

Present:

Mr. Justice Md. Nuruzzaman
-And-
Mr. Justice Md. Khasruzzaman

F. A. No. 52 of 2013**IN THE MATTER OF:**

Sree Bhuban Chandra Sutradhar and others
Appellants

-Versus-

Md. Afroj Afgan Choudhury and Others
 respondents

Mr. Md. Zakir Hossain, Adv.
For the appellants

Mr. Md. Shakhawat Hussain Khan, Adv.
 For the respondents

Judgment on 11.07. 2018.**Md. Khasruzzaman, J:**

This appeal has been preferred at the instance of plaintiff appellants against the judgment and decree dated 21.01.2013 passed by the learned Joint District Judge, 1st Court, Habiganj in Title Suit No. 68 of 2012 allowing an application for rejection of plaint and thereby dismissing the suit.

The appellants as plaintiffs instituted Title Suit No. 68 of 2012 in the 1st Court of Joint District Judge, Habiganj impleading the respondents as defendants praying for declaration of title and confirmation of possession and restraining the defendants not to

dispossess the plaintiffs from the suit land and not to transfer the same to others.

The case of the plaintiffs in a nutshell is as follows:

The suit land originally belonged to Sree Babu Akhil Chandra Sharma Tarofder and Sree Brojendra Kumar Sutradhar, the predecessor of the plaintiffs, was a tenant under mirashdar and had been in possession of the suit land by constructing house on plot Nos. 513 and 518 and by digging pond in plot No. 514. By virtue of the State Acquisition and Tenancy Act, 1950, the title of land of Sree Babu Akhil Chandra Sharma Tarofder has been extinguished and Sree Brojendra Kumar Sutradhar became the owner of the land. Brojendra Kuamr Sutradhar died leaving behind wife and 3 (three) minor sons and thereafter wife, namely Matanga Rani Sutradhar died leaving behind the present plaintiffs as heirs. At the time of R.S. record in the year 2005, the present plaintiffs came to know that S.A. record was not prepared in their names rather the lands in plot Nos. 312, 324 and 517 were recorded in the name of one Aftab Uddin Chowdhury, and other lands described in the schedule in different plots except the lands of Plot Nos. 519 and 520 were recorded jointly in the name of their father with said Aftab Uddin Chowdhury. But Brojendra Kumar Sutradhar was the original owner of the lands, said Aftab Uddin, with the help of the dishonest employees of the record office, recorded his

name instead of their father. During operation of S.A. record of rights, the survey officials were residing in the house of Aftab Uddin Chowdhury and at the time of last R.S. record, they also completed their survey record while residing in the same house. Taking the advantage, Aftab Uddin, in connivance of the survey officials, illegally recorded his name in the record of right. The plaintiffs on 15.01.2005 along with some villagers went to the house of Aftab Uddin Chwodhury and asked him about the wrong recording of the lands and on request, Aftab Uddin Choudhury, in presence of witnesses agreed that he would do the needful for correcting the wrong record of the lands on his own responsibility and requested the plaintiffs to pay Taka 8,000.00 to him as miscellaneous costs and the plaintiffs agreed to pay the said money to him. Accordingly, the plaintiffs on 17.01.2005 in presence of the witnesses paid Taka 8,000.00 to Aftab Uddin Choudhury but he did not take steps to correct the RS Khatian Then on 11.10.2005 he suddenly died leaving behind defendant No. 1 as his heir and the plaintiffs requested him to correct the wrong recording of the lands in the name of his father but defendant No. 1 refused to do so. Moreover, on 27.07.2012 defendant Nos. 1, 5-7 threatened the plaintiffs in presence of the witnesses to dispossess them from the suit land and they would transfer the same,

hence, the plaintiffs compelled to file the above numbered suit against the defendants.

The plaintiffs also filed an application under Order 39 rules 1 and 2 read with section 151 of the Code of the Civil Procedure on 02.08.2012, hereinafter referred to as “the Code,” for temporary injunction against defendant Nos. 1, 5-7. The learned Joint District Judge issued show cause notice to the defendant as to why a temporary injunction should not be granted. After receiving the summons defendant No. 1 appeared before the Court and prayed for time to file written statement and written objection.

