

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 1726 of 2006

Abdul Matlib and another

..... petitioners

-Versus-

Abdul Salik and others ..... opposite parties

Mr. Chanchal Kumar Biswas with

Mr. Sougata Guha and

Ms. Rutba Ikhtilat Tuli , Advocates

..... for the petitioners

No one appears for the opposite parties

Judgment on 22.04.2024

In this rule, issued at the instance of the pre-emptees, opposite party1 pre-emptor was called upon to show cause as to why the judgment and order of the District Judge, Sunamganj passed on 15.05.2006 in Civil Revision No. 23 of 2005 rejecting the revision affirming the judgment and order of the Senior Assistant Judge, Jagannathpur, Sunamganj passed on 05.09.2005 in Miscellaneous Case No. 10 of 2004 rejecting the application for rejection of the plaint should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the rule, all further proceedings of the aforesaid miscellaneous case was stayed for a limited period which was subsequently extended till disposal of the rule.

Facts relevant for disposal of the rule, in brief, are that opposite party 1 herein as pre-emptor filed the aforesaid miscellaneous case in the Court of Assistant Judge, Jagannathpur, Sunamganj against the pre-emptee petitioners and others for getting pre-emption of the deed registered on 26.12.1987 as detailed in the schedule to the case. The present petitioners as pre-emptees filed written objection in the case contending amongst other that the application is barred by limitation, bad for defect of parties and also barred by the principle of *res judicata*.

During pending the said miscellaneous case the petitioners filed an application under Order 7 Rule 11 of the Code of Civil Procedure (the Code) for rejection of the case stating facts that opposite party 6 to this case Abdul Malik who is the full brother of the present pre-emptor had filed Pre-emption Case No. 07 of 1992 in the selfsame Court against the same opposite parties in which he lost. The judgment and order passed in that case was upheld up to the appellate division. The present pre-emptor has filed this miscellaneous case after long lapse of years and as such the plaint of the miscellaneous case would be rejected on point of limitation and also on the principle of *res judicata*.

The Assistant Judge after hearing rejected the aforesaid application against which the petitioners filed a civil revision before the District Judge, Sunamganj under section 115(2) of the

Code. The District Judge after hearing rejected the revision and affirmed the judgment and order passed by the Assistant Judge which prompted the petitioners to approach this Court with this revision upon which the aforesaid rule has been issued.

Mr. Sougata Guha, learned Advocate for the petitioners taking me through the judgment and orders passed by the Courts below submits that Miscellaneous Case No. 07 of 1992 for pre-emption was filed by opposite party 6 of this case for getting pre-emption of the selfsame deed. But he lost in the case which was affirmed up to the appellate division. The present pre-emptor was opposite party 21 in the said case. The notices of the aforesaid case were duly served upon him but he did not appear. The present pre-emptor has full knowledge about the said *kabala* and filing of the miscellaneous case previously by his full brother. The instant miscellaneous case has been filed after long lapse of more than 17 years which is hopelessly barred by limitation. The issues of the previously filed miscellaneous case and the miscellaneous case in hand are same. Since the matter has been disposed of up to the appellate division in respect of selfsame transfer, the present miscellaneous case for pre-emption is also barred by *res judicata*. He refers to the case of Abdul Jalil and others vs. Islami Bank Bangladesh Limited and others, 53 DLR (AD) 12 and submits that a plaint can be rejected by invoking inherent jurisdiction of this

Court under section 151 of the Code, if it cannot be rejected under Order 7 Rule 11 of the same Code. If it is found that the ultimate result of the suit/case would be in negative in that case the plaint may be rejected at the very initial stage without consuming any further time in the name of holding its trial. The revisional Court below in rejecting the revision committed error on an important question of law which is required to be interfered with by this Court in revision, Mr. Guha concludes.

No one appears for the opposite parties, although the matter has been appearing in the daily cause list for a couple of days with the names of the learned Advocates for opposite party 1.

I have considered the submissions of the learned Advocate for the petitioners, gone through the judgments passed by the Courts below and *ratio* of the case cited.

It appears that the pre-emptor has filed the pre-emption case to pre-empt the *kabala* dated 26.12.1987 claiming him as a co-sharer by inheritance. The pre-emption case was filed on 13.06.2004, i.e., after more than 17 years of the registration of the *kabala*. In paragraph 8 of the pre-emption application the pre-emptor made statement that he firstly came to learn about the disputed transfer on 27.04.2004 through his attorney and then filed the case for pre-emption. In the application for rejection of the plaint the petitioners made statements that the pre-emptor was

opposite party 21 in the previously instituted miscellaneous case. The notices were served upon him and he had full knowledge about the alleged transfer and previously instituted case. Whether the pre-emptor had full knowledge about the deed of transfer and for that reason the case in hand for pre-emption would be barred by limitation is to be decided in the trial of the case by examining witnesses. At this stage it cannot be said that the miscellaneous case is barred by limitation. The other ground taken in the application for rejection of the plaint is that since the present pre-emptor's full brother, i.e., opposite party 6 to this case, as pre-emptor had filed Miscellaneous Case No. 07 of 1992 for getting pre-emption for the same *kabala* which was rejected by the Assistant Judge and affirmed up to the appellate division so that the issues of this case has already been decided in the previous instituted case between the same parties and thus case is barred by *res judicata*. Admittedly, the pre-emptor of this case did not contest in the previously filed case for pre-emption. Whether this miscellaneous case is barred by principle of *res judicata* is also to be decided in the trial of this case. At this stage, it cannot be said that this miscellaneous case is barred by *res judicata*.

I am in full agreement with the *ratio* laid in the case reported in 53 DLR (AD) 12 that the Court has jurisdiction to under section 151 of the Code to reject a plaint, if it is found that

the continuation of the proceeding of a suit would will be abuse of the process of the Court and harassing for the party even its trial is hold. But in the present case the point of limitation and *res judicata* as agitated to reject the plaint are both related with the mixed question of facts and law and to be decided in final adjudication of the case. The *ratio* laid in the aforesaid case shall not apply in this case considering the facts upon which the *ratio* has been laid.

In view of the discussion made hereinabove, I find that in rejecting the application for rejection of the plaint, the Assistant Judge committed no error and the lower revisional Court committed no error on point of law in rejecting the revision for which it may be interfered with by me under section 115(4) of the Code.

Therefore, this rule bears no merit. Accordingly, the rule is discharged without any order as to costs. The order of stay stands vacated.

However, the learned Assistant is directed to proceed with the case expeditiously and to dispose it within 06 (six) months from the date of receipt of this judgment and order.

Communicate this judgment and send down all the lower Court records.

