

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 117 of 2021
with
(Civil Rule No. 691 (F) of 2021)

In the matter of:

Mrs. Sinara Mannan and another
... Appellants-petitioners

-Versus-

Mr. Abdul Mubin Ahmed and others
... Respondents-opposite parties

Mr. Morshed Ahmed Khan, Advocate
... For the appellants-petitioners

None appears
... For the respondents-opposite parties

Heard and Judgment on 25.04.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have heard together and are being disposed of by this common judgment.

This appeal is directed against the judgment and decree dated 22.02.2021 passed by the learned Joint District Judge, 3rd court, Dhaka in Title Suit No. 54 of 2021 rejecting the plaint and thereby dismissing the suit under Order 7 Rule 11 (ka) of the Code of Civil Procedure finding the suit is not maintainable.

The salient facts leading to preferring this appeal are:

The present appellants as plaintiffs originally filed a suit being Title Suit No. 54 of 2021 against the present respondent nos. 1 and 2 seeking following reliefs:

(a) A decree declaring that the plaintiff No. 1 is the exclusive owner of all balance being an amount of Tk. 4,76,37,964,15 (Taka four crore seventy six lac thirty seven thousand nine hundred sixty four and paisa fifteen) only as on 30.06.2020 along with all interests profits accrued thereon in the schedule-D Bank Account.

(b) A decree declaring that any operational instruction issued/given by the defendant No. 1 regarding the schedule-D Bank Accounts are void and ineffective and a decree of permanent injunction restraining the defendant No. 1 from issuing/giving any further operational instruction regarding the schedule-D Bank Accounts;

(c) A decree declaring that the Wasiat of Late A Manman Ahmed made on 06.09.2016 as outlined in schedule-A below is binding upon the plaintiffs and the defendant No. 1 and accordingly, the plaintiff No. 1 is the lawful owner of the property described in schedule-C(a01) and the remaining properties being the properties described in schedule-B and schedule-C(2) to schedule-C(6) are not subject to any distribution until demise of the plaintiff No. 1 and the plaintiff No. 1 is the lawful custