

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 2567 of 2023

Md. Ershad Ali and others

.....petitioners

-Versus-

Md. Abdul Mazid Pramanik and others

.....opposite parties

Mr. Ahmed Nowshed Jamil with

Ms. Sayeda Shoukat Ara and

Mr. Borhan Uddin, Advocates

.....for the petitioners

Mr. G.M. Mozahidur Rahman, Advocate

.....for the opposite party

Heard on: 02.12.2025 and 10.02.2026

Judgment on: 18.02.2026

In the instant revision Rule was issued on 12.06.2023 calling upon the opposite parties 1-4 to show cause as to why the impugned judgment and decree dated 06.03.2023 passed by the Additional District Judge, 1st Court, Naogaon in Title Appeal No. 51 of 2013 disallowing the appeal thereby affirming the judgment and order dated 10.04.2013 passed by the Assistant Judge, Raninagar, Naogaon in Other Suit No. 75 of 2012 should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The predecessor of the petitioners as plaintiff instituted Other Suit Number 75 of 2012 on 25.04.2012 praying for partition of the suit land.

The case of the plaintiff in short is that C.S. tenant Pandit Pramanik has two sons namely Jaban Pramanik and Sobahan Pramanik. Sobhan was married to Durgati Bewa. Durgati had two daughters from her previous marriage named Nurjahan and parash Bibi. After death of Durgati the said daughters inherited her share. Parash Bibi later died leaving behind her son Meher Ali. Nurjahan and Meher while being owners in possession of the suit holding transferred 1.77 acres of land to Sobahan by registered kabala deed Number 3700 dated 12.03.1966 and delivered possession thereof. Plaintiff further stated that upon the death of Pandit Pramanik he was survived by two daughters named Param Bibi and Fori Bibi. The successive heirs of Pandit Pramanik through his son Jaban Pramanik and the successive heirs of Param Bibi and Fori Bibi transferred 1.91 acres of land to Sobahan by registered kabala number 1539 dated 05.02.1960 and delivered possession thereof. Thus according to the plaintiff she became owner and possessor of her share in the suit land both as a daughter heir of Sobahan and also as an heir to the portion purchased by her

father through the aforesaid two deeds. It was contended that the R.S. record was wrongly prepared in the names of the defendants. When plaintiff demanded partition of her lawful share defendants refused the same on 15.03.2012 compelling the plaintiff to institute the suit.

Upon receipt of summons the defendants entered appearance and filed an application on 12.02.2013 under Section 11 and Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint. In the said application it was contended that Sobahan the father of the plaintiff earlier filed Other Suit 521 of 1984 for partition in the Munsif Court of Raninagar claiming himself to be the son of Pandit Pramanik but failed to prove the same and the suit was dismissed accordingly. It was contended that since the subject matter of the present suit had already been decided in the earlier suit the present plaint is barred and liable to be rejected.

The trial Court upon hearing the parties found that the plaintiff failed to produce and prove the original kabala deeds relied upon by her and further relying upon the decision passed in Other Suit 521 of 1984 held that Sobahan failed to prove that he was the son of Pandit Pramanik. On such consideration the trial Court by judgment dated 10.04.2013

allowed the application for rejection of the plaint and rejected the plaint.

Being aggrieved the plaintiff preferred Title Appeal Number 51 of 2013 before the Court of District Judge, Naogaon which was subsequently transferred to the Court of Additional District Judge, First Court, Naogaon. The Additional District Judge by judgment and decree dated 06.03.2023 observed that in Other Suit Number 521 of 1984 Sobahan failed to establish that he was the lawful son of Pandit Pramanik and the appeal being Title Appeal Number 95 of 1986 arising therefrom was also dismissed. On such finding the appellate Court held that the present suit being based on the same property between the same parties was barred by the principle of res-judicata and dismissed the appeal.

Being dissatisfied with the concurrent findings of the Courts below the plaintiff has preferred the present revisional application and obtained the present Rule on 12.06.2023.

