

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

CIVIL REVISION NO. 3103 OF 2023

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

AND

In the matter of:

Md. Umar Mia, son of late Idris Ali of 72/1, Goyalbondo,
DN Road, District- Narayanganj and others.

.... Petitioners

-Versus-

Shahidulla Vuiyan and others.

....Opposite-parties

Ms. Jobaida Pervin, Advocate

... For the petitioners

Mr. Manjur Matin with

Mr. Md. Aminul Hoque Chowdhury, Advocates

...For the opposite-party nos. 2-6

Heard on 13.02.2024 and 18.02.2024.

Judgment on 18.02.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J:

At the instance of the defendant nos. 1-6 in Title Suit No. 175 of 2020, this rule was issued calling upon the opposite-party nos. 1-6 to show cause as to why the order dated 12.06.2023 passed by the learned Joint District Judge, 1st Court, Narayanganj in the said suit rejecting the application filed for rejection of plaint under order VII, rule 11 of the Code of Civil Procedure, 1908 brought by the defendants-petitioners and allowing the application filed by the plaintiff for amendment of plaint under order VI, rule 17 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of Title Suit No. 175 of 2020 pending before the learned Joint District Judge, 1st Court, Narayanganj was stayed for a period of 3(three) months which was lastly extended on 09.10.2023 for another 6(six) months.

The salient facts leading to issuance of the instant rule are:

The present opposite-party nos. 1-6 as plaintiffs filed the aforesaid suit seeking following reliefs:

“(ক) আরজির তফসিল বর্ণিত বিরোধীয় ভূমিতে বাদীপক্ষ বিরুদ্ধে দখলজনিত স্বত্বে

স্বত্বান মর্মে এক ঘোষণা মূলক ডিক্রী প্রদানে;

(খ) আরজির তফসিল বর্ণিত বিরোধীয় ভূমি সম্পর্কে বাদীপক্ষ ১-৬ নং মূল

বিবাদীগণের বিরুদ্ধে দখল স্থিরিতরকরনের (Confirmation of possession)

অপর এক ডিক্রি প্রদানে;

(গ) মোকদ্দমার যাবতীয় ব্যয় বাদীপক্ষের অনুকূলে এবং ১-৬ নং বিবাদীপক্ষের

প্রতিকূলে প্রদানের ডিক্রি দানে;

(ঘ) আইন ও ইকুইটি মতে বাদীপক্ষ আর যে সবল প্রতিকার পাওয়ার হকদার তন্মর্মে

ডিক্রি প্রদানে;

এবং

এইরূপ সহায়তার জন্য অত্রপক্ষ বিজ্ঞ আদালতের নিকট চিরকৃতজ্ঞ থাকিবো।”

To contest the suit, the present petitioners as defendant nos. 1-6 entered appearance and filed a joint written statement denying all the material averments so made in the plaint and prayed for dismissing the suit. Soon enough, on 01.12.2020, they filed an application under order VII, rule 11 of the Code of Civil Procedure for rejection of the plaint chiefly stating that, they got a decree in Arpita Sampatti Protorpan Tribunal Case No. 69 of 2012 and that of Arpita Sampatti Protorpan Tribunal Appeal No. 04 of 2014 and hence, the suit itself is barred under the provision of sections 4 and 7 of the Arpita Sampatti Protorpan Ain, 2001 (as amended up to 2012). Though against that application, no written objection was filed by the plaintiffs rather they on 08.02.2021 filed an application under order VI, rule 17 read with section 151 of the Code of Civil Procedure for bringing some amendments to the plaint on the back of coming to learn about certain facts provided in the written statement filed by the present petitioners. However, both the applications were taken up for hearing by the learned Judge and vide impugned order rejected the application so filed by the defendants under order VII, rule 11 of the Code of Civil Procedure though allowed the application of the plaintiffs for amendment of the plaint.

It is at that stage, the defendants as petitioners came before this court and obtained the instant rule and order of stay.

Ms. Jobaida Pervin, the learned counsel appearing for the petitioners upon taking us to the provision provided in sections 4, 7 and 13 of the Arpita Sampatti Protorpan Ain, 2001 at the very outset submits that, those very provisions clearly put bar to initiate the suit so filed by the plaintiffs as the defendants got the decree in Arpita Sampatti Protorpan Tribunal No. 69 of 2012 dated 11.09.2013 and Arpita Sampatti Protorpan Tribunal Appeal No. 04 of 2014 dated 28.08.2019.

The learned counsel next contends that, section 13 of the Arpita Sampatti Protorpan Ain, 2001 also provides that if any suit is pending after the publication of the gazette notification giving effect of that Ain, the suit itself will become abated even no formal order is required to be passed by any court yet the learned Judge of the trial court without considering that very provision passed the impugned order which cannot be sustained in law.

The learned counsel by referring to section 18 of the said Ain further contends that, if the plaintiffs-opposite-parties feel aggrieved with the judgment and decree passed in those Arpita Sampatti Protorpan Tribunal Case and Appeal, they could have preferred appeal under that very section but without doing so, they have filed a separate suit which is also bar under that very section 18 of the Ain.

The learned counsel by referring to section 4 of the said Ain next contends that, certain section of the Code of Civil Procedure has been made applicable in disposing of a suit filed under the Ain and therefore, the suit so filed challenging the propriety of the judgment and decree passed in the case and appeal cannot sustain.

