Present:
Mr. Justice Sheikh Abdul Awal
And
Mr. Justice A.K.M. Rabiul Hassan
First Appeal No. 134 of 2016

In the Matter of:

Mohor Ali Alias Maham Molla aliasMohammad Ali

.....Plaintiff -appellant.

-Versus-

Md. Raihan Molla and others

.....Defendant-respondents.

Mr. Rashedul Haque, Advocate with
Mr. Md. Nazmul Hossain, Advocate

... For the appellant.

Mr. Shahjada Al-Amin Kabir, Advocate.

.....For the respondent No. 1.

Heard on 03.09.2026, 06.09.2026 and 10.09.2026 and Judgment on 01.11.2026.

Sheikh Abdul Awal, J:

This first appeal at the instance of plaintiff-appellant is directed against the judgment and decree dated 01.12.2015 (decree signed on 01.12.2015) passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No. 303 of 2012 rejecting the plaint.

Short facts for disposal of the appeal is that the plaintiff as appellant instituted Title Suit No. 303 of 2012 in the Court

of the learned Joint District Judge, 2nd Court, Manikganj impleading the respondents as defendants praying the following reliefs:

" অতএব প্রার্থনা ঃ-

ক) "ক" তপশীল বর্ণিত ভুমি সম্পর্কে সিংগাইর সাব রেজিষ্ট্রার অফিসে "ক" তপশীলে বর্ণিত বিগত ইং ১৬/০১/৪৩ তারিখে সম্পাদিত ২৯/০১/৪৩ তারিখে রেজিষ্ট্রিকৃত ৫১৪ নং সাব কবলা দলিল ও বিগত ইং ০৫/০৮/৪৩ তারিখে সম্পাদিত ১৩/০৭/৪৪ তারিখে রেজিষ্ট্রিকৃত ৫৫৮১ নং সাব কবলা দলিল এবং বিগত ইং ১৪/০৯/৪৩ তারিখে সম্পাদিত ১১/১২/৪৪ তারিখে রেজিষ্ট্রকৃত সাব কবলা দলিল সমূহ জাল, ভুয়া ও তঞ্চকতাপূর্ণ হওয়ায় ও বাদীর বিরুদ্ধে বাধ্যকর নয় মর্মে ঘোষনামুলক ডিক্রী দিতে;

খ) সুদ সহ আদালত ব্যয় বাদীর অনুকূলে ডিক্রী দিতে,

গ) বিজ্ঞ আদালতে ন্যায় বিচারে বাদী আর যে, যে, প্রকার প্রতিকার পাওয়ার অধিকারী তাহাও ডিক্রী দিতে সুবিচারে মর্জি হয়।

Thereafter, the defendant Nos. 17-19 entered appearance in the suit and filed an application under Order 7, Rule 11 CPC for rejecting the plaint stating, inter-alia, that the plaintiff of the suit suppressing the fact that he had contested in the suit being Title Suit No. 39 of 2002 by filling written statement and finally the defendants of the present suit got a decree for partition. In this backdrop without having any cause of action for the suit the plaintiff filed this suit and as such, the present suit is clearly barred by the principle of Res judicata.

The learned Joint District Judge after hearing both the sides by the impugned judgment dated 01.12.2015 allowed the application and the rejected the plaint holding that the contents of the plaint do not disclose any cause of action for

the suit, the case is clearly barred by the principle of Res judicata.

Aggrieved plaintiff then preferred this First Appeal before this Court.

Mr. Rashedul Haque, the learned Advocate appearing for the appellant submits that the trial Court below without applying its judicial mind into the facts of the case most illegally rejected the plaint and as such, the same is liable to be set-aside. The learned Advocate further referring the plaint of the suit and other materials on record submits that the contents of the plaint do disclose cause of action for the suit and subject matter of this suit being Title Suit No.303 of 2012 and previous partition suit being Title suit No. 59 of 2008 are not same and similar, parties are not same and similar. Moreover, the earlier partition suit has not yet been disposed of and it is on record the said partition suit is now pending as First Appeal No. 170 of 2013 before this Court although the trial Court giving a go by to such facts and circumstance of the case mechanically rejected the plaint in a hopeless manner and as such the impugned judgment and decree is liable to be set-aside.

Mr. Shahjada Al-Amin Kabir, appearing for the respondent No. 1, on the other hand, supports the impugned judgment which was according to him just, correct and proper. The learned Advocate at the very outset referring a decision reported in 53 DLR(AD)12 submits that the proposition of law is by now well settled that if it is found ultimate result of the

suit clear as day light such a suit should be buried at its inception so that no further time is consumed in a fruitless litigation and the instant suit is a fruitless litigation. He adds it is on record that subject matter of the present suit has already been decided in favour of the plaintiff in earlier suit being Title Suit No. 59 of 2008 and the necessary parties of both the suits are same and thereupon, the trial Court rightly rejected the plaint, the same should not be disturbed.

Having heard the learned Advocates for both the sides and having gone through the materials on record including the impugned judgment and plaint of the suit.

On scrutiny of the record, it appears that present plaintiff and others instituted the suit being Title Suit No. 303 of 2012 for cancellation of some deeds and earlier suit being Title Suit No. 59 of 2008 was for partition suit. It is also found that the parties are not same in the present case and earlier suit inasmuch as in earlier suit there are 5 plaintiffs and 80 defendants and in the present suit there are only 1 plaintiff and 36 defendants. It further appears that earlier suit bang Title Suit No. 59 of 2008 has not yet been finally disposed of inasmuch as First Appeal No. 170 of 2013 arising out of Title Suit No. 59 of 2008 is now pending before this Court.

On these 3 counts, we are led to hold that the learned Joint District Judge committed gross illegality in allowing the application under Order 7, Rule 11 CPC holding that the suit is barred by the principle of Res Judicata. The decision cited is distinguishable on facts.

By the way it may be observed that Res judicata (under Section 11 of the Code of Civil Procedure, 1908) prevents courts from trying any suit or issue in which the matter directly and substantially has been decided in a former suit between the same parties (or parties litigating under the same title) by a competent court and has been finally decided.

Core Principles and Scope-

To successfully invoke Res Judicata under CPC, the following conditions must be strictly satisfied:

Identity of Parties: The prior and subsequent suits must be between the same parties or those claiming under them.

Competent Court: The court that decided the first case must have been competent to try the subsequent suit.

Same Title: The parties must be litigating under the same title in both suits.

Matter Directly in Issue: The issue in the second suit must have been directly and substantially in issue in the first suit.

As we have already noticed that the in the fact of the case there is no legal scope to invoke principles Res Judicata under CPC.

In view of our discussions made in the foregoing paragraphs by now it is clear that the instant first Appeal must succeed.

In the result, the appeal is allowed. The impugned Judgment and decree dated 01.12.2015 (decree signed on 01.12.2015) passed by the learned Joint District Judge, 2nd Court, Manikgonj in Title Suit No. 303 of 2012 rejecting the

plaint is set-aside. The suit being Title Suit No. 303 of 2012 is hereby restored.

Since the suit is an old one of 2012, the trial Court concerned is directed to proceed with the suit expeditiously in accordance with law.

Let a copy of this judgment be sent down at once.

A.K.M. Rabiul Hassan, J:

I agree.