

District-Khulna.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 5622 of 2022.

Md. Nur Islam and others.

---- Defendant-Petitioner-Petitioners.

-Versus-

M. Ibrahim Adeel Khan being dead his heirs
Sakendar Khan and others.

---- Transposed Plaintiff-Opposite Party.

Mr. Md. Amimul Ehsan, Advocat

---- For the Plaintiff-Appellant-Petitioners.

None appears.

---- For the Transposed Plaintiff-Opposite Party.

Mr. S.M. Obaidul Haque, Advocate

---- For the Defendant No.27-opposite party.

Heard On: 05.11.2025.

And

Judgment Delivered On: 11.11.2025.

Md. Toufiq Inam, J.

Following leave, the opposite parties were called upon to show cause as to why the judgment and order dated 17.10.2022 passed by the learned 4th Court of Additional District Judge, Khulna, in *Civil Revision No. 30 of 2020*, affirming Order No. 81 dated 19.02.2020 passed by the learned Assistant Judge, Batiaghata, Khulna, in *Title Suit No. 1325 of 2008*, rejecting the defendants' application under Order VII Rule 11(d) of the Code of Civil Procedure for rejection of plaint, should not be set aside.

One Rokeya Mannan, as the sole plaintiff, instituted *Title Suit No. 1325 of 2008* on 14.08.2008 in the Court of the learned Assistant Judge,

Batiaghata, Khulna, seeking: (i) a declaration of her title in the suit land, and (ii) cancellation of a decree being obtained by fraud. The plaintiff's case, in short, is that three mouzas- Labonchara, Bilpabla, and Banishanta—originally belonged to *Khan A. Sabur*. His father, *Nazmul Haque Khan*, died leaving five sons: A. Goni Khan, A. Ali Khan, A. Hamid Khan, A. Sabur Khan, and A. Rouf Khan and one daughter, *Rahimon Nessa Khanom*. The plaintiff, *Rokeya Mannan*, is one of the daughters of *Rahimon Nessa Khanom*. It is alleged that *Khan A. Sabur* and his elder brother *Abdul Ali Khan* jointly established a partnership firm named “Khan Krishi Khamar” with an investment of Tk. 50,000 and purchased 43.91 acres of land under a registered partnership deed dated 23.10.1961. During the S.A. operation, however, the land was recorded solely in the name of *Khan A. Sabur*.

Subsequently, *Asmot Ara Khanom* (defendant No. 1) and her mother, as heirs of *Abdul Ali Khan*, filed *Title Suit No. 776 of 1976*, which was decreed on compromise on 17.02.1978, declaring their share according to the partnership deed. The plaintiff asserts that her mother was entitled to one-third share in *Khan A. Sabur's* property, and accordingly, she herself became entitled to 1/24th share in the suit land. Since the defendants denied her claim, she filed the present suit for declaration and cancellation of the decree dated 17.02.1978.

Defendant No. 1 contested the suit by filing a written statement denying the allegations and contending that the suit is not maintainable and barred by limitation, waiver, estoppel, and acquiescence. It is stated that

Dr. Abul Ali Khan (father of defendant No. 1) and *Khan A. Sabur* were partners in Khan Krishi Khamar under the registered deed dated 23.10.1961, which included subsequently acquired properties. After the death of *Dr. Abul Ali Khan*, his widow and daughter inherited a five annas share in the partnership property, while *Khan A. Sabur* retained the rest. In *Title Suit No. 776 of 1976*, this defendant obtained a compromise decree with *Khan A. Sabur*, which lawfully declared her title. She claims to be the exclusive owner of the 'Ka' schedule land, in continuous possession, and paying rent regularly. The plaintiff, being a stranger to the partnership and not a party to the decree, has no locus standi to maintain the present suit.

The sole plaintiff *Rokeya Mannan* died on 29.03.2012, but no legal heirs were substituted within the prescribed time of ninety days. Consequently, *Defendant No. 1* filed an application on 23.10.2017 for abatement of the suit. Despite abatement, Defendant No. 19, who claimed himself as a legal heir of the deceased *Khan A. Sabur*, filed an application on 05.07.2012 seeking transposition as *plaintiff No. 2*. The trial court, by Order No. 65 dated 11.03.2018, allowed abatement as to the deceased plaintiff but kept the suit alive with respect to the transposed defendant-plaintiff.

The transposed plaintiff subsequently filed an amendment application on 22.01.2019 seeking deletion of the prayer for declaration of title, admitting that he has no necessity of declaration of title. The trial court allowed the amendment on 19.02.2020, limiting the suit solely to the

prayer for cancellation of the decree as being fake, fraudulent and inoperative.

Thereafter, defendant No. 1 filed an application under Order VII Rule 11(d) CPC for rejection of the plaint as being barred by law solely on the ground that the transposed plaintiff-M. Ibrahim Adil Khan has no locus standi as he is not any legal heir of Khan A. Sabur. The learned Assistant Judge rejected the application by Order No. 81 dated 19.02.2020. The defendants preferred *Civil Revision No. 30 of 2020* before the District Judge, Khulna, which upon transfer was heard and dismissed by the learned 4th Court of Additional District Judge, Khulna, by judgment and order dated 17.10.2022 finding that he has prima facie locus standi being the successor of Khan A. Sabur. Against the judgment of lower revisional court, the defendant as petitioner obtained the present Rule under section 115(4) of CPC.

Mr. Md. Amimul Ehsan, learned Advocate for the petitioners, submits that both the trial Court and the lower revisional Court acted illegally and with material irregularity in rejecting the defendants' application under Order VII Rule 11(d) of the Code of Civil Procedure. He contends that the transposed plaintiff, by way of amendment, deleted the prayer for declaration of title, leaving only a prayer for cancellation of a decree, which makes the suit not maintainable. He relies on 18 BLT (AD) 497 and 53 DLR (AD) 12, submitting that when a suit is bound to fail, the Court may strike it down even under its inherent power under

section 151 CPC, since the ultimate result is clear as daylight; that as the original sole plaintiff died on 29.03.2012 and her heirs were not substituted within ninety days, the suit stood abated by operation of law;

He argues that the transposed plaintiff, being one of the original defendants and not a legal heir of the deceased plaintiff, has no *locus standi* to continue a suit initiated by his opponent, particularly after he himself admitted no personal claim in the land; and that after deletion of the prayer for declaration under section 42 of the Specific Relief Act, 1877, the remaining relief for cancellation became incompetent, since the transposed plaintiff is not an aggrieved person or party to the decree.

The transposed defendant No. 19 as plaintiff did not appear to oppose the Rule.

However, Mr. SM Obaidul Haque, learned Advocate for the Defendant No.27-opposite party, on the other hand, submits that the transposition of defendant No. 19 as plaintiff was done in accordance with law and that the suit was not abated entirely, as the trial court specifically kept it alive regarding the transposed plaintiff. He contends that Order VII Rule 11 CPC applies only when the bar of law is apparent on the face of the plaint, not when factual disputes exist.

He further argues that the issue of locus standi or survivability of cause of action is a mixed question of law and fact, which can only be determined upon evidence at trial, and hence the courts below rightly

rejected the prayer for rejection of plaint to allow adjudication on merit. By referring the decision of 37 DLR 131 he submits that plaintiff did not file the suit for declaration of title but for simple declaration that the certificate proceedings is illegal, fraudulent and therefore prayer for consequential relief is not required and the suit is not hit by section 42 of SRA.

This court has heard the learned Advocates for both sides and carefully perused the impugned judgments and orders along with the materials on record. It is an admitted fact that the original sole plaintiff died on 29.03.2012, and no substitution of her legal heirs was made within the period prescribed by law. Consequently, the right to sue stood extinguished as to her, and the suit abated to that extent. The subsequent transposition of defendant No. 19 as plaintiff—who claims to be a successor of Khan A. Sabur, the person alleged not to have signed the *solenama* on which the impugned decree was founded—raises the question whether such transposition can lawfully revive a cause of action that had already abated.

At the outset, it appears from the record that the transposed plaintiff claims to be a successor of Khan A. Sabur, who was a party to the decree sought to be cancelled. His case is that the *solenama* on which that decree was passed did not bear the genuine signature of Khan A. Sabur and was therefore forged and fraudulent. Prima facie, such a plea gives him a direct grievance against that decree. Whether he can finally

establish himself as a lawful successor is a matter of evidence, which can only be verified at trial. Hence, his *locus standi* cannot be rejected summarily at the threshold.

As regards the argument that the suit became incompetent after deletion of the prayer for declaration, it is well settled that a suit for cancellation of a forged or fraudulent decree is maintainable even without a formal declaration of title, if the plaintiff alleges that the instrument adversely affects his rights or his predecessor's estate. The relief for cancellation stands on its own footing and does not automatically depend on a declaratory prayer.

The contention that the suit abated on the death of the original plaintiff also does not hold good. The trial Court already recorded abatement as to the deceased plaintiff but, in its discretion, allowed the transposed defendant to proceed as plaintiff on his own right. Such an order, having attained finality, cannot be reopened in collateral form at this stage. Moreover, whether the cause of action survives in favour of the transposed plaintiff is again a mixed question of law and fact requiring evidence.

It is equally well settled that Order VII Rule 11(d) CPC applies only when the bar of law is clear and apparent on the face of the plaint itself. In the present case, the plaint discloses a triable issue—namely, whether the *solenama* and the subsequent decree were forged, and whether the

transposed plaintiff, as alleged successor of Khan A. Sabur, is entitled to challenge it. These are factual issues that cannot be dismissed as “fruitless” without trial. The inherent power under section 151 CPC cannot be used to short-circuit a suit involving such disputed facts.

When a plaint, on its face, discloses triable allegations of fraud or forgery in a decree and the plaintiff claims succession from a party to that decree, the Court cannot reject the plaint under Order VII Rule 11(d) CPC on the ground of lack of *locus standi* or abatement. Issues of succession, abatement, and maintainability in such cases are mixed questions of law and fact, to be determined at trial and not summarily at the inception of the suit.

For the foregoing reasons, this court finds that the courts below committed no illegality and material irregularity in rejecting the application under Order VII Rule 11(d) CPC. The courts below correctly appreciated that the issues of succession and forgery are triable questions of fact and mixed law and, therefore, were not amenable to summary determination on the face of the plaint. There was no proper ground to invoke Order VII Rule 11(d) or the inherent jurisdiction to terminate the suit at inception.

Accordingly, this Court finds that both the trial Court and the lower revisional Court rightly refused to reject the plaint, since the question of

the transposed plaintiff's succession, his *locus standi*, and the alleged forgery are matters to be adjudicated on evidence.

The Rule is discharged.

The impugned judgment and order dated 17.10.2022 passed by the learned 4th Court of Additional District Judge, Khulna, in *Civil Revision No. 30 of 2020*, and Order No. 81 dated 19.02.2020 passed by the learned Assistant Judge, Batiaghata, Khulna, in *Title Suit No. 1325 of 2008*, are hereby upheld.

The trial court is directed to dispose of the suit expeditiously, preferably within six (6) months.

The interim order of stay stands vacated.

Let a copy of this judgment be transmitted to the court below forthwith for information and necessary compliance.

(Justice Md. Toufiq Inam)

Ashraf/ABO.