

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 376 of 2023

with

Civil Revision No. 290 of 2023

IN THE MATTER OF:

Applications under section 115(4) of the Code of
Civil Procedure

-And-

In the Matter of:

Fatema Begum and others

... Defendant-Petitioners

-Versus-

Government of Bangladesh and others

...Plaintiff-Opposite parties

(in both Civil Revisions)

Mr. Md. Fakhar Uddin, Advocate

.... For the petitioners

Mr. Md. Shahiduzzaman, DAG

.... For the Government

Mr. A. Z. M. Mohiuddin, Advocate

... For the opposite party no. 2
(in both Civil Revisions)

Judgment on: 17.05.2026

Md. Riaz Uddin Khan, J:

Since both the Civil Revisions arose from the same order involving the same facts and points of law which are intertwined with each other, both the Civil Revisions are disposed of by this single judgment.

At the instance of the defendants Rule in Civil Revision No.376 of 2023 was issued calling upon the opposite party 1 to show cause as to why the judgment and order dated 29.11.2022 passed by the Additional District Judge, 5th Court, Dhaka in Civil Revision No.01 of 2021 dismissing the same and thereby affirming

the order dated 26.11.2020 passed by the Senior Assistant Judge, 2nd Court, Dhaka in Title Suit No.67 of 2018 rejecting the application of the defendants under Order-VII, Rule-11(d) of the Code of Civil Procedure for rejection of the plaint should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and proper.

Rule in Civil Revision No.290 of 2023 was issued calling upon the opposite parties to show cause as to why the judgment and order dated 29.11.2022 passed by the Additional District Judge, 5th Court, Dhaka in Civil Revision No.01 of 2021 dismissing the same and thereby affirming the order dated 26.11.2020 passed by the Senior Assistant Judge, 2nd Court, Dhaka in Title Suit No.67 of 2018 allowing the application for thumb impression expert report filed by the plaintiff opposite party 1 should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rules a single bench of this Court stayed all further proceedings of Title Suit No.67 of 2018 initially for a period of 06 (six) months which was extended time to time.

Facts in brief for disposal of these Rules are that the opposite party 1 Government on 19.02.2018 as plaintiff instituted Title Suit No.67 of 2018 for declaration against the defendant-petitioners 1-6 and the opposite parties 2 and 3 as the defendants 7 and 8 with a prayer to the effect that the deed No.6789 dated 03.05.1980 as mentioned in “ka” schedule of the plaint is illegal, fraudulent, concocted, inoperative and not

binding upon the plaintiff. The plaintiff stated in the plaint *inter alia* that an area of 17 decimal of land of S.A plot No.491 of S.A khatian No.409 belonged to Fakir Chandra Paul and Chandi Das Paul to the extent of eight anna share each. During the Indo-Pak war in 1965 Chandi Das Paul left this country for India forever, as such his property i.e 08½ decimal of land was enlisted as Enemy Property in E.P Case No.72/1969 on 16.06.1969. Fakir Chandra Paul transferred 247½ ajutangsha of land on 23.10.1976 through a registered Deed of Sale being Deed No.25055 in favour of AKM Harun-Ur-Rashid and on 27.10.1976 transferred 0165 ajutangsha of land in favour of the proforma defendant No.7 through a registered Deed of Sale bearing Deed No.25515.

The plaintiff further stated in the plaint that aforesaid AKM Harun-Ur-Rashid transferred 247½ ajutangshah of land on 05.02.1980 through a registered Deed of Sale being No.2029 in favour of the proforma defendant No.7, as such the proforma defendant No.7 became the owner of 0412½ ajutangsha of land. Fakir Chand Paul transferred 0412½ ajutangsha of land on 23.10.1976 and 27.10.1976 in favour of Golam Sarwar and his wife Nilufar Sarwar through two registered deeds of Sale bearing Nos.19877 and 25552. The proforma defendant No.7 being the lessee of 8½ decimal of land has been possessing since 1981.

