

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

Civil Revision No.4639 of 2023

The Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Dhaka and others

..... petitioners

-Versus-

Md. Nafisa Moni and others

.....opposite parties

Ms. Rahima Khatun, Deputy Attorney General

..... for the petitioners

Mr. MI Farooqui, Senior Advocate with Mr. M.
Sadekur Rahman, Advocate

..... for the opposite parties

Judgment on 19.02.2024

Bhishmadev Chakrabortty, J.

This Rule, at the instance of the defendants, was issued calling upon the plaintiff-opposite parties to show cause as to why the order of the Joint District Judge, Court No.3, Dhaka passed on 14.06.2023 in Title Suit No.111 of 2016 rejecting the defendants' application under Order 7 Rule 11 of the Code of Civil Procedure (the Code) should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuance of the Rule, all further proceedings of the aforesaid suit was stayed for a period of 06(six) months which still subsists.

Facts relevant for disposal of the Rule, in brief, are that the plaintiffs instituted the suit praying for partition of the suit land

measuring an area of 3 *bighas* as detailed in schedule-‘Ka’ to the plaintiff claiming their *saham* to the extent of 2 *bighas* 13 *kathas* and 12 *chhataks* described in schedule-‘Kha’ to the plaintiff. In the plaintiff they claimed that their predecessor got the suit land by way of a lease deed dated 13.06.1946 and they are the heirs of the lease holder. The defendants have been contesting the suit by filing written statement denying the averments made in the plaintiff. They contended mainly that the land described in the schedule to the plaintiff is Abandoned Property and its holding number is 25, Chittaranjon Avenue. In the year 1982 it has been enlisted in the gazette as Abandoned Property at serial No.223. It was further contended that a part of the suit property measuring .1967 acres has been enlisted in the ‘Ka’ list as Arpita Sampatti under Serial Nos.236 and 237. Therefore, the suit in the present form in civil Court is not maintainable.

During examination of PW1, the defendants filed an application under Order 7 Rule 11(a) & (d) of the Code on 24.05.2023 for rejection of the plaintiff. They took grounds therein that to release any property gazetted in the Abandoned Property list, the party has to file application before the Court of Settlement. They further contended that a part of the property has been gazetted in the ‘Ka’ list of Arpita Sampatti and against it a suit is to be filed before the concerned Tribunal. The above fact is admitted in the plaintiff and as such the plaintiff of the suit would be rejected.

The plaintiffs opposed the application by filing written objection denying the facts stated in the application for rejection of the plaint. In the objection it has been stated that at the fag end of examination of PW1, the plaintiffs' witness, the defendants filed this application which is not at all maintainable. They further contended that the property as claimed by the defendants is not identical in toto with the property described in the schedule of the plaint. The application, therefore, would be rejected.

The Joint District Judge after hearing both the parties by its judgment and order passed on 14.06.2023 rejected the application for rejection of the plaint. In this juncture, the defendants approached this Court and obtained this Rule with an *interim* order of stay.

Ms. Rahima Khaun, learned Deputy Attorney General takes us through the materials on record. She refers to the statements made in paragraph 7 of the plaint and submits that there the plaintiffs admitted that the suit property has been declared as Abandoned Property and the government is in possession of the same. If it is found from the plaint that the suit is barred under the provisions of certain law, the Court can reject the plaint without entertaining any application for rejection of the plaint. She refers to the provisions of sections 14 and 23 of the Bangladesh Abandoned Property Control Management and Disposal Order, 1972 (President's Order No.16 of 1972) and the provisions of the Abandoned Building Supplementary Provisions

Ordinance, 1985 (the Ordinance, 1985) and submits that since the property has been enlisted as Abandoned Property there could be no reason to proceed with the suit any more. The plaintiffs had to file application in the Court of settlement. Ms. Khatun admits that no part of the property is gazetted as Arpita Sampatti and the fact stated in the application for rejection of the plaint to that effect is not correct. She refers to the cases of Abdul Malek Sawdagar Vs. Md. Mahbubey Alam and others, 57 DLR (AD) 18; Jobeda Khatun Vs. Momtaz Begum and others, 45 DLR (AD) 31 and Siruj-ud Dowla Vs. Government of the People's Republic of Bangladesh and others, 6 BLC (AD) 90 and submits that there is no *hard and fast* rule as to when and at what stage a plaint can be rejected. It depends upon the facts and circumstances of each case. The question whether the plaint is liable to be rejected being barred by law must be apparent from the statement made in the plaint. She submits that admittedly the suit property has been included in the list of Abandoned Property in the official gazette published under section 5 of the Ordinance, 1985 and as such the present suit is not maintainable. The plaintiffs had to file application before the Court of settlement for its release. The Joint District Judge committed error of law resulting in an error in such order occasioning failure of justice in rejecting the application for rejection of the plaint. In view of the aforesaid position the impugned order is to be interfered with by this Court in revision and the plaint of the suit be rejected.

