

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.769 OF 2025

Mosa. Nazmunnahar
..... Plaintiff-Petitioner.

-VERSUS-

Md. Asad Miah and others
..... Plaintiff-Opposite Parties.

Mr. Md. Uzzal Hossain, Advocate
----- For the petitioner.
Mr. A.M. Shawkatul Haque, Advocate
----- For the opposite party No.1.

Heard on 21.08.2025, 14.08.2025,
16.11.2025, 02.11.2025, 11.11.2025 and 17.11.2025.

Judgment on 23.11.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and order dated 03.03.2025, passed by the learned Senior District Judge, Kishoreganj in Civil Revision No.12 of 2024 rejected the Civil Revision and affirmed judgment and order dated 30.04.2024 passed by the learned Joint District Judge, 1st Court, Kishoreganj in Partition Suit No.17 of 2023 rejected the application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint should not be set aside should not set aside and or pass other orders as to this court may seem fit and proper.

The opposite party No.1 herein, as plaintiff, instituted Partition Suit No.179 of 2021 before the Joint District Judge, 1st Court, Kishoreganj, for partition of the land described in the schedule of the plaint.

The petitioner herein, as defendant, entered an appearance in the suit and contested the same by submitting a written statement denying all the material allegations of the plaint.

During the pendency of the suit, the defendant filed an application before the learned Joint District Judge, 1st Court, Kishoreganj, under Order VII, Rule 11, of the Code of Civil Procedure, seeking rejection of the plaint.

The plaintiff contested the said application by filing a written objection.

Subsequently, the learned Joint District Judge, 1st Court, Kishoreganj, by the judgment and order dated 30.04.2024, rejected the application.

Being aggrieved by and dissatisfied with the above judgment and order, the defendant preferred Civil Revision No.17 of 2024 before the District Judge, Kishoreganj.

Eventually, the learned Senior District Judge, Kishoreganj, by the judgment and order dated 03.03.2025,

rejected the Civil Revision and affirmed those passed by the trial Court.

Being aggrieved by and dissatisfied with the above judgment and order, the defendants-petitioner filed the present Civil Revision before this court and obtained the instant Rule and order of stay extended from time to time.

Mr. Md. Uzzal Hossain, the learned Counsel appearing on behalf of the petitioner, submits that learned Judge of the Court of appeal below committed an error of law resulting in an error in the decision occasioning failure of justice in not considering that the defendant got possession of the suit land through court, so there is no cause of action for partition of the suit land and the suit is barred by resjudicata.

On the contrary, Mr. A.M. Shawkatul Haque, the learned Counsel appearing on behalf of the opposite party, submits that the plea of resjudicata is not applicable in rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure.

We have considered the submissions made by the learned Counsel for both parties, perused the judgment and order, application under Order VII Rule 11 of the Code of Civil Procedure, and other materials on record. It appears that the opposite party No.1, as the plaintiff, instituted the instant suit for partition of the suit land. The defendant-petitioner contested the suit by filing a written statement. Defendant also filed an

application under Order VII, Rule 11, of the Code of Civil Procedure for rejection of the plaint.

It appears that the defendant in the application under Order VII Rule 11 of the Code of Civil Procedure asserted that the suit is barred by resjudicata, as this plaintiff, on an earlier occasion, instituted Other Class Suit No.179 of 2001 for declaration of title and recovery of khas possession, which was decreed and affirmed up to the appellate division. Moreover, the predecessor of the plaintiff also filed Other Class Suit No. 190 of 2001, which was also decreed, and the deed of the plaintiff has been declared void.

The cardinal settled principle 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, in the case of Bangladesh Jatiyo Samabaya Shilpa Samity Ltd. Vs. Shan Hosiery, 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."

It is settled law that whether the suit is barred by res judicata or not is decided at the time of trial. This view gets support in the case of Sreemati Pushpa Rani Das and another Vs. A.K.M. Habibur Rahman and others reported in 13 BLD (AD) 217, where their Lordship of the Appellate Division observed that-

"This ground, we are afraid, is not available in rejecting a plaint under Order 7 Rule 11 of the Code of Civil Procedure. Whether the suit is barred by resjudicata or not is a matter to be decided at the time of trial, as raised by the defendants, and the same cannot be decided from a reading of the plaint. The maintainability of the suit on the ground of resjudicata can very well be framed as an issue in the suit."