The plaintiff further stated that AKM Harun-Ur-Rashid (the predecessor of the defendants 1 to 6) by showing fake Fair Chand Paul as vendor created sale Deed No.6789 dated 03.05.1980 in his favour in respect of 8½ decimals of land which is forged, fraudulent and concocted. AKM Harun-Ur-Rashid being the plaintiff

instituted a suit for declaration of title in respect of 8½ decimal of land on the basis of Sale Deed No.6789 dated 03.05.1980 in the 2nd court of Joint District Judge being T.S. No.348/97 and in that suit the present plaintiff and pro-defendant No.7 being the defendants contested the suit by filing written statement which was abated due to operation of **অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১**. Thereafter, AKM Harun-ur-Rashid filed V.P Case No.1785 of 2012 before the V.P Tribunal for release of the suit property and in that case the plaintiff of this suit being the defendant contested the case by filing written statement which is pending. In that V.P Case No.1785 of 2012, the present plaintiff filed a petition for the opinion of T.I Expert on Sale Deed No.6789 dated 03.05.1980 to compare with that of sale deed no.25055 dated 23.10.1976 which was rejected on 11.06.2016 and as against that order the present plaintiff preferred V.P.P Appeal No.4 of 2017 before the District Judge, which was also rejected on 11.09.2017. The plaintiff further stated in the plaint that the cause of action of this suit arose on when the plaintiff filed written statement in T.S No.348 of 1997, on 11.06.2016 and thereafter on 11.09.2017 when the petition for T.I. Expert were rejected in V.P.P. Tribunal Case No.1785 of 2012 and V.P.P Tribunal Appeal No.4 of 2017 respectively.

On 20.11.2019 the defendants 1 to 6 filed an application under Order-VII, Rule-11(d) of the Code of Civil Procedure for rejection of plaint on the ground of limitation stating *inter alia* that the plaintiff in Para 10 and 20 of the plaint clearly stated regarding filing written statement in T.S. No. 348 of 1997 of the

2nd Court of Joint District Judge, Dhaka as well as the present disputed Deed No. 6789 dated 03.05.1980. In that Title Suit No. 348 of 1997 A.K.M. Harn-ur-Rashid (the predecessor of the defendant No. 1 to 6) was the plaintiff and the Government of Bangladesh (The present plaintiff) was the defendant No.1 who filed written statement in that suit on 22.04.2001 and in that written statement it was claimed that the deed no.6789 dated 03.05.1980 is forged, void, collusive etc. In that suit PW-1 (A.K.M Harun-Ur-Rashid) deposed from 18.01.2003 to 28.04.2005 and Government cross examined him and the disputed deed was exhibited by the DW-2. In that suit the Government on 26.06.2011 filed a petition under sections 47 and 73 of the Evidence Act with the prayer for sending the suit deed for T.I expert opinion and that petition was rejected on contest on 01.04.2012 and no Appeal/Revision was preferred against that order. In Para 11 of the plaint of the present Suit the plaintiff stated regarding V.P.P. Case No. 1785 of 2012 of the Court of Additional Joint District Judge, Dhaka in which Government filed written statement on 27.03.2013 stating about the disputed deed. The present suit was filed on 19.02.2018 challenging the validity of sale deed no.6789 dated 03.05.1980. Article 91 and 92 of the Limitation Act provides that the limitation to cancel or set aside instrument is three (3) years either from the date of registration of the deed or from the date of knowledge when the plaintiff for the first time came to know regarding the deed. Thus the present suit is hopelessly barred by limitation.

The opposite party 1 as plaintiff filed written objection against the application under Order-VII,

Rule-11(d) of the Code of Civil Procedure stating that the suit is not barred by limitation or principle of *res judicata*.

In the mean time, the plaintiff-opposite party 1 filed an application for thumb impression expert report against which the defendant filed written objection.

The aforesaid two applications were heard on 26.11.2020 by the Senior Assistant Judge, 2nd Court, Dhaka and after hearing both the parties rejected the application filed by the defendants for rejection of plaint and allowed the application for thumb impression expert report filed by the plaintiff by a single order dated 26.11.2020.

Against the order dated 26.11.2020 passed by the Senior Assistant Judge the defendant-petitioners preferred Civil Revision No.01 of 2021 before the Court of District Judge, Dhaka which was ultimately heard on 29.11.2022 by the Additional District Judge, 5th Court, Dhaka and after hearing rejected the same by the impugned judgment and order dated 29.11.2022.

