

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

First Appeal No.47 of 2015

Mst. Shefali Begum and others appellants

-Versus-

Government of Bangladesh and others

..... respondents

with

Civil Rule No.433(F) of 2015

Mst. Shefali Begum and others petitioners

-Versus-

Government of Bangladesh and others

..... for opposite parties

Mr. Rawshan Alam Khan, Advocate

..... for the appellants

(Appellant in FA and petitioners in Rule)

Mr. Redwan Ahmed, Deputy Attorney General
with Mr. Saiful Islam Miajee, Mr. Abul Khair
Khan, Ms. Anjuman Ara Lima, Mr. Montu Alam
and Mr. Md. Saydur Rahman Jatun, Assistant
Attorney Generals

..... for respondent 1

(In FA and opposite party in Rule)

Mr. Enamul Hoque, Advocate

..... for respondent 3

(In FA and opposite party 3 in Rule)

Judgment on 27.07.2025

Bhishmadev Chakrabortty, J:

Since the Rule has arisen out of the appeal and parties thereto are same, both have been heard together and are being disposed of by this judgment.

This appeal at the instance of the plaintiffs is directed against the judgment and decree of the Joint District Judge, Court 1, Pabna passed on 29.06.2014 in Other Class Suit 24 of 2009 allowing an

application under Order 7 Rule 11 of the Code of Civil Procedure (the Code) rejecting the plaint.

The plaint case, in brief, is that the land of CS *Khatian* 1889 originally belonged to Tarak Nath Pramanik. He used to possess 1.41 acres of land of plot 285 and .21 acres of plot 191 as agricultural land by growing crops through *borgadars*. He then settled the aforesaid land to Anil Ranjan Sen Gupta in 1335 BS. Anil Ranjan on payment of rent to the superior landlord and obtaining *dakhilas* possessed the land through *borgadars*. But he defaulted in paying rent and consequently the landlord Tarak Nath filed Rent Suit 1409 of 1935 in the Court of the then 2nd Munsif, Pabna. Anil Ranjan appeared in the suit and paid arrear rent and got *dakhilas*. He then settled .60 acres of plot 285 and .10 acres of plot 291 in total .70 acres to Manindra Nath Pramanik in 1943 AD at an yearly rent of Taka 07/- on receipt of proper salami. Manindra defaulted in paying rent and Anil filed Rent Suit 06 of 1958 against him in the 2nd Court of Munsif, Pabna which was decreed. In Rent Execution Case 14 of 1958 Manindra had paid total decretal amount and accordingly the execution case was disposed of. But SA *khatian* was prepared in the name of some other titleless persons. Then Manindra filed Objection Cases 146 and 256 under the provisions SAT Act. He got order and accordingly SA *khatian* was corrected and finally published in his name. Manindra defaulted in payment of arrear rent and the land was put into auction

in Certificate Case 319/60-61. He deposited the amount and filed a petition to set aside the sale which was allowed. During his possession and enjoyment openly and adversely for more than 30 years Manindra sold out .70 acres of land to the plaintiffs through *kabala* dated 17.01.1977 and delivered possession thereof. The plaintiffs are in peaceful possession in the suit land and RS *Khatian* has been published finally in their names. Defendant 3 claiming himself as the Secretary of Refugee Colony applied to the Additional Deputy Commissioner (ADC) Revenue, Pabna to take lease of the land. It was rejected on 23.05.1978 on the findings that it was not vested property. Against the aforesaid order defendant 3 filed Appeal 100 of 1978 to the Divisional Commissioner, Rajshahi which was allowed holding that the land was acquired land of the government. The land was never acquired by the government in LA Case 21/52-53 and was not settled to the refugees. In the LA case 2.74 acres of land was acquired but the land in schedule-‘Ka’ to the plaint was not acquired and no compensation was paid to Anil or Manindra for it. The plaintiffs then filed Title Suit 109 of 1982 in the Court of the then 2nd Munsif, Pabna challenging the aforesaid order of the Divisional Commissioner. There defendant 3 admitted that .81 acres of plot 285 and .11 acres of plot 291 was acquired for the refugees and further admitted that .60 acres and .10 acres of the aforesaid plot was recorded in the name of Manindra in SA *Khatian* but claimed lease treating the same as

Enemy Property. In the aforesaid suit 4 issues were framed but no issue as to the title of the plaintiffs in the suit land was framed. However, the suit was ultimately dismissed and against it the plaintiffs preferred Title Appeal 34 of 1984 before the District Judge, Pabna. The appeal was dismissed against which the plaintiffs filed Civil Revision 3254 of 1992 before this Court. The Rule issued in the aforesaid civil revision was made absolute on 06.01.1997 but challenging it defendant 3 filed Civil Appeal 235 of 2001 in the Appellate Division. The appeal was allowed and review against it was also dismissed.