Mr. MI Farooqui, learned Senior Advocate for the opposite parties opposes the Rule by filing a counter-affidavit denying the facts stated in the rule petition. He submits that in the suit the plaintiffs prayed for partition of suit land detailed in schedule-‘Ka’ to the plaintiff claiming *saham* to the extent of 2 *bighas*, 13 *kathas* and 12 *chhataks* described in schedule-‘Kha’ which is a part of schedule-‘Ka’. The property measuring 6 *kathas* and 8 *chhataks* described in Schedule-‘Ga’ which is a part of Schedule-‘Ka’ was enlisted as Abandoned Property. Whether the property of Schedule-‘Ka’ to the plaintiff is enlisted as Abandoned Property in total as claimed by the defendants or schedule-‘Ga’ property as claimed by the plaintiffs are the disputed question of facts which is to be resolved in the trial of the suit. He refers to the case of Kazi Md. Shajahan and another Vs. Md. Khalilur Rahman Madbor and others, 8 BLT (AD) 286 and submits that it is well settled principle that a plaintiff may be rejected under Order 7 Rule 11 of the Code merely on a plain reading of the plaintiff and nothing else. There is no *hard and fast* rule when an application for it may be filed but ends of justice demands that it must be filed at the earliest opportunity. He refers to the statements made in paragraphs 8 and 9 of the counter affidavit and submits that in the meantime PW 1 has been examined-in-chief and cross-examined by the defendants in part. His examination as witness is almost at the end. At this stage the application under Order 7 Rule 11(a) and (d) does not lie. Mr. Farooqui finally submits that the property as claimed by the

defendants in the application are not identical with the land of the plaintiff. The trial Court on correct appreciation of fact and law rejected the application for rejection of the plaintiff which may not be interfered with by this Court in revision.

We have considered the submissions of both the sides, gone through the materials before us including the documents appended with the revisional application, the provisions of law referred to and *ratio* of the cases cited by the parties.

It transpires that in the suit the plaintiffs prayed for partition of the property described in schedule-‘Ka’ to the plaintiff. They claimed *saham* to the extent of 2 *bighas*, 13 *kathas* and 12 *chhataks* detailed in schedule-‘Kha’ to the plaintiff. In schedule ‘Ka’ of the plaintiff, we find that 3 *bighas* of land has been described as land of holding No.27 and 27(1) of Chittaranjan Avenue and CS and RS *khatian* of it has been mentioned therein. The plaintiffs claimed the land of schedule ‘Kha’ which is a part of schedule-‘Ka’. In the statements made in paragraph 7 of the plaintiff it is found that the plaintiffs claimed the land through a lease agreement with the elites of holding No.25 Chittaranjan Avenue with holding Nos.27 and 27/1 of the same Avenue in the year 1946 and a part of it has been declared as Abandoned. The learned Deputy Attorney General tried to convince us by submitting that the property is actually of holding No.25 of Chittaranjan Avenue but the plaintiffs collusively opened holding No.27 and 27/1 to grab the valuable

government property. The above submission of the learned Deputy Attorney General are bundle of facts which is to be decided in the trial of the suit. On perusal of the gazette submitted by the learned Deputy Attorney General, we find that the property of holding No.25, Chittaranjan Avenue has been enlisted as Abandoned Property. The plaintiffs' claimed property are in holding Nos.27 and 27/1 of the same Avenue upon which they prayed for partition claiming *saham* to the extent of 2 *bighas*, 13 *kathas* and 12 *chhataks* described in schedule-'Kha' to the plaint. In the plaint schedule-'Ga' for 6 *kathas* 8 *chhataks* of land has been shown as Abandoned Property and the plaintiffs' have no claim over it. Whether the land enlisted in the gazette is the land of holding No.25 or of holding 27 and 27/1 is a disputed question of fact which is to be decided in the trial of the suit. If any part of the holding remains out of the list published in the gazette, surely a partition suit claiming share to that extent lies. Such dispute cannot be resolved in any other way except filing a suit for partition. The petitioners neither stated anywhere the quantum of land enlisted as Abandoned Property nor it is found from the gazette. According to their statement the quantum of land recorded in the name Osman and others in SA and RS *khatian* is found different.

It is found that earlier the plaintiffs approached this Court in First Miscellaneous Appeal No.196 of 2016 challenging the order of rejection of the application for temporary injunction passed by the Joint District Judge. The appeal was heard by a Division Bench of this

Court and it was allowed. The parties were directed to maintain *status quo* in respect of the possession of the suit land. The Joint District Judge was further directed to dispose of the suit within 06(six) months from the date of receipt of the order. It is further found that the defendants filed written statement in the suit on 13.11.2017. In the meantime, PW1 has been examined-in-chief on 17 different dates and he cross-examined by the defendants on 3 dates. The trial of the suit is almost at the end. We also find that this application under Order 7 Rule 11 of the Code has been filed at the very belated stage. Although there is no *hard and fast* rule in filing an application for rejection of the plaint but it is required to be filed at the earliest opportunity. The plaint of a suit may be rejected without any application only considering the statements made in the plaint. But here scrutinizing the statements made in the plaint, we find no substance in the submission of the learned Deputy Attorney General that this suit is barred under President's Order No.16 of 1972 or of President's Ordinance, 1985. The *ratio* of the cases referred to by her do not match this case. Although the parties did not brought the issues framed by the trial Court before us but it is still open to the trial Court to frame an issue, if not, as to the maintainability of the suit under P.O. 16 of 1972 and Ordinance, 1985 which is to be settled at the final disposal of the suit.

The Joint District Judge on detailed discussion rejected the application for rejection of the plaint. We find no error in the

impugned judgment and order which occasioned failure of justice and find ground to interfere with it.

Therefore, we find no merit in this Rule. Accordingly, the Rule is discharged without any order as to costs.

The order of stay stands vacated.

Communicate this judgment and order to the concerned Court.

Md. Akhtaruzzaman, J.

I agree.