Being aggrieved by and dissatisfied with the said judgment and order dated 29.11.2022 passed by the Additional District Judge, 5th Court, Dhaka the defendant-petitioners filed the instant two Civil Revisions before this Court and obtained the Rules and orders of stay as stated at the very outset.

Mr. Md. Fakhar Uddin, the learned Advocate appearing for the petitioners submits that the suit is barred by limitation as from the statements of the plaint admittedly plaintiff has clear knowledge in respect of impugned Deed No.6789 dated 03.05.1980 in the year 2001 but the plaintiff filed the instant suit

in the year 2018. The suit deed no. 6789 was registered on 03.05.1980, the plaintiff (Government) filed written statement in T.S. No. 348 of 1997 on 22.04.2001, deposition of pW-1 of suit was taken from 18.01.2003 to 28.04.2005, on 07.03.2007 suit deed was marked as exhibit-6, on 01.04.2012 prayer for T.I. expert was rejected in that suit. Thus it is crystal clear that as per averment of the plaint of the suit, the plaintiff had full knowledge regarding the suit deed. So the suit is hopelessly barred by limitation and the plaint of the suit is liable to be rejected under Order-7, Rule-11 of the Code of Civil Procedure as per Articles 91, 92 and 120 of the Limitation Act, 1908.

The learned advocate then submits that since there is specific provisions under Article 91, 92 and 120 of the Limitation Act, 1908 for cancellation of instrument or declaring any instrument illegal, void etcetera and as such Article 149 of the Limitation Act, 1908 is not applicable in respect of the instant case as because Article 149 of the Limitation Act, 1908 is applicable only for recovery of khas possession by the Government.

The learned advocate next submits that both the courts below erred in law by mentioning that disputed matter have to be determined by taking evidence inasmuch as the plaintiff clearly admitted the date of knowledge of the deed in question being impugned Deed No.6789 dated 03.05.1980, in the year 2001 and admitted facts need not to be proved as per Section 58 of the Evidence Act, 1872 and in this regard the judgment referred by the courts below are not relevant and applicable in this case.

The learned advocate strenuously submits that the suit is barred by *res judicata* as provided under Section 11 of the Code of Civil Procedure, because the suit property was enlisted as অর্পিত সম্পত্তি in the Bangladesh Gazzate and the predecessor of the petitioners namely AKM Harun-Ur-Rashid filed অর্পিত সম্পত্তি প্রত্যর্পন Case No. 1785 of 2012 before the অর্পিত সম্পত্তি প্রত্যর্পন Tribunal for releasing the said property from the list of অর্পিত সম্পত্তি. That aforesaid Case No. 1785 of 2012 was decreed by the Joint District Judge, Additional Court and অর্পিত সম্পত্তি প্রত্যর্পন Tribunal, Dhaka vide judgment and decree dated 31.03.2022. The opposite party as Government preferred অর্পিত Appeal No. 122 of 2022 against the aforesaid judgment and decree dated 31.03.2022 passed in অর্পিত সম্পত্তি প্রত্যর্পন Case No. 1785 of 2012. That aforesaid Arpita Appeal No. 122 of 2022 was finally heard on 22.10.2024 by the learned Additional District Judge, 2nd Court, Dhaka and after hearing disallowed the appeal vide judgment and decree dated 22.10.2024. The Government did not take any step against the aforesaid judgment and decree dated 22.10.2024 and consequently the suit property are declared as the personal property of the petitioners and excluded from the list of Schedule Ka of অর্পিত সম্পত্তি List and since the issue was settled in respect of title and impugned deed in the aforesaid অর্পিত সম্পত্তি প্রত্যর্পন Case No. 1785 of 2012, the instant Title Suit No.67 of 2018 is barred by Section 11 of the Code of Civil Procedure.

