

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 3307 of 2024

Md. Amir Hossain (Babul)

..... Petitioner

-Versus-

Mahmudul Haq Khan and others

..... Opposite-Parties

Mr. Md. Moniruzzaman, Advocate with

Mr. Khorshed Alam, Advocate

... For the Petitioner

Mr. M.M. Shafiullah, Advocate with

Mr. Md. Arafat Kausar, Advocate and

Mr. Bibhuti Bhushan Sarker, Advocate

... For the Opposite Parties

Judgment on 31.07.2025

In this revision Rule was issued granting leave to revision at the instance of the petitioner calling upon the opposite parties to show cause as to why the impugned judgment and order dated 13.06.2024 passed by the learned Additional District Judge, 1st Court, Dhaka in Civil Revision No. 350 of 2023 allowing the revision and setting aside the judgment and order dated 18.10.2023 passed by the learned Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 236 of 2023 rejecting the application for rejection of plaint 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 relevant for disposal of this Rule, in short, are that the petitioner, as plaintiff, filed Title Suit No. 236 of 2023 in the Court of Senior Assistant Judge, 1st Court, Dhaka, against the opposite parties for declaration of title by adverse possession. The opposite parties, as defendant Nos. 1-8 appeared in suit, filed written statement and also filed an application under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint, on the ground stated therein. The plaintiff in suit did not file written objection against the application. The trial court took the matter for hearing and after hearing by the order dated 18.10.2023 rejected the application for rejection of plaint only on the ground that unless the claim of the plaintiff is allowed to be proved, the plaint in suit is not liable to be rejected.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the defendant moved before the District Judge, Dhaka by filing Civil Revision No. 350 of 2023. Eventually, the revision was heard by the learned Additional District Judge, 1st Court, Dhaka on transfer who after hearing by the impugned judgment and order dated 13.06.2024 allowed the revision and rejected the plaint in suit by setting aside the judgment and order of the trial court. At this juncture, the plaintiff-

petitioner moved this Court by filing this revisional application under section 115(4) of the Code of Civil Procedure seeking leave to revision and obtained the present Rule and order of stay.

Mr. Md. Moniruzzaman, learned Advocate appearing for the petitioner submits that the petitioner filed the instant suit for a decree of declaration of title by adverse possession, claiming that the plaintiff by dispossessing the defendant took possession of the suit property on 05.06.2002. Since then has been continuously possessing the suit land ousting the defendants and hence acquired title by adverse possession.

He argued that to prove possession in the property adverse to the true owners, it requires sufficient evidence at the time of trial, but plaint in suit is not at all liable to be rejected on an application filed by the defendants only on the ground that the plaintiff earlier filed Title Suit No. 829 of 2022 against the present opposite parties, as defendants for declaration that the plaintiff is a tenant under defendant Nos. 1-9 and in the alternative for a declaration that the tenancy right of the plaintiff is still subsisting under defendant Nos. 1-8. Subsequently, the plaintiff got the suit withdrawn by filing application under Order 23 Rule 1 of the Code on 29.05.2023 and filed the instant suit on the following day on

31.05.2024, but the plaintiff did not admit that the said suit was filed by him. Whether earlier Title Suit No. 829 of 2023 was at all filed by present plaintiff is a matter to be decided on evidence at the time of hearing, but for such reason plaint in the instant suit is not liable to be rejected. He argued that the trial court while rejecting the application for rejection of plaint rightly held that unless evidences are recorded it cannot be said that the suit is barred by any law.

Mr. M.M. Shafiullah, learned Advocate appearing for the opposite parties at the very outset submits that the plaintiff in one hand suppressed the fact of filing earlier suit and withdrawal of the same by him in the plaint and on the other hand after filing written statement as well as filing application for rejection of plaint, the plaintiff did not file written objection against the application denying the fact or getting the plaint amended denying that the earlier suit was not filed by him or filed by other person in his name. Before the revisional court, the petitioner did not agitate that fact by filing any application or objection, not only that, in the instant application under Section 115(4) of the Code, the petitioner did not take any ground or made any statement or submission to that effect

that by forging his signature some other persons filed Title Suit No. 829 of 2022 and got the same withdrawn without his knowledge.