The learned counsel also contends that, if the plaintiffs-opposite-parties feel aggrieved having found no alternative remedy against the above judgments, they could have invoked writ jurisdiction by challenging those judgment but under no circumstances, can the judgment passed in a especially constituted tribunal be called in question by filing a separate suit and finally prays for making the rule absolute on setting aside the impugned judgment and order.

On the contrary, Mr. Manjur Matin, the learned counsel appearing for the opposite-party nos. 2-6 by refuting the submission advanced by the learned counsel for the petitioners at the very outset contends that, the learned Judge has rightly passed the impugned order which calls for no interference.

To supplement the said submission, the learned counsel then referred to the provision of sections 12 and 6 of the Arpita Sampatti Protorpan Ain, 2001 and contends that, as per clause (kha) and (ga) to section 12, there has been no legal bar for the plaintiffs to challenge the propriety of the judgment and decree passed in Arpita Sampatti Protorpan Tribunal Case and Appeal inasmuch as by virtue of section 7 of the Ain only the inclusion (অর্তভুক্তিযোগ্য) as well as question of returning the property (প্রত্যপনযোগ্য) have been made bar so if any third party herein the plaintiffs have got right, title and possession in the suit property on which decree was passed earlier by the tribunal, there has been no legal bar to proceed with the suit.

The learned counsel by referring to section 7 of the Ain further contends that, that very provision put bar in challenging the inclusion as

well as non-returning the property enlisted as vested property but the plaintiffs-opposite-parties have challenged the propriety of the judgment and decree by inserting schedule 'ga' to the plaint by way of amendment and if the defendants are able to prove that they got the decree in accordance with law then the suit with regard to 'ga' prayer might have dismissed but under no circumstances, can there be any bar to make such prayer in the suit.

Insofar as regards to the submission so placed by the learned counsel for the petitioners in regard to preferring appeal under section 18 of the Ain, the learned counsel next contends that, that very provision does not *ipso facto* preclude the present plaintiffs to file a fresh suit with the prayers so made in the plaint as well as in the subsequent amendment so the plaintiffs have rightly filed the suit and finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the defendants-petitioners and that of the plaintiffs-opposite-parties at length and very carefully gone through the provisions so have been enshrined in sections 4, 7, 12 and 13 of the Arpita Sampatti Protorpan Ain, 2001. We have also examined the application filed for amendment in particular, inclusion of 'kha' and 'ga' thereof in the plaint through which the plaintiffs inserted two different prayers that is to say, challenging the propriety of the judgment and decree passed in Title Suit No. 128 of 1991 and judgment and decree so passed in Arpita Sampatti Protorpan Tribunal Case No. 69 of 2012 and that of Appeal No. 04 of 2014.

When we pose a question to the learned counsel for the opposite-parties how the learned Judge of the trial court without disposing of the application filed by the defendants under order VII, rule 11 of the Code of Civil Procedure can allow the application of the plaintiff for amendment, the learned counsel then retorted that, since no written objection was filed against the application for amendment and the court has been given ample authority to amend the pleading so there has been no bar to dispose of the application for amendment even before disposing of the application for rejection of the plaint. The provision of section 7 of the Ain of 2001 though put bar to challenge the propriety of any suit claiming **inclusion** of property characterized as vested property and that of such property **to be not returned**, so we are of the considered view that, there has been no legal bar to challenge the propriety of the judgment and decree even passed by the tribunal as well as the appellate tribunal because it is fact that the plaintiffs-opposite-parties have not filed the suit that attracts section 7 of the Ain of 2001.

Furthermore, clause (kha) and (ga) to section 12 of the Ain of 2001 stands as shield for any parties to challenge the propriety of self-same property on which tribunal has passed the decree in any ones' favour because by the judgment passed by the tribunal as well as the appellate tribunal, the right, title, and interest on the suit land has not been established for the plaintiffs. However, it has been admitted by the learned counsel for the opposite-parties that, the learned Judge of the trial court while disposing of the applications has not assigned any reason in support either to reject the plaint or to allow the application for amendment and in

that sense, the impugned order is not happy one yet the impugned order does not have any legal lacuna rather under the provision of order VII, rule 11 as well as order VI, rule 17 of the Code of Civil Procedure the applications have correctly been disposed of. So for not discussing or not assigning any reason *ipso facto* does not render impugned order invalid. Though it would have been wiser if the learned Judge of the trial court first took up the application filed under order VII, rule 11 of the Code of Civil Procedure but the gap between the two applications filed under order VI, rule 17 of the Code of Civil Procedure is only one month and perhaps for that obvious reason, the learned Judge of the trial court took up those two applications for disposal conjointly but there is no impropriety in the impugned order. Thus we find substance in the assertion that section 12(kha) and (ga) of the Ain of 2001 has given authority to any party to claim title and possession over the property on which tribunal earlier passed a decree in favour of his/her adversary, in Arpita Sampatti Protorpan Tribunal Case as well as the Appeal. Hence, we don't find any illegality in the impugned order in sustaining the plaint and to allow the application for amendment.

Given the above facts and circumstances, we don't find any legal infirmity or impropriety in the judgment and order impugned in the revisional application which is liable to be sustained.

Accordingly, the rule is discharged however without any order as to costs.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

However, the learned Joint District Judge, 1st Court, Narayanganj is hereby directed to dispose of the suit as expeditiously as possible preferably within a period of 6(six) months from the date of receipt of the copy of this order.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1st Court, Narayanganj forthwith.

Mohi Uddin Shamim, J:

I agree.