Defendant No. 1 filed an application under Order 7 rule 11 (b) of the Code for rejecting the plaint on 05.09.2012 stating, *inter alia*, that the plaintiffs filed the suit for declaration of title by showing the value of the suit land only Taka 5,25,000/- but the actual value of the said land would be Taka 20,00000/- (twenty lac) as per latest বাজারমূল্য নির্ধারণ নীতিমালা, ২০১০ . It is also stated that the actual value of the said land would be much more than Taka 20,00000/- (twenty lac), accordingly, prayed for a direction for submitting *ad valorem* court fees and stamp-paper.

The plaintiffs objected the said application under Order 7 rule 11 of the Code by filing written objection stating, *inter alia*, that there is no cause of action to file the said application, and they have no

locus-standi to file the said application and the application filed by them is a mis-concept one because if the Judge think that the valuation was not properly assessed he can accordingly gives direction to pay court fees; in that case, they will provide *ad valorem* court fees and accordingly prayed for rejection of the said application.

The learned Joint District Judge, 1st Court, Habiganj on 27.01.2012 fixed the value of the land is at Taka 20,00000/- (twenty lac) and accordingly directed the plaintiffs to deposit the deficit court fees within 21.01.2013. Thereafter the learned Joint District Judge on 21.01.2013 rejected the plaint as the deficit court fee was not paid within time fixed by the court.

Being aggrieved by and dissatisfied with the said judgment and decree, the plaintiffs filed the present first appeal before this Court.

Mr. Md. Zakir Hossain, the learned Advocate appearing on behalf of the appellants, has submitted that the learned Joint District Judge failed to consider the facts and provision of Order 7 rule 11 (b) of the Code in rejecting the plaint due to non depositing of the deficit court fees within time fixed by the Court. He has further submitted that the provision of Order 7 rule 11 (b) of the Code is not mandatory rather directory as no consequence is provided in case of failure to put in deficit court fees within the statutory period of 21 days. In support of his submission he cited a case of Begum Sultana Mazid and others

Vs. Syedul Islam, reported in 10 MLR(AD) 186. He has also submitted that the learned Joint District Judge erred in law in rejecting the plaint without giving a condition to the plaintiffs to pay deficit court fees and only on the failure of the plaintiffs to comply with any such direction from the learned Joint District Judge, the plaint ought not be rejected.

On the other hand, Mr. Md. Shakhawat Hussain Khan, the learned Advocate appearing on behalf of the respondents, has submitted that in fact, there is a consequence in Order 7 rule 11 (b) of the Code, as the rule provides that the plaint shall be rejected if the plaintiff fails to put in requisite stamp-papers within the time fixed by the Court, in the present case, the plaintiff appellants have failed to put the requisite stamp-papers within the time fixed by the Court and the said time shall not exceed 21 (twenty one) days. Mr. Khan has further submitted that the law has not curtailed the power of the Court to extend time, in an exceptional case, to deposit the deficit Court fee but the plaintiffs have failed to make out a case that the present case is an exceptional one to get time to deposit deficit court fees rather it reveals that they got enough time than the stipulated time of 21 days wherefrom their negligence could be revealed. Mr. Khan, by referring Order 7 rule 11 (b) and its proviso, has also submitted that the consequence is not mentioned in the proviso if the plaintiff fails to

correct the valuation or supply requisite stamp paper within time fixed by the court but in the very first sentence of rule 11 it is mentioned that the plaint shall be rejected on account of failure of the plaintiff in some cases as stated in the rule. In support of his submission he also referred the decision reported in 10 MLR (AD) 186. He has contended that the plaintiffs have failed to deposit the deficit Court fees within time fixed by the Court, accordingly the trial Court rightly rejected the plaint which calls for no interference by this Court. In support of his submissions he cited the Case of Haji Md. Ishaque and others Vs. Rupali Bank reported in 11 BLD 489.

Heard the learned Advocates for both the sides, perused the impugned judgment, memo of appeal and other materials on record.