In Title Suit 109 of 1982 no prayer as to the title and possession in the suit land was made and no issue was framed to that effect. The trial Court did not take any decision as to the title and possession of the parties in the suit land. In the suit the plaintiff challenged the order passed by the Divisional Commissioner in Appeal 100 of 1978 which was upheld by the Appellate Division against the plaintiffs. In the acquisition 3.69 acres of land was not included. RS record was prepared in the names of the plaintiffs in respect .650 acres. They paid up to date rent to the government and are in its possession. Defendant 3 collusively created a Multipurpose Samity and rented it to others and misappropriated the money. Consequently, the Deputy Commissioner took over the management and control of the property and took legal steps against defendant 3. The Deputy Commissioner

has been collecting rent from the tenants. Defendant 3 on the plea of result of the appeal by the Appellate Division disowned plaintiffs' title in the suit land on 15.12.2008 and tried to take over its possession forcefully which clouded the title of the plaintiffs in the suit land, hence the suit for declaration of title in respect of .6555 acres of suit land and confirmation of its possession.

Defendant 3 filed written statement denying the averments made in the plaint. In the written statement they contended that after 1947 Haji Abdul Aziz and others came to this country from India as refugee. The government in LA Cases 21/51-52, 50/51-52 and 51/52-53 acquired lands to rehabilitate them. The government took over possession of 5.50 acres of land and paid compensation to the effected person. The government sanctioned Taka 30,000/- for that purpose a bazar and 9 residential houses were constructed in plot 285. There are houses for the refugees in plots 291 and 292 and other 19 houses are in other plots. The refugees paid Taka 30,000/- to the government through installment. They undertook to pay taka within 15 years. Subsequently, the list of the refugees was changed and the government gave allotment of 5.50 acres of land to 30 persons who have been enjoying it in *ejmali*. Defendant 3 was selected as secretary of the Co-operative Society. It was further contended that earlier the plaintiffs instituted title suit in the Court of the then Munsif, Pabna which was dismissed and affirmed by the lower appellate Court.

Although in revision the Rule was made absolute by the High Court Division but the judgment was set aside by the Appellate Division. In the premises above this suit is barred by constrictive *res judicata* and it would be dismissed.

Defendant 1 filed written statement stating that the land in question is the *khas* land of the government. Moreover, on the selfsame allegation the plaintiffs earlier instituted a suit in which they lost up to the Appellate Division and as such the suit would be dismissed.

During pending of the suit, defendant 3 filed an application under Order 7 Rule 11 of the Code for rejecting the plaint stating grounds that earlier the plaintiffs instituted Title Suit 109 of 1982 in the Court of Assistant Judge, Pabna which was dismissed. The judgment so passed was affirmed in Appeal 34 of 1984. The judgment and decree passed by the Courts below was finally affirmed by the Appellate Division in Civil Appeal 235 of 2001. Therefore, the present suit is not maintainable and the plaint of the suit would be rejected on the principle of *res judicata*.

The plaintiffs filed written objection against the aforesaid application stating that Title Suit 109 of 1982 was filed challenging the order of the Divisional Commissioner, Rajshahi passed in Appeal 100 of 1978. In that the suit the plaintiffs did not claim title in the suit land. The question of title and possession was not settled therein. The

instant suit, therefore, is not barred by *res judicata* and as such the application would be rejected.

However, the Joint District Judge by the judgment and order passed on 29.06.2014 allowed the application under Order 7 Rule 11 of the Code and rejected the plaint of the suit which has been challenged in this appeal. During pending of the appeal, the appellants filed an application praying for injunction against the respondents upon which Rule was issued and an *interim* order of status quo in respect of suit land was passed which still subsists.