We also find support in the case of Mahbubul Haque (Md.) Vs. Md. A. Kader Munshi reported in 52 DLR (AD) 49 wherein their Lordship of the Appellate Division observed that-

"Plaintiff-respondents having alleged that fraud was practiced by the defendant-petitioner upon the plaintiff as well as the court in the earlier suit by producing forged documents, he cannot be non-suited at the threshold since the question of res judicata and limitation are mixed question of law and fact. High Court Division relied on the decision in the case of Sreemati Pushpa Rani Das vs AKM Habibur Rahman & ors reported in 13 BLD (AD) 217, in which it has been held that question of res judicata cannot be decided from a reading of the plaint and should be decided at the time of trial. The High Court Division also held relying on another decision of the Appellate Division in the case of Shahabuddin vs Habibur Rahman reported in 50 DLR (AD) 99 that question of limitation is a mixed question of law and fact which can be decided at the time of trial on taking evidence. The learned Advocate for the petitioner could not show that the High Court Division committed any illegality in relying upon those decisions and holding that the questions of limitation and res judicata raised in the application under Order 7 rule 11(d) of the Code for rejecting the plaint of the present

suit, are mixed questions of law and fact which need thorough investigation on adequate evidence for arriving at a correct decision on framing specific issues by the trial Court. Since the petitioner would get a chance to agitate the questions at the time of trial of the suit, the petition merits no consideration."

In the instant case, it appears that the opposite party, herein as the plaintiff, instituted the instant suit for partition, and the applicant-petitioner also entered appearance and submitted a written statement to contest the suit. It also appears that, admittedly, in the earlier suit filed by this applicant for a declaration of title and eviction from the suit land, which was decreed by the trial Court below and affirmed up to the Appellate Division of the Bangladesh Supreme Court.

However, both suits are not similar, as the plaintiff filed the instant suit for partition. Moreover, the question raised by the applicant is misconceived, as it is based on facts that should be decided by the trial Court on framing specific issues at the time of trial. Moreover, the applicant would get a chance to agitate the questions at the time of trial of the suit.

Mr. Uzzal Hossain referred to the case of Sumon Paul and others Vs. Binode Kumar Mali and others reported in 5 L.M. (AD) (2018) 139 wherein their Lordship of the Appellate Division held that-

"The High Court Division observed that it is true "that a plaint of a suit should not be rejected under order 7 rule 11 of the Code of Civil Procedure only on point of res-judicata. But the facts of the present case are quite different. Apparently it shows that the predecessor of the plaintiffs-opposite parties lost their title up to Appellate Division and after settling dispute finally by the Appellate Division the present plaintiff-opposite parties purchased some lands in 2009 from the predecessor of the defendants of the former suit and they instituted present suit for declaration of title, confirmation of possession and for further declaration that the decree passed in previous Title Suit No. 235 of 1972 against the predecessor of the present plaintiffs are void and not binding upon them. The issue of the present title suit was decided by the court finally in the previously instituted suit, and that issue cannot be agitated in the subsequent suit."

We are fully aggriement with the above decision. But it is accepted in law that each case has its own facts and merits. In the instant case, it appears that the predecessor of the plaintiff and this defendant purchased the land in question from one Abdul Khalek, who owned 19 decimals of land. The predecessor of the plaintiff purchased the scheduled land from Abdul Khalek by registered deed No. 3055 dated 08.04.1990, and the

defendant also purchased the same land from the above landowner, Abdul Khalek, by registered deed No. 5681 dated 07.09.1999, i.e., the defendant applicant purchased after 9 years of purchase by the predecessors of the plaintiffs.

In view of the above facts and circumstances of the case and on materials on record, it appears that the trial Court below, as well as the Appellate Court below, upon considering the whole aspect of the facts of the case and the law, rightly and concurrently rejected the application for rejection of the plaint. The trial court should consider the petitioner's application to reject the plaint at the stage of trial. Therefore, we do not find any illegality in the impugned judgment and order calling for interference under Section 115(1) 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 the Rule by this court stands vacated.

Communicate this judgment.

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(MD. SALIM, J).