

**Present- Md. Hasan Zaman, Senior Assistant Judge,  
Patiya, Chattogram**

**Order No- 09**  
**Date-22.01.2023**

Today is fixed for SR and hearing of petition under Order VII, Rule -11 of CPC for rejection of plaint.

Now the record is taken up for hearing.

Ld. Advocate for the plaintiff petitioner moves before the court the petition under Order VII, Rule -11 of CPC for rejection of the plaint on the ground that the suit is barred by res-judicata and for no cause of action.

The record is taken for order. Heard learned advocate for both parties. Perused the petition under Order VII Rule-11 of CPC and the plaint.

On perusal of the plaint it appears that the plaintiff opposite party filed the instant suit being **Other Class Suit No. 47 of 2021** praying for declaration of title and for declaration that that BS Khatian concerning schedule land has been erroneously recorded. The petitioner prayed for rejection of the plaint on the ground that the suit is barred by res judicata as well as for no casue of action. The petitioner submitted that this the scheduled land of the plaint was the suit property of Other Suit No. 09 of 2013 which was dismissed of non appearance of the the plaintiff. Concealing the dimissal fact the plaintiff has brought this instant suit. Since the subject matter in both suits are same so this suit is barred by res judicata and the plaint shall liable to be rejected.

The petitioner also raised the question of cause of action and prayed rejection of the plaint on ground of limitation.

But it appears to me that barred by res-judicata is mixed question of law and facts and it necessitates true investigation and the plaint shall not be rejected unless it is so clear from the meaningful reading of the plaint that no further

evidence is required. The plaint cannot be rejected as the court is to look into the statements of the plaint alone. The plaint does not show any such statement by which it can be inferred that the suit is barred by res judicata. It is now well settled that in considering an application filed under order 7 Rule 11 of the code there is no chance for the court to go beyond the averments made by the plaintiff in his plaint. Even there is no scope here to take into consideration any facts stated in the written statements or any documents produced by the defendants. From a reading of the averments made by the plaintiff in their plaint and the reliefs claimed in the suit I am of the opinion that the contents of the plaint do disclose the cause of action for filing the suit. I find nothing in the plaint to suggest that the suit is barred by any law.

Thus I am of the view that as the petitioner raises the question of res-judicata so it cannot be decided mere reading of the plaint. Conclusive decision as to whether the suit is barred by res judicata is to be reached only after full trial. In support of this stands I would like to cite a decision of the Hon'ble Appellate Division in the case of **Sremati Pushpa Rani Das Vs.A.K.M Habibur Rahman & others 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 trial. Thus I am of the view that the question of res judicata raised in the application under Order 7 rule 11 are mixed questions of law and fact which need through investigation on adequate evidence for arriving at a correct decision. Since the petitioner would get a chance to agitate the question at the time of trial of the suit so the petition merits no consideration.

Court Fee paid is correct.

Hence

It is Ordered

This petition dated 04.08.2022 under order 7 Rule 11 of the Code is hereby rejected without any order as to cost.

The plaintiff is directed to take necessary step without any delay by 18.05.2023.

**Dictated & Corrected by me.**

Senior Asst. Judge, 2<sup>nd</sup> Court.

Patiya, Chattogram.

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Patiya, Chattogram

