

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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5721 of 2023.

In the matter of:

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

And

Aminul Hossain

...Petitioner

-Versus-

Md. Abdul Baten Miah and others

...opposite parties

Mr. Garib Newaj, Advocate

...For the petitioner

Mr. Md. Faisal Islam, Advocate

..For the opposite party No.1

Heard & judgment on:03.12.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 02.08.2023 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No.276 of 2012 rejecting the application of the defendant petitioner under order 7 rule 11 read with section 151 of the Code of Civil Procedure for rejection of plaint should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

Facts in short are that opposite party as plaintiff instituted above suit for declaration of title and confirmation of possession and in above suit defendant No.3 filed a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of above plaint.

It was alleged that defendant No.3 was appointed attorney of defendant Nos.4-8 for above property. While defendant No.3 was constructing a dwelling house the plaintiff threatened him with dispossession and above defendant No.3 as plaintiff instituted Title Suit No.04 of 2000 for decree for perpetual injunction against the plaintiff but above suit was dismissed and appeal was preferred against judgment and decree of the trial court which was allowed and decree was passed. The plaintiff as petitioner No.1 preferred Civil Revision No.1554 of 2001 but the same was rejected and above judgment of the High Court Division was affirmed by the Appellate Division in Civil Petition for Leave to Appeal No.1618 of 2003 on 20.07.2005. Above petitioner was also filed a review petition which was also rejected. Since in above judgment and order of the Appellate Division title and possession of the defendants have been established in the

disputed property this suit of the plaintiff is barred by limitation as well as resjudication and the plaint was liable to be rejected.

The plaintiff did not file any written objection but participated in the hearing and on consideration of submissions of the learned Joint District Judge rejected above petition of the defendant No.3 under Order 7 Rule 11 of the Code of Civil Procedure.

Being aggrieved by above judgment and order of the court of appeal below above defendant as petitioner moved to this court and obtained this rule.

Mr. Garib Newaj learned Advocate for the petitioner submits that in its judgment and order both the High Court Division and the Appellate Division made clear findings that defendant No.3 had rightful title and possession in the disputed land. Since above findings of the Apex Court is still effective challenging above findings no suit can be filed in the court of learned Joint District Judge. From above findings of the Apex Court it clearly emerges that the present suit is barred by limitation as well as by section 11 of the Code of Civil Procedure.

Mr. Md. Faisal Islam learned Advocate for the opposite party submits that admittedly owner and possessor of disputed land Bosonto Kumar Mistry transferred above land vide registered kobla deed No.1465 dated 04.04.1939 to the predecessor of the defendant. As such the claim of defendant No.1 as successive heirs of Bosonto Kumar Ministry does not have any leg to stand. But above kobla deed was not in possession of the plaintiff at the time of hearing Title Suit NO.04 of 2000 so they could not produce above document before the trial court or the appellate court. The learned Advocate lastly submits that the question of resjudicata and limitation are both mixed question of facts and laws and on above ground a plaint cannot be rejected without recording and consideration of evidence to be adduced at trial.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It is admitted that Title Suit No.04 of 2000 was filed by defendant No.3 for a decree of perpetual injunction and above suit was decreed by the court of appeal below and above decree was upheld by the Appellate Division. The plaintiff has filed this suit for declaration of title and

confirmation of possession. It is well settled that in a suit for permanent injunction there is no scope for determination of title but in such a suit only juristic possession of the parties are determined. It is to be seen if the plaintiff is in possession of the disputed land and his above possession is referable to a lawful claim and title. As such the defendant against whom a decree of perpetual injunction has been passed may bring a civil suit for determination of title with appropriate relief for possession or if parties are co-sharers a suit for partition. Since this is a suit for declaration of title and confirmation of possession and the learned Advocate for the plaintiff has mentioned about a registered kobla deed dated 04.04.1939 allegedly executed by Bosonto Kumar Mistry the predecessor of defendant No.3 in favour of the predecessor of the plaintiff I hold that the plaintiff has every right to maintain above suit for title.

It is well settled that the question of resjudicata and limitation are mixed question of facts and laws and above questions cannot be determined without recording and consideration of evidence to be adduced by the parties at trial.

In above view of the material on record I hold that the learned Joint District Judge on correct appreciation of material on record rightly rejected the petition under Order 7 Rule 11 of the Code of Civil Procedure which calls for no interference.

I am unable to find any substance in this civil revision and the rule issued in this connection is liable to be discharged.

In the result, the rule is discharged.

Let a copy of this judgment be transmitted down at once.