case, I find no substance in this Rule rather I find substance in the submissions of the learned Advocate for the plaintiffs-opposite parties.

**Accordingly, the Rule is discharged without any order as to costs.**

The impugned Judgment and Order dated 03.8.2022 passed by the learned District Judge, Narayangonj in Civil Revision No. 24 of 2022 affirming the Judgment and Order dated 27.1.2022 passed by the learned Senior Assistant Judge, 2<sup>nd</sup> Court, Narayanganj in Title Suit No. 939 of 2021 is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

The learned Trial Court is directed to conclude the trial within 06 (six) months from the date of receipt of a copy of this judgment.

Communicate the Judgment to the Courts below at once.