

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 977 of 2014

Md. Shahabuddin and another
....Petitioners

Versus
Khandakar Shahidur Rahman and others
....Opposite Parties

No one appears
....For the Petitioners

Mr. Ellius Ahmed, Advocate
....For the Opposite Party Nos. 1 and 2

Judgment on 03.07.2025.

Md. Iqbal Kabir, J:

On an application under Section 115(1) of the Code of Civil Procedure filed by the defendants/petitioners the instant Rule was issued calling upon the opposite parties to show cause as to why the order dated 14.11.2013 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 1309 of 2012 refusing the application for rejection of plaint under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court also stayed all further proceedings of Title Suit No. 1309 of 2012 now pending in the Court of Joint District Judge, 1st Court, Dhaka for a period of 03 (three) months from the date.

The opposite parties Nos. 1 and 2, as plaintiffs, filed the Title Suit No. 1309 of 2012 before the learned Joint District Judge, 1st Court, Dhaka, against the instant petitioners and opposite party No. 3 as defendants for declaration of ownership and recovery of khash possession. The short facts of the opposite parties i.e., plaintiff case is that the property in question was recorded in C.S. Khatian in the name of Anser Ali Sheikh who died leaving behind his wife, two

sons and two daughters as heirs; his son Kudrat Ali sold a land measuring 15.50 decimals in favour of one Fazle Rabbi vide registered deed No. 7749 dated 03.11.1983. He sold 15 decimals in favour of Gulshan Ara Nasrin, 15 decimals in favour of Andalib Hasan, 7 decimals to Rojana Wahed, and 7 decimals to Wahida Wahab on different dates. Gulshan Ara Nasrin sold 35 decimals of land in favour of Md. Abdul Baten and Hafez Md. Abul Kashem, who later on sold 6.25 kathas of land in favour of the plaintiffs vide registered deed No. 6872 dated 23.05.1993. Thereafter, the petitioners have been enjoying the suit land by mutating their names and paying off land taxes and other charges. The son of deceased Ansar Ali, named Kudrat Ali, sold 33 decimals of land to Dilruba Wahab, who later on sold the land to one Md. Dulu Mia, the land measuring 6.25 decimals, was recorded in the name of the petitioners in the Mohanagar City Jarip, and an objection case was filed, which was disallowed. The defendants did not file any appeal against the said case and did not file any case in the Land Survey Tribunal. As the plaintiffs have been living abroad, the defendants grabbed 3 kathas of land from the said 6.25 kathas by dispossessing them. One Md. Dulu Mia, who has been in possession and enjoying a land measuring 33 decimals, which is not suit land herein has given power of attorney in favour of one Kazi Tota Miah to sell the said land. Tota Mia sold the said land to defendant Nos. 1 and 2 and also to one Foyez Ullah; later on, the defendant No. 1 sold 1.74 kathas of land to Most. Ayesha Akhter. Foyez Ullah gifted 1.48 kathas of land to his brother, Md. Abdul Malek, who sold the said land to one Kazi Salma Aziz Queen. The defendants with an ill motive, along with the said Salam Aziz Queen, have made a solenama which has been registered for the enjoyment of their land. The suit land, which is recorded in City Khatian No. 7871 and dag No. 5883, has never been sold, but the defendants forcefully and unlawfully dispossessed the petitioners.

The petitioners as defendants filed a written statement, thereby denying the material allegation made in the plaint and establishing a case of their own. In the written statement, it is stated that the plaintiffs have filed the title suit through their lawful attorney named Mrs. Nargis Ahmed, but they have provided

no registration number of the said power of attorney. The plaintiffs, without providing correct information, have initiated the instant proceedings by showing that a registered deed is no. 6812; they have also hidden the information about the recent record of rights in connection with the suit land. It has been agreed that the plaintiffs have bought the land measuring 12 kathas adjacent to the lands of the defendant Nos. 1 and 2 situated in the east. The plaintiffs, without mentioning the names of the purchasers, Md. Foyezullah and Salma Aziz Queen, without providing their property details, have filed the suit to get relief on the basis of their fabricated stories. It has also been claimed by the defendants that the suit is barred by limitation, and the court fees paid are not sufficient. Considering the said facts and circumstances, the petitioners (defendants) prayed for the rejection of plaint of the plaintiffs.

However, the petitioners filed an application under Order VII Rule 11, read with section 151 of the Code of Civil Procedure, for rejection of the plaint. By such application, it has been alleged that the suit is barred by limitation, and there is no detail about the property. According to the petitioner, without providing property details, on the basis of their fabricated stories, the suit has been filed to get relief.

The Joint District Judge, 1st Court, Dhaka, in Title Suit No. 1309 of 2012, refused the application for rejection of the plaint. The Court did not accept the plea on the view that the suit is for a declaration of ownership and recovery of khash possession. The Court below rejected the application filed by the defendant/petitioner, holding that a mixed question of law and facts are involved; therefore, it would be appropriate to dispose of the matter by taking evidence.

Against the said impugned order, defendant-petitioner filed a revisional application before this Court and obtained the instant Rule.

Mr. Ellius Ahmed, the learned Advocate for the opposite party Nos. 1 and 2, made his submission in support of the impugned order passed by the Court below. According to him, in the present facts and circumstances, the fate of the suit cannot be decided without the farming issue in the suit. According to him,

before rejecting the plaint, the averments of the plaint have to be read as a whole, and upon reading, it appears there is no cogent reason to reject the plaint. In support of his submission, he cited decisions reported in 50DLR (AD) 99 and XX ADC 740.

No one appears on behalf of the petitioners to press the Rule.

However, we have heard the learned Advocate for the opposite party Nos. 1 and 2 and gone through the record.

It is pertinent to note that, before rejecting the plaint, the averments of the plaint have to be read as a whole; such procedure is the settled proposition of law. In this case, this court followed such principle and upon plain reading of the plaint, we find that the plaint cannot be rejected under Order 7 Rule 11 of the Code of Civil Procedure on the ground agitated before us. In this context, we find substance in the submission made by the opposite parties; therefore, it can be said that the contention of the petitioner seems to be a misconceived one. However, the learned Joint District Judge correctly took the view that the application cannot be allowed as mixed question of law and fact is involved.. The learned Joint District Judge, Dhaka, did not commit any illegality in passing the order dated 14.11.2013.

Given the above, we do not find any merit in this Rule.

Accordingly, the Rule is discharged without any order as to cost.

The order of stay as granted at the time of issue of the Rule is hereby recalled and vacated. The learned Subordinate Judge is directed to dispose of the suit under the law.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.