In the absence of any denial about filing of earlier Title Suit No. 829 of 2022 it can be construed that the plaintiff accepted and admitted that the earlier suit was filed by him and got the same withdrawn by filing application. If it is so, in earlier suit, the plaintiff himself claimed that he is a tenant under the defendants and to that effect asserted that he obtained the premises on monthly rental basis by three tenancy agreements. Said suit was subsequently withdrawn without leave of the court to file suit a fresh, as such, under the provisions of Order 23 Rule 1, the present suit is barred by law.

Moreover, the plaintiff in earlier suit admitted that he is a tenant under defendants, therefore, he cannot claim title over the property by adverse possession without surrendering possession of the property to the defendants first, as such, the revisional court rightly allowed the revision and rejected the plaint in suit. The trial court while rejecting the application for rejection of plaint failed to appreciate the fact and law in this regard and fell in error finding that the grounds stated in the application for rejection of plaint requires evidence at the time of trial.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(4) of the Code of Civil Procedure, plaint in suit, written statement, application under Order 7 Rule 11 of the Code and impugned judgment and order of both the courts below.

From plain reading of the plaint of the instant suit only plea taken by the plaintiff that he forcibly dispossessed the defendants by force from the suit land and took over possession on 05.06.2002 and since then he has been possessing the suit property completely ousting the defendants, resultantly, acquired title by adverse possession. Counter affidavit filed by the opposite parties annexing photocopy of plaint in Title Suit No. 829 of 2022 filed by present plaintiff Md. Amir Hossain (Babul) against the present opposite parties, as defendants. In that suit, the plaintiff claimed tenancy right in the property under the defendants. For the reason best known to him he got the suit withdrawn by filing application under Order 23 Rule 1 of the Code without leave of the court to file suit a fresh.

When a plaintiff in suit withdrew a suit unconditionally, it means that he has given up claim in the subject matter for ever and in the event of withdrawing any suit unconditionally the plaintiff is legally debarred

from bringing further suit for the self same subject matter. In the instant case, the plaintiff in one hand suppressed the fact of filing earlier suit and withdrawal of the same giving up claim and did not deny filing of earlier suit by filing written objection against the application for rejection of plaint or by getting amendment of the plaint denying the fact of filing earlier suit, even did not take any ground or made statement to that effect in this instant revision also, meaning thereby, the plaintiff impliedly admitted the fact that earlier suit was filed by him and withdrawn without leave of the court, therefore, the suit is barred under Order 23 Rule 1 and also barred by estoppel as in earlier suit the plaintiff claimed himself as tenant under the defendants, but in the instant suit giving a go bye to the earlier stand he has adopted another tactics in filing this suit for a declaration of title by adverse possession.

It is the settled principle of law that when a tenant claimed title in the property by purchase or otherwise he is to surrender possession to the landlord first and then he can come with independent claim of title either by purchase or otherwise, but in the instant case the petitioner suppressed the fact of filing earlier suit and withdrawal of the same and also has taken a new plea of adverse possession giving a go bye to his earlier stand that

he is a tenant under the defendants. Because of contrary situation, the trial court ought to have allowed the application and rejected the plaint. However, the revisional court below while allowing the revision rightly held that a person cannot claim title in the property by adverse possession where he in earlier suit admitted that he is a tenant under the defendants.

From perusal of both the judgment and order of the courts below, I find that the trial court committed illegality in rejecting the application for rejection of plaint and the revisional court below rightly appreciated the facts and circumstances of the case, coupled with relevant laws mainly the suit barred under Order 23 Rule 1 as well barred under the principle of estoppel and acquiescence.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the learned Advocate for the petitioner.

In the result, 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 vacated.

Communicate a copy of this judgment to the court concerned at once.