Now to appreciate the submissions of the learned Advocates let us quote order 7 rule 11 (b) of the Code for ready reference:

11. Rejection of plaint. The plaint shall be rejected in the following cases:

(a)

(b) *Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:*

(c)

(d)

Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-paper shall not exceed twenty-one days.

It appears that defendant No. 1 filed an application under Order 7 rule 11 (b) of the Code for rejection of plaint alleging that the relief claimed is undervalued, and the plaintiffs by filing written objection denied this fact. The learned Joint District Judge considering the material document filed by them corrected the valuation of the suit property on 21.10.2012 and also directed the plaintiffs to supply deficit court fees considering the valuation of the suit is Taka 20,00,000.00 (twenty lac) and 21.01.2013 was fixed for depositing deficit court fees. The plaintiffs on 21.01.2013 filed an application praying for time for depositing deficit court fees but the learned Joint District Judge rejected the said application and also rejected the plaint for non-compliance of depositing deficit court fees within the time fixed by the court.

According to section 6 (2) the Court Fees Act, 1870, the court can receive a plaint or memorandum of appeal with deficit court fees with a condition that deficit court fees will be paid within time fixed by the Court, otherwise the plaint or memorandum appeal will be rejected.

Moreover, sections 148 and 149 of the Code provides that the Court can in its discretion allow the person, by whom whole or deficit court fee is payable, to pay the same and the effect would be the same as if it had been paid in the first instance, and the Court can also enlarge time which was fixed or granted for doing any act even after expiry of the time fixed or granted by it.

In this regard we need not to discuss more as our Appellate Division affirmed the decision of the High Court Division reported in 10 MLR (AD) 186 observing that *the statutory period of 21 days for putting in deficit court fee is not mandatory rather the same is directory in nature as no consequence is provided in the law in case of failure to put in deficit court fee within statutory period of 21 days.*

Since, Appellate Division has decided that there is no consequence in the proviso for failure of the correction of the valuation or supplying the requisite stamp paper within twenty one days, we are of the view that the time fixed by the Ordinance in the proviso for correction of the valuation or supplying stamp paper is not mandatory rather the same is directory in nature.

Article 111 of the constitution provides that *“the law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the*

Supreme Court shall be binding on all courts subordinate to it.”

Accordingly, by virtue of this Article said judgment of the Appellate Division settled the above point of law which is binding as a law is the ratio of the decision.

We are respectfully agreed with the above *ratio decidendi* enunciated by the Appellate Division. But we may discuss the provision as laid down in Order 7 rule 11 (b) and its proviso of the Code only for academic purpose. Under rule 11 (b) of Order 7, a plaint shall be rejected only when the plaintiff fails to deposit the deficit court fees within time fixed by the Court. The proviso of the said rule provides that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not exceed twenty one days. This proviso was added by Ordinance No. XLVIII of 1983 fixing the time limit by the Court for the correction of the valuation of the suit or for supplying of the requisite stamp paper. It is admitted that in the proviso there is no consequence if the plaintiff fails to correct the valuation or to supply the requisite stamp paper within the time fixed by the Court but in the very first sentence of the rule 11 clearly states that “The plaint shall be rejected in the following cases:” and thereafter rules 11 (a), (b), (c), (d) and (e) have been incorporated, and then the proviso was added in 1983. We have

also considered that if the plaint is rejected on the account of the failure of the plaintiff to correct the valuation or to put in requisite stamp paper within time fixed by the Court, no doubt it would be very harsh decision against the plaintiff to gain over the defendant without contesting the suit on merit and thus the plaintiff will be debarred from his lawful claim. But the said proviso of the rule was added by an amendment only to check unnecessary and willful delay to correct the valuation and to supply deficit court fees.

Considering the facts and relevant provisions of law and the decision of our apex court reported in 10 MLR (AD) 186, we find merit in this appeal.

In the result, the appeal is allowed without any order as to costs.

The suit is restored to its original file and number. The plaintiffs are directed to deposit deficit court fees within 15 days from the date of receipt of this judgment.

Communicate the order.

Md. Nuruzzaman, J:

I agree.