

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 4572 of 2022

Md. Anis Biswas

.....Petitioner.

-Versus-

Most. Ainoon Nahar Begum and others

.....Opposite parties.

Mr. Md. Abdullah Al Mamun, Adv.

.... For the petitioner.

None appears.

..... For the opposite parties.

Heard and judgment on 07th March, 2024.

A.K.M.Asaduzzaman,J.

Other Class Suit No. 208 of 2014 was filed by the plaintiff opposite party for partition against the petitioner and others.

Defendant No.3 appeared and contested the suit by filing written statement.

During pendency of the suit on 23.06.2014 defendant Nos. 1, 3 and 4 submitted an application for rejection of plaint under Order 7 Rule 11 read with section 151 of the Code of Civil Procedure with the contention that the disputed schedule property was recorded in R.S. khatian as abandoned property, which was recorded in the name of the Ministry of Public Works and City Development under P.O. No. 16/72 and the said record still remains in force and the plaintiffs (Opposite party Nos. 1-6) filed L.S.T. Case No. 1244 of 2013 before the Land Survey Tribunal, Pabna for correction of the said R.S. Record and the said Tribunal has been established for correction of the last final record under section 145 of the State Acquisition and Tenancy Act. The plaintiffs (Respondent Nos. 1-6) filed the said partition suit concealing the fact that the schedule property was recorded in the name of the Public Works and City Development and on the self same matter, the plaintiff filed the said L.S.T. No. 1244 of 2013 before the said Land Survey Tribunal, Pabna, which is still pending and since over the self same schedule, the instant partition suit has been filed, the same is liable to be rejected.

The defendant Nos. 1, 3 and 4 (petitioner and opposite party Nos. 7-8) filed L.S.T. Suit No. 307 of 2012 before the Land Survey Tribunal, Pabna and obtained decree in their favour against which the plaintiffs filed Writ Petition No. 5004 of 2014 before the Hon'ble High Court Division and the defendant No.2 filed L.S.T. Case No. 289 of 2013 before the said Land Survey Tribunal for correction of the record and therefore, according to Order 7 Rule 11(d) read with section 151 of the Code of Civil Procedure the said plaint is liable to be rejected.

By the order dated 19.02.2015 the Joint District Judge after hearing the parties and considering the application rejected the said application.

Challenging the said judgment and order petitioner filed Civil Revision No. 9 of 2015 before the Court of District Judge, Pabna, which was heard on transfer by the Additional District Judge, 2nd Court, Pabna, who by the impugned judgment and order dated 06.09.2022 dismissed the revision and affirmed the judgment of the trial court.

Challenging the propriety and legality of the said judgment the petitioner obtained the instant leave upon filing an application before this court under section 115(4) of the Code of Civil Procedure.

Although notice of this petition was served upon the opposite party but no one appears to oppose the application.

Mr. Md. Abdullah Al Mamun, the learned advocate appearing for the petitioner submits that schedule property was recorded in R.S. khatian as abandoned property in the name of Ministry of Public Works and City Development under P.O. No. 16 of 1972 and the said record is still remains in force. Plaintiff initially filed L.S.T. Case No. 1244 of 2013 before the Land Survey Tribunal, Pabna for correction of the said R.S. record. The said Tribunal was constituted for correction of the last final record under section 145(A) of the S.A. & T, Act. But the plaintiff upon concealing the fact that the schedule property was recorded as abandoned property and that L.S.T. Case No. 1244 of 2013 was filed for correction of the R.S. khatian, which is still pending. The instant suit, out of the said land is barred under section 144 (b) of

the S.A.&T, Act as well as under section 7 of the Arpito Sompotty Protarpon Ain, 2001.

Pursuant to Rule 11 (d) of Order 7 of the Code of Civil Procedure, the plaint is liable to be rejected. But the courts below totally failed to consider this aspect of this case as well as legal provision as laid down under law and as such the impugned judgment is liable to be set aside.

Heard the learned advocate and perused the document annexed to the application and the relevant provision of law.

This is a suit for partition. Wherein the application was filed by the defendant saying that by suppressing the fact that property was enlisted as abandoned property and finally been recorded in the R.S. khatian in the name of the government and for correction of the said recording L.S.T. Case No. 1244 of 2013 was filed before the Land Survey Tribunal constituted under section 145(A) of the S.A. & T, Act and under section 16 of the Arpita Sampatty Protarpon Ain, 2001 accordingly as per section 144(b) of the S.A.& T, Act and under section 7 of the said Ain civil court shall not entertain any suit or application thereof. In the said matter,

which is absolutely a domain of the Land Survey Tribunal constituted under section 16 of the Arpito Sampatty Protarpon Ain, 2001. Suit is apparently barred under law and as per provision as laid down under Order 7 Rule 11(d) of the Code of Civil Procedure, plaint is liable to be rejected. But the courts below appear to have failed to assess the real question in the matter and pass the impugned judgment and order without applying their judicial mind. When the suit appears to be filed on suppression of the fact, court could have examine the same and come to a definite findings on this point. When the institution of the suit on correction of the R.S. khatian was filed before the Land Survey Tribunal properly been constituted, then instant suit appears to be barred under section 7 of the Arpito Sampatty Protarpon Ain, 2001 and plaint appears to have rejected in limini, failing which court below committed error of law resulting an error in the decision occasioning failure of justice.

I thus find substances in the application.

In the result, the leave is allowed and the plaint is rejected.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.