Learned Advocate Mr. Ahmed Nowshed Jamil takes this Court through the record and submits that the plea of res-judicata is not a pure question of law which can be decided at the threshold without framing an issue and without taking evidence. He contends that such a plea can only be determined

after proper adjudication upon evidence led by the parties. Referring to Annexure-C series he submits that in Title Appeal Number 34 of 2014 filed by the brother of the present plaintiff the identical question as to whether Sobahan was the son of Pandit Pramanik arose for consideration wherein the appellate Court held that in absence of a framed issue and without investigation through evidence such a disputed fact could not be decided in an application under Order 7 Rule 11 of the Code of Civil Procedure. He further submits that from a plain reading of the plaint of the instant suit it is not at all discernible as to how the suit is barred by res-judicata inasmuch as there is no reference whatsoever to any earlier suit nor any disclosure of adjudication of the same cause of action between the same parties. He also contends that mere filing of an application by the defendants for rejection of the plaint with reference to an alleged earlier suit does not *ipso facto* attract the bar of res judicata unless the judgment and decree of the earlier suit are examined by framing a specific issue and by affording opportunity to adduce evidence. He emphatically submits that the judgments passed by both the Courts below are based on surmise and conjecture and do not reflect any cogent lawful or judicial consideration in arriving

at the impugned decisions. He lastly submits that the Courts below misdirected themselves in law and thereby committed error of law resulting in an error in such decree occasioning failure of justice and the findings recorded by the Courts below being perverse and misconceived and legally untenable are liable to be set aside outright.

On the other hand Mr. G.M. Mozahidur Rahman, learned Advocate for the opposite parties with reference to the relevant provisions of law strongly submits that both the Courts below upon proper judicial scrutiny and analysis of the plaint of the present suit lawfully rejected the same. He contends that since the impugned judgments were passed strictly in consonance with Section 11 and Order 7 Rule 11 of the Code of Civil Procedure there exists no lawful ground for interference at the revisional stage. He further submits that the Courts below committed no error of law resulting in an error in such decree occasioning failure of justice inasmuch as the father of the plaintiff named Sobahan earlier instituted Title Suit Number 521 of 1984 for partition claiming himself to be the son of Pandit Pramanik but failed to establish such claim and the said suit was dismissed on that ground. He argues that in the present suit the daughter of the said Sobhan has again

raised the selfsame claim which stands directly barred under Section 11 of the Code of Civil Procedure. He also submits that the son of Sobahan namely Solaiman also filed Title Suit Number 37 of 2013 on the same claim and Title appeal Number 34 of 2014 preferred by Solaiman arising out of the said suit was allowed and although the said Title Suit Number 37 of 2013 is still pending for disposal on merit but by instituting one suit after another on the same cause and on the same claim the opposite parties are being subjected to serious harassment which is not permissible in law and this conduct further justifies the rejection of the plaint. Referring specifically to the judgment and decree passed in Title Suit Number 521 of 1984 he submits that since the subject matter of the earlier suit and that of the present suit are identical and the parties are substantially the same and since the matter has already been directly and substantially adjudicated upon the present suit is not maintainable under any circumstance. He further submits that the appellate Court upon due compliance with Order 41 Rule 31 of the Code of Civil Procedure examined the facts and law in proper perspective and arrived at a reasoned decision and therefore the concurrent findings of

the Courts below are not open to interference in revision. He lastly prays that the rule be discharged.

Heard the learned Advocates for both the parties and perused the materials on record.

This is a suit for partition filed by the plaintiff on 25.04.2012. From a plain reading of the plaint it appears that the suit land originally belonged to C.S. tenant Pandit Pramanik. Upon his death he was survived by his two sons Jaban and Sobahan, his two daughters Param Bibi and Fori Bibi and his wife Durgati. Durgati had two daughters named Nurjahan and Parash Bibi from her previous husband. After death of Durgati her abandoned holding devolved upon Nurjahan and Parash bibi who became entitled thereto and possessed the same. Parash Bibi thereafter died leaving her only son Meher Ali as her heir. Nurjahan and Meher Ali by registered deed number 3700 dated 12.03.1966 transferred 1.77 acres of land to Sobahan and delivered possession thereof.

It further appears from the plaint that subsequently Pandit Pramanik's son Jaban Pramanik and his daughters Param Bibi and Fori Bibi died leaving behind their respective heirs who continued to possess and enjoy the suit property.

The heirs of Fori Bibi by registered deed number 1539 dated 05.02.1960 transferred 1.91 acres of land to Sobahan and delivered possession thereof. It is imperative to bear in mind that Foribibi is the daughter of Pandit Pramanik.

Thereafter Sobhan while possessing the suit land both by inheritance from his father Pandit Pramanik and by virtue of the aforesaid two deeds died leaving behind the plaintiff and her other brothers and sisters as co-sharers who acquired title in the suit property. Subsequently due to erroneous R.S. record and inconvenience in possession the present suit was instituted. Thus it appears that the plaintiff claims the suit land partly by inheritance and partly by purchase through two registered deeds.