The learned advocate further submits that the deed in question being Sale Deed No. 6789 dated 03.05.1980 which is challenged in the instant Title Suit No.67 of 2018 was the issue of the aforesaid অর্পিত

সম্পত্তি প্রত্যর্পন Case No. 1785 of 2012 and said issue as title of the suit property was declared in favour of the petitioners by the অর্পিত সম্পত্তি প্রত্যর্পন Tribunal as well as অর্পিত সম্পত্তি Appellate Tribunal and declared that Sale Deed No. 6789 dated 03.05.1980 is a valid deed. Consequently, the issue in respect of subject matter of the instant Title Suit No.67 of 2018, already decided between the same parties in the অর্পিত সম্পত্তি প্রত্যর্পন Case No. 1785 of 2012 and thus the suit is barred by principle of *Res Judicata* as per Section 11 of the Code of Civil Procedure, 1908.

The learned advocate also submits that the instant Title Suit No.67 of 2018 is already abated as per Section 13 of the অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১ as because the suit property was enlisted in the Bangladesh Gazzete in the year 2012 as অর্পিত সম্পত্তি and said property was excluded from the list of অর্পিত সম্পত্তি by the অর্পিত সম্পত্তি প্রত্যর্পন Tribunal in favour of these petitioners consequently instant Title Suit No.67 of 2018 already abated. In Writ Petition Nos. 10164 and 17187 of 2012 a Larger Bench of this Court by an unreported Judgment dated 08.06.2023 declared that Section 13 of the অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১ is not contrary with the Constitution and further observed that for avoiding multiple suits between the parties, Section 13 of the Act, 2001 rightly promulgated by the Parliament.

Mr. Fakhar Uddin lastly submits that court below erred in law in allowing the application for thumb impression of the plaintiff-opposite party inasmuch as the plaintiff admitted in the plaint that, from the selfsame matter earlier the plaintiff filed application in Title Suit No.348 of 1997 before the Joint District

Judge, 2nd Court, Dhaka which was rejected on contest and the plaintiff also filed similar application before the অর্পিত সম্পত্তি Case No.1785 of 2012 which was also rejected on contest and the plaintiff also preferred selfsame application in Arpita Appeal Tribunal Case No.04 of 2017 which was also rejected and the plaintiff did not take any steps before the higher forum and thus prayer for thumb impressions is clearly barred by *res judicata* as provided in Section 11 of the Code of Civil Procedure.

In support of his contentions the learned advocate for the petitioners cited the following decisions: Shahidullah and others Vs Lutfar Karim and others, 50 DLR 328; Nirmal Chandra Dutta Vs Ansar Ahamed and others, 10 MLR 344; Fazlur Rahman Vs Bangladesh, 1 BLT 18; Kala Mia Vs Fiaz Ahamed, 2 MLR (AD) 218; Kulsum Bibi Vs Deputy Commissioner Magura, 12 BLC (AD) 92.

On the other hand Mr. Md. Shahiduzzaman, the learned Deputy Attorney General (DAG) appearing for the Government submits that the predecessor of the present petitioners AKM Harun-Ur-Rashid, with a view to grab the Schedule-Ka Property, created the forged Sale Deed No. 6789 dated 03.05 1980 by false personation of the said Fakir Chandra Paul in his favour with the recitations that the "Vendor's younger brother Chandi Das Paul died unmarried leaving behind him as his sole heir". Then as plaintiff he filed T.S. No. 348 of 1997 in the Court of Second Sub-Judge, Dhaka praying for declaration of title of the Schedule-Ka Property on the basis of the forged Sale Deed No.6789 dated 03.05.1980. In the said suit, the opposite party No. 1 government

filed an application for comparing the thumb impression in the Sale Deed No. 6789 dated 03.05.1980 of Fakir Chandra Paul with the thumb impressions of Fakir Chandra Paul in the admitted Sale Deed No. 25055 dated 22.10. 1976 and Sale Deed No. 25615 dated 27.10.1976 by a thumb impression expert, which was kept with the record for consideration at the time of final hearing. But the said suit was formally abated on 12.02.2013 due to promulgation of অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১। Thereafter, Harun-Ur-Rashid as petitioner filed অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইব্যুনাল Case No. 1785 of 2012 for release of the Schedule-Ka Property from the list of vested property. In the said case, the opposite party No.1 government filed an application for comparing the thumb impressions as contained in the two sets of sale deeds (as stated above) by a thumb impression expert, but the same was rejected on 11.06.2016 with the reasoning that no such power has been vested in the অর্পিত সম্পত্তি প্রত্যর্পন Tribunal by the অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১। Challenging the order dated 11.06.2016, the opposite party No.1 preferred অর্পিত সম্পত্তি প্রত্যর্পন Appeal No. 4 of 2017 but the same was also disallowed stating that according to the provisions of অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১, no appeal lie against an interim order passed by a অর্পিত সম্পত্তি প্রত্যর্পন Tribunal. Finding no alternative the opposite party No. 1 as the plaintiff filed the present TS. No. 67 of 2018 in the 2nd Court of Senior Assistant Judge, Dhaka for a declaration that the "Schedule-Kha" sale deed relating to "Schedule-Ka" property is forged, concocted, inoperative and not binding upon the plaintiff. Then the plaintiff-opposite party filed an application for comparing the thumb impressions as contained in the two sets of sale deeds

as stated above by a Thumb Impression Expert. Upon hearing, the said application was rightly allowed by the trial court.

The learned DAG then submits that the submission of the petitioners that the present suit is barred by limitation under Article 91, 92 and 120 of the Limitation Act, 1908 has no basis as according to Article 149 of the Limitation Act, the prescribed period for filing a suit by the Government is 60 years. Hence, the present suit filed by the government cannot be rejected under Order-VII, Rule-11(d) of the Code of Civil Procedure on the ground of limitation as the suit is filed well within the limitation period as prescribed under Article 149 of the Limitation Act.

The learned DAG next submits that the suit or the application for thumb impression expert report is also not barred by the principle of *res judicata* as the application filed by the opposite party No. 1 in অর্পিত সম্পত্তি প্রত্যর্পন Tribunal Case No. 1785 of 2012 for obtaining expert opinion was rejected with the reasoning that no such power has been vested with the অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইব্যুনাল by the অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১। Against which অর্পিত সম্পত্তি প্রত্যর্পন Appeal No. 122 of 2022 was preferred which was dismissed on the ground that no appeal lies against any interim order of the Tribunal with further observation that "কোন দলিলমূলে নালিশী সম্পত্তির স্বত্ব বাদী বা বিবাদীর কিনা তা নির্ধারণের বিষয় অর্পিত সম্পত্তি প্রত্যাপন ট্রাইব্যুনালের নয়।." Therefore, it is crystal clear that neither the অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইব্যুনাল nor the অর্পিত আপিলেট ট্রাইব্যুনাল ascertained the validity of the Sale Deed No. 6789 dated 03.05.1980 i.e. the application for expert opinion was never disposed of on merit. According to the provisions of Section 9 of the Civil Procedure

Code, absolute power has been vested in Civil Courts with regard to determination of civil dispute.

Mr. AZM Mohiuddin, the learned Advocate appearing for the opposite party No.2 adopted the submissions of the learned Deputy Attorney General and further submits that while executing the Sale Deed No. 25015 dated 22.10.1976 and Sale Deed No. 25515 dated 27.10.1976 (as stated above) Fakir Chandra Paul admittedly put his thumb impressions only. If the thumb impressions in the name of fake Fakir Chandra Paul appeared in the disputed Sale Deed No.6789 dated 03.05.1980 (Schedule-Kha Sale Deed to the plaint) is compared with the admitted thumb impressions of Fakir Chandra Paul appeared in the Sale Deed Nos. 25055 dated 22.10 1976 and 25515 dated 27.10.1976 by a thumb impression expert, it would be proved that the thumb impressions appeared in the Sale Deed No.6789 (Schedule-Kha Sale Deed) in the name of Fakir Chandra Paul is the product of a fake person i.e. the deed is forged.

The learned Advocate further submits that the observations made by the অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইব্যুনাল, Dhaka as well the অর্পিত Appellate Tribunal Dhaka is absolutely against the provisions of the Section 24(2) of the অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১, as such, both the judgments suffer from nullity and not sustainable in law and cannot be treated as finally determined the disputed issue between the parties. Therefore, the Rule is liable to be discharged.

I have heard the submissions advanced at the bar, perused the civil revisional application, supplementary affidavit along with the annexures and

the counter affidavit filed on behalf of the opposite party No. 2 along with the annexures. I have also perused the lower court records including plaint, application filed under Order-VII, Rule-11 for rejection of the plaint and written objection. I have also examined both the judgment and orders passed by the Court below.

The first and main contention of the defendant-petitioners is that the suit filed by the Government is barred by limitation as admittedly the Government came to know about the disputed deed in the year 2001 and filed the instant suit in the year 2018 but as per article 91, 92 and 120 of the first schedule of the Limitation Act, 1908 this suit is barred by limitation. On the other hand the contention of the learned Deputy Attorney General is that the instant suit in no way barred by limitation because as per article 149 of the first schedule of the Limitation Act the Government can file any suit within 60 years and since this suit has been filed within that limitation period, this suit is not barred by limitation.

On perusal of Article 91, 92, 120 and 149 of the First Schedule of the Limitation Act, 1908 it appears that as per Article 91 to cancel or set aside an instrument not otherwise provided for, the limitation period is three years from when the facts entitling the plaintiff to have the instrument cancelled or set aside becomes known to him. As per Article 92 to declare the forgery of an instrument issued or registered, the limitation period is also three years from when the issue or registration becomes known to the plaintiff. As per Article 120 Suit for which no period of

limitation is provided elsewhere in this schedule, the limitation period is six years from when the right to sue accrues. As per Article 149 any suit by or on behalf of the Government except a suit before the Appellate Division in the exercise of its original jurisdiction the limitation period is sixty (60) years from when the period of limitation would begin to run under this Act against a like suit by a private person.

From the plain reading of the above articles of the First Schedule of the Limitation Act, 1908 it is palpably clear that the limitation for filing any suit by the government is sixty (60) years from when the period of limitation would begin to run under this Act against a like suit by a private person. So, in this case the limitation period for the private person and the Government is altogether different. This Article 149 is applicable in the suit for recovery of possession or adverse possession only has no basis rather it is applicable in any suit by or on behalf of the Government except special limitation is provided by special law. In that view, if the contention of the learned advocate for the petitioners taken as true that the government knew about the disputed deed in the year 2001 and filed the instant suit in 2018 even then it cannot be held that the suit is barred by limitation, because of clear and unambiguous language expressed in Article 149 of the First Schedule of the Limitation Act, 1908. The decisions cited by the learned advocate for the petitioners in this regard have no manner of application.

The second and final contention of the learned advocate for the petitioners in both the Rules is that

the instant suit is barred by *res judicata* as per section 11 of the Code of Civil Procedure. According to the learned advocate for the petitioners that at least regarding the question of sending the disputed deed for expert opinion is barred by the principle of *res judicata*. On the other hand the contention of the learned Deputy Attorney General is that the suit is not barred by *res judicata* as the matter in issue was not directly and substantially in the issue of the present suit which was in the former suit between the same party and that issue has not been heard and finally decided by the former Court.

This doctrine of *res judicata* or the rule of conclusiveness of judgments comes from the Latin maxim "*Interest reipublicae ut sit finis litium*" which means "It is the interest of the State that there be an end to litigation". There are some essential ingredients to decide the case whether it is barred by *res judicata* or not. The findings in a suit would operate as *res judicata* if all the following conditions are satisfied: (i) that the former judgment must be between the same parties. (ii) The former judgment must be that of a Court of competent jurisdiction but it is not necessary that the Court which is competent to decide the former suit and decides that suit has jurisdiction to hear the later suit. A decision by a Special Tribunal is *res judicata* on a matter within an exclusive jurisdiction of a tribunal but it does not in any way bind civil Courts on matters which are not within the special jurisdiction of the tribunal. (iii) The decree on which it is founded is a valid decree and not one which is void because it is only the decree which confers a

right of appeal on an aggrieved person and not the judgment. (iv) The former judgment must be directly speaking upon the matter in question in the subsequent suit. (v) There must be an identity of issues to be tried and the issue must have been decided on the merits in the previous proceedings. There can be no *res judicata* regarding a cause of action that has arisen subsequent to the previous suit.

