

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5355 OF 2022

In the matter of:

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

And

Ranodhir Dutta

... Petitioner

-Versus-

Uttam Dutta and another

... Opposite parties

None appears

... For the petitioner.

Mr. Muntasir Mahmud Rahman with

Mr. ANM Ashiqur Rahman, Advocates

.... For the opposite party Nos.1-2.

Heard on 13.11.2024 and Judgment on 14.11.2024..

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.10.2022 passed by the learned Senior District Judge, Patuakhali, in Title Appeal No.34 of 2022 affirming those dated 02.06.2022 passed by the learned Senior Assistant Judge, Kalapara Court, Patuakhali, in Title Suit No.1332 of 2021 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title for 7.87 decimal land as described in 'Ka' schedule to the plaint alleging that the plaintiff is the rightful owner and possessor of above land but the B.R.S. Khatian of above land was

erroneously recorded in the name of the defendants. Above land has been acquired by the Government and defendants are trying to receive compensation money from the Government on the basis of above erroneous record.

In above suit defendants submitted a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint alleging that previously plaintiffs instituted Civil Suit No.26 of 1981 against the same defendants in respect of the self same property for declaration of title and above suit was dismissed on contest on 13.03.1984. Against above judgment and decree above plaintiff preferred Title Appeal No.133 of 1984 which was also dismissed. Suppressing above facts the plaintiff instituted this suit for the same subject matter against the same defendants issues of which were conclusively determined by a competent Court on 13.03.1984 in Title Suit No.26 of 1981. As such instant suit was barred by section 11 of the Code of Civil Procedure.

On consideration of submissions of learned Advocates for the respective parties and materials on record the learned Senior Assistant Judge allowed above petition and rejected the plaint.

Being aggrieved by above judgment and decree of the trial Court plaintiff preferred Title Appeal No.34 of 2022 to the District Judge, Patuakhali who dismissed above appeal and affirmed the judgment decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of appeal below above appellant as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner when the Rule was taken up for hearing although the matter appeared in the list for hearing on several dates.

Mr. Muntasir Mahmud Rahman, learned Advocate for opposite party Nos.1-2 submits that the plaintiff of this suit as plaintiff previously instituted Title Suit No.26 of 1981 against the same defendants for declaration of title for selfsame land in the 1st Court of SubJudge, Patuakhali which was dismissed on contest on 13.03.1984. As such the issues of this suit between this parties were conclusively and finally determined by a competent Civil Court previously. But suppressing above facts the petitioner has filed a second suit for the same cause against the same defendants which is not tenable in law.

On consideration of above materials on record the learned Judges of both the Courts below have rightly and concurrently held that the instant suit was barred by Section 11 of the Code of Civil Procedure and accordingly rejected the plaint which calls for no interference.

I have considered the submissions of the learned Advocate for opposite party Nos.1-2 and carefully examined all materials on record.

It is well settled that a plaint is rejected under Order 7 Rule 11 of the Code of Civil Procedure on consideration of the averments made in

the plaint. If it turns out from a plain reading of the plaint that the plaint is hit by any law or the plaint does not disclose any cause of action or the plaint has been under valued and insufficiently stamped and the plaintiff fails to provide sufficient valuation and pay adequate court fees only then a plaint can be rejected.

A plaint cannot be rejected on the basis of claims or allegations made by the defendants in the written statement.

It appears from the impugned order that the learned Judges of the Courts below have rejected the plaint of this suit on consideration of the statements and claims made by the defendants in their written statement.

The plaintiff did not mention any thing about Title Suit No.26 of 1981 in the plaint nor admitted the claim of the defendants that they previously filed Title Suit No.26 of 1981 against the plaintiffs for the disputed land and the same was dismissed on contest.

The question of resjudicata is a mixed question of law and fact which cannot be determined without consideration of evidence to be adduced by the parties on the point of maintainability of the suit.

Since the defendants have produced a certified copy of Title Suit No.26 of 1981 the learned Assistant Judge should have framed an issue on the maintainability of the suit on the ground of resjudicata and after recording of evidence of both the parties, if any, pass passed an appropriate judgment in accordance with law.

In above view of the materials on record I hold that the impugned judgment and decree passed by the learned District Judge suffers from serious illegality which is not tenable in law and I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 12.10.2022 passed by the learned Senior District Judge, Patuakhali, in Title Appeal No.34 of 2022 affirming those dated 02.06.2022 passed by the learned Senior Assistant Judge, Kalapara Court, Patuakhali, in Title Suit No.1332 of 2021 is set aside.

The learned Senior Assistant Judge is directed to frame a preliminary issue on maintainability of the suit and after recording of evidence of both parties, if any, pronounce a judgment in accordance with law.

However, there is no order as to costs.

Send down the lower Courts records immediately.