The defendants on 12.02.2013 filed an application for rejection of plaint under Section 11 of the Code of Civil Procedure read with Order 7 Rule 11 thereof. In the said application the defendants contended that Sobahan earlier filed Title Suit Number 521 of 1984 claiming himself to be the son of Pandit Pramanik but failed to prove the same and the judgment was affirmed up to appeal. On that basis the defendants prayed for rejection of the present plaint.

On the other hand from Annexure-C series of the revisional application it appears that the plaintiff's brother Solaiman filed Title Suit Number 37 of 2013 seeking setting aside of the judgment passed in Title Suit Number 521 of 1984. The defendants filed an application for rejection of plaint in that suit on allegations identical to the present case which was initially allowed. Solaiman then preferred Title Appeal Number 34 of 2014 and the appellate Court allowed the appeal on the finding that the determination of whether Sobahan was the son of Pandit Pramanik depends upon framing of an issue and the evidence adduced in support thereof and remanded the suit which is still pending.

There are three issues which require necessary consideration. Firstly whether the deed dated 12.03.1966 includes any portion of the suit holding and whether the said deed has been proved in accordance with the provisions of the Evidence Act. Secondly whether by deed dated 05.02.1960 the heirs of Fori Bibi being successive descendants of Pandit Pramanik as well transferred any portion of the suit land to Sobahan and whether the said deed has been lawfully proved. Thirdly whether Sobahan was the lawful son of C.S. tenant

Pandit Pramanik and acquired property by inheritance as alleged by the defendants.

It is settled principle of law that for rejection of plaint it must appear from a reading of the plaint itself that the suit is barred by law and such determination cannot be made on the basis of statements made in the written statement or in an application for rejection of plaint.

Nowhere in the plaint is there any reference to Title Suit Number 521 of 1984 nor has the plaintiff challenged that judgment therein. Merely because the defendants referred to Title Suit Number 521 of 1984 in their application for rejection of plaint it is not comprehensible how the present suit can be said to be barred under section 11 of the Code of Civil Procedure. The appellate Court did not give any independent finding regarding the deeds dated 12.03.1966 and 05.02.1960 relied upon by the plaintiff. Relying solely upon the certified copies of the judgment of Title Suit Number 521 of 1984 the appellate Court assumed that Sobahan was not the lawful son of pandit Pramanik and on that basis affirmed the judgment of the trial court.

In the judgment passed in Title Appeal Number 34 of 2014 forming part of Annexure-C series the appellate Court

while dealing with identical allegations observed that Order 7 Rule 11 cannot be applied for rejection of plaint where it is difficult to arrive at a clear decision without recording evidence and where there is a clear allegation of false personation requiring framing of issues. From a reading of the plaint in the present case it cannot by any means be said that the suit is barred by res judicata. Even if such an issue or question arises the same must be determined by framing proper issues and upon taking evidence. There is also no scope for applying the inherent powers of the Court in the present case under Section 151 of the Code of Civil Procedure as the ultimate outcome cannot be determined and settled without evidence.

There is nothing on record to show that the issues are relating to the documents and inheritance which are directly and substantially in issue either actually or constructively being heard and finally decided in Title Suit Number 521 of 1984. It is well settled that it is the matter in issue and not the subject matter of the suit which constitutes the foundation of res-judicata. Another principle of law is that except in special circumstances evidence of one suit cannot be used in another suit.

In the present case without framing issues and recording evidence it is not possible to lawfully resolve the disputes between the parties. The validity of the two deeds and the correctness of the judgment relied upon by the defendants in Title Suit Number 521 of 1984 can only be determined through trial.

It is not comprehensible how the Courts below arrived at the conclusion that the plaintiff failed to produce and prove her documents when neither law nor record indicates that she was afforded such opportunity.

In view of the foregoing discussion and upon overall consideration the judgments and decrees passed by both the Courts below are not legally sustainable and are liable to be set aside.

Accordingly the judgments and decrees of both the Courts below are hereby set aside and the instant Rule having merit is made absolute. The Trial Court is directed to proceed with the original Title Suit Number 75 of 2012 in accordance with law.

Communicate this judgment to the concerned Court and send down the lower Courts' record.

Md. Ali Reza, J: