

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.1743 OF 2024

Haji Mohammad Ali and others
..... Plaintiff-Petitioners.

-VERSUS-

Kamrun Nahar @ Kamrunnessa and others
..... Defendant-Opposite Parties.
Mr. Mohammad Harun, Advocate
----- For the petitioners.
Mr. Shahriar Mahmood, Advocate
----- For the opposite party No.1.

Heard on 31.10.2024 and 14.11.2024.

Judgment on 14.11.2024.

By this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and order dated 16.01.2024 passed by the learned Additional District Judge, 5th Court, Chattogram in Civil Revision No.212 of 2023, rejecting the revisional application and affirming the order dated 13.07.2023 passed by the learned Joint District Judge, 2nd Court, Chattogram in Title Suit No.94 of 2023 rejecting the application under Order VII Rule 11, (a) and (d) read with Section 151 of the Code of Civil Procedure for rejection of plaint should not be set aside.

The plaintiff-opposite party instituted Other Suit No.94 of 2023 before the Joint District Judge, 2nd Court, Chattogram, to partition the land described in the plaint's schedule.

During the pendency of the above suit, the defendants Nos.2-4 and 7 entered an appearance before the Court without filing any written statement applying for rejection of the plaint under Order VII Rule 11, (a) and (d) read with Section 151 of the Code of Civil Procedure as barred by law.

Subsequently, the learned Joint District Judge, 2nd Court, Chattogram, rejected the application by the judgment and order dated 13.07.2023.

Being aggrieved, the defendant petitioner preferred Civil Revision No.212 of 2023 before the District Judge Chattogram. Eventually, the learned Additional District Judge, 5th Court, Chattogram, rejected the Civil Revision in affirming those passed by the trial Court by the judgment and order dated 16.01.2024.

Being aggrieved, the defendants-petitioners filed the present Civil Revision before this Court and obtained the instant Rule and order of stay.

Mr. Mohammad Harun, the learned Counsel appearing on behalf of the petitioners, submits that the scheduled lands of the plaintiffs are Trust property that have been transferred by the deed No.3803 dated 27.06.1990 and handed over by the predecessor of the plaintiff and defendants to trustee holder 1-6. However, without disclosing the true facts of the case, the plaintiff-opposite party filed the instant suit, and thus, the suit

is barred under Order 7 Rule 11 of the Code of Civil Procedure. Moreover, both the Court below rejecting the application filed by the petitioner are not sustainable in the eye of the law.

On the contrary, Mr. Shahriar Mahmood, the learned Counsel appearing on behalf of the opposite party, submits that the plaintiff does not know whether the suit properties were Trust property. Moreover, since the defendants have yet to file any written statement stating that the suit properties are Trust property, both the Courts below rightly reject the petitioner's application.

I have anxiously considered the submission made by Counsel for both parties perused the plaint, judgment and order, and application under Order VII Rule 11 of the Code of Civil Procedure and other materials on record. In view of the averments made in the plaint and the relief sought for, now the pertinent question calls to determine this Rule is to see whether the learned Additional District Judge committed any illegality in rejecting the application under Order VII Rule II of the Code of Civil Procedure while the suit was fixed for submission of written statements of the defendants.

The cardinal settled principle of law is that in deciding whether the plaint should be rejected, the Court must consider only the plaint. The Court must apply its mind to the averments made in the plaint itself as a whole, assuming all

the averments made therein to be corrected, without considering the possible defense plea. In other words, the Court can reject the plaint only when it concludes that even if all the allegations made in the plaint are still proven, the plaintiffs would not be entitled to any relief. In this regard, the case of Bangladesh Jatiys Samabaya Shilpa Samity Ltd. Vs Shan Hosier, Proprietor Md Abu Taleb reported in 12 BLT (AD) 253, 10 BLC(AD)8 it was held that—

“With regard to rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, the High Court Division rightly found that in deciding the question as to whether a plaint is liable to be rejected, the court is always required to peruse the plaint only and court is not permitted to travel beyond the plaint to dig out grounds to reject the plaint which is a settled principle of law.”

Further, it is noted that it is the cardinal settled proposition of the law that a plaint of a suit cannot be rejected before filing the written statement. In this regard, the case of Manzur Murshed Khan and Ors Vs. Bangladesh Bank and Ors reported in 72 DLR (HCD) 744 it was held that---

“ Further, after scrutinizing the series of decisions of our Apex court in respect of Order VII Rule II of the Code of Civil Procedure, we may refer some of decisions reported in 39 DLR (AD) 1, 42 DLR (AD) 244, 49 DLR 531, 564, 53 DLR(AD) 62, 5

DLR (AD) 125 and 57 DLR (AD) 18 wherein the principles laid down as under:-

- (I) The well-settled principle of laws relating to Order VII Rule II are the plaintiff can be rejected only on reference to plaintiff itself as whether it is barred in any of the four clauses of Order VII Rule II of the Code of Civil Procedure.
- (II) Plaintiff cannot be rejected on defense materials as well as on mixed question of law and fact.
- (III) Where evidence is required and where there is material, plaintiff cannot be rejected.
- (IV) Plaintiff can be rejected if it does not disclose a cause of action and barred by any law.
- (V) There is no hard and fast rule when an application for rejection of plaintiff is to be filed, but ends of justice demand that it must be filed at the earliest opportunity.
- (VI) Plaintiff cannot be rejected before filing of the written statement.”

In the instant case, It manifests from the record that the plaintiff-opposite party filed the instant suit for partition of the suit property described in the schedule of the plaintiff, and from the averment of the plaintiff, it reveals nothing that the suit

properties are Trust property. On the other hand, no written statement has yet been submitted by the defendant from whom the Court found that the suit property is the Trust property.

In view of the above facts and circumstances of the case and on materials on record, I am of the view that the learned Additional District Judge, 5th Court, Chattogram, rightly and justifiedly says that the question of maintainability of the suit might be determined at the trial, and concurred with the view of the trial Court. Therefore, I do not find any illegality in the impugned order calling for interference under Section 115 of the Code of Civil Procedure.

Resultantly, the Rule is discharged without any order as to costs.

The order of stay granted at the time of issuance of Rule by this Court stands vacated.

Communicate this judgment.

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(MD. SALIM, J).