The general principle of *res judicata* is based on the need of giving finality of judicial decisions. The underline principle is that once a *res is judicata* it shall not be adjust again. It is well settled that the doctrine of *res judicata* or the rule of conclusiveness of judgments is much wider than section 11 of the Code of Civil Procedure. In a case reported in 1966 PLD 31 it has been observed, “the underline principle is that once a *res judicata* it shall not be adjust again. It is quite correct that the principle of *res judicata* is embodied in relation to suits under section 11 of the Code of Civil Procedure but there is good authority to hold that even where section 11 does not apply the principle of *res judicata* has been applied by Courts for the purpose of achieving finality in litigation. The fundamental principle in such cases is that the court in any future litigation proceeds on the basis that the previous decision was correct.” However, generally principles of *res judicata* cannot be used in such a way as to practically render provisions of section 11 nugatory by superimposing them on the provisions of the section.

Plea for *res judicata* must be clearly established and the judgment which is pleaded in bar

strictly construed. While considering the plea the Court should be influenced by no technical consideration of form but by matter of substance within the limits allowed by law. The *res judicata* should be decided on the basis of the statements in the plaint and not on the reference of some facts in the written statement or on some documents produced by the defendants. To raise the plea of *res judicata* as a bar of law under provision of Order-VII, Rule-11, the defendant must raise the bar of *res judicata* on the averment of the plaint itself and not with reference to further facts in the written statement or some other documents produced.

The doctrine has to be interpreted strictly and door of justice are not to be slammed because intention of law is not what is termed as a technical knockout leaving aggrieved person with a bitter mouth but preventing a party who has had a fair fight on merits to drag his opponent back to Court a second time over the same dispute. Rules of procedure are handmaids of justice. Procedural law is not meant to frustrate but to advance cause of justice and should not be interpreted to make it a sort of trap. *Finis litium* is intended to be a protective fortress and not an indiscriminate hatchet. Fundamental principle of *res judicata* is that a question must be finally decided once and for all by a competent Court. After it is decided, further litigation about it should be concluded for ever between the parties. The doctrine of *res judicata* is not applicable in subsequent proceedings where it does not satisfy the fundamental essentials of the general principles of *res judicata* or

the earlier suit/fact in issue has not been disposed of on merit. The matter so determined to be directly and substantially in issue must have been heard and finally decided. The fact that one of the issues is common, or that some questions of fact are common or relevant, would not warrant the application of section 11 of the Code of Civil Procedure. A finding is not *res judicata* if the decree is not based on it but is made to inspite of it (5 DLR 285). These are the principles decided by the superior Courts of this sub-continent including our Supreme Court.

Now, in the light of the above principles whether the instant suit is barred by *res judicata*. Admittedly in the Title Suit no.348 of 1997 filed by the predecessor of the present petitioners the Government raised the question of forgery regarding the disputed deed no.6789 but that suit was abated due to operation of অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১, without deciding the issue. Thereafter, the predecessor of the present petitioners filed অর্পিত সম্পত্তি প্রত্যর্পন case no.1785 of 2012 and in that case the government filed an application for expert opinion of thumb impression of the same disputed deed no.6789 on the allegation of forgery which was rejected on the ground that the tribunal has no jurisdiction to decide the matter. The government filed appeal against that order but was dismissed on the ground that there was no scope to file any appeal against any interlocutory order passed by the tribunal under the অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১। Now the government filed the instant title suit no.67 of 2018 and filed similar application for expert opinion of thumb impression of the same disputed deed no.6789 on the

allegation of forgery which is allowed and is under challenged before this Court on the ground of *res judicata*. From the above facts it is clear that it was the fact in issue in earlier suit and case but it was not heard and decided on merit. In that view of the matter, since the fact in issue regarding the disputed deed has not been resolved by the court or tribunal on merit, it cannot be said that the present suit and/or the application for expert opinion on thumb impression of the disputed deed is barred by *res judicata*. It cannot in any way come under the constructive *res judicata*.

Considering all the facts and circumstances of the case as discussed above and the point of law I find no merits in the instant two Rules which are destined to fail and as such I am constrained to discharge both the Rules.

In the result both the Rules are **discharged**. However, without any order as to cost.

The order of stay passed earlier by this Court stands vacated. The trial court is directed to proceed with the suit expeditiously keeping in mind that the suit is of the year of 2018.

Send down the Lower Court Records and communicate this judgment and order at once.