Mr. Rawshan Alam Khan, learned Advocate for the appellants taking us through the materials on record submits that there is a very limited scope to reject the plaint of a suit under Order 7 Rule 11 of the Code. A Court can reject a plaint, if on its mere reading it is found that the suit is barred by any law. Here, defendant 3 by filing an application claimed that the dispute between the parties in respect of the suit land has been settled by the appellate division in Civil Appeal 235 of 2001 and prayed for rejecting the plaint on the principle of *res judicata*. But in Title Suit 109 of 1982 the order of the Divisional Commissioner, Rajshahi passed in Appeal 100 of 1978 in which he opined that the suit land is the *khas* land of the government was challenged. In that suit no issue on point of plaintiffs' title and possession in the suit land was framed and as such it cannot be said that the present suit is barred by *res judicata*. The principle of *res*

judicata is a mixed question of fact and law which is to be decided by the trial Court on framing issues on that particular point. Therefore, the Joint District Judge erred in law in allowing the application under Order 7 Rule 11 of the Code rejecting the plaint which is required to be interfered with by this Court in appeal. The appeal, therefore, would be allowed.

Mr. Saiful Islam Miajee, learned Assistant Attorney General for respondent 1 on the other hand opposes this appeal and supports the judgment and decree passed by the trial Court. He submits that the Joint District Judge gone through the contents of the plaint and the application filed under Order 7 Rule 11 of the Code and correctly found that since the matter in issue between the parties have already been settled by our Apex Court, the instant suit is barred by constructive *res judicata* and cannot run. Therefore, the judgment and decree passed by the trial Court rejecting the plaint may not be interfered with.

Mr. Md. Enamul Hoque, learned Advocate for respondent 3 on the other hand adopts the submissions of the learned Assistant Attorney General and supports the judgment and decree passed by the Joint District Judge and prays for dismissal of the appeal.

We have considered the submissions of all the sides and gone through the materials on record. It is found that defendant 3 filed an application under Order 7 Rule 11 of the Code for rejecting the plaint

on the ground of *res judicata*. Therefore, the application surely comes within the ambit of Order 7 Rule 11(d) of the Code. The aforesaid provisions of the Code provide that a plaint may be rejected, if it appears from the statements made in the plaint that the suit is barred by any law. Therefore, a Court has no scope to travel beyond the plaint in entertaining an application filed under Order 7 Rule 11(d) of the Code. In the plaint, it has been specifically stated that in the previously instituted suit the order of the Divisional Commissioner, Rajshahi passed on 08.10.1982 in Appeal Case 100 of 1978 was challenged. In that suit, as it appears from the statement made in paragraph 10 of the plaint, the following issues were framed:-

1. Whether the present suit is maintainable in the present form and manner?
2. Whether the suit is barred by limitation?
3. Whether the plaintiffs are entitled to get a declaratory decree?
4. Whether the plaintiffs are entitled to get any other relief?

The above issues which were framed in the previous suit show that the plaintiffs did not claim their title in the suit land therein. The issues of possession and title which has been brought in the present suit was not issues of the previously instituted suit. It is well settled by our Apex Court in numerous cases that the principle of *res judicata* is mixed question of fact and law which is to be decided in the trial of

the suit on framing issue and taking evidence of the parties. Since from the statements made in the plaint it is found that the previously instituted suit was challenging the order of Divisional Commissioner, Rajshahi passed in an appeal treating the property as *khas* and no issue was framed as to the title and possession of the plaintiffs therein, therefore, the instant suit relying on an application of defendant 3 cannot be said to be barred by principles of *res judicata*. The concerned Court has every opportunity to frame issue on that particular point and decide it in the trial on merit. Moreover, it is found from the statements made in the plaint that the suit property was not acquired by the Government for rehabilitation of the refugees.

In view of the above position, we find that the Joint District Judge erred in law in allowing the application under Order 7 Rule 11 of the Code rejecting the plaint being barred by *res judicata*. Therefore, this appeal merits consideration. Accordingly, the appeal is allowed. No order as to costs. The judgment and decree of the Joint District Judge rejecting the plaint is hereby set aside.

The trial Court shall proceed with the suit in accordance with law on framing proper issues on point of *res judicata*. The trial Court is further directed to dispose of the suit expeditiously preferably within 06(six) months from the date of receipt of this judgment and order.

Consequently Civil Rule No. 433(F) of 2015 is disposed of but the order of *status quo* passed by this Court shall operate till disposal of the suit.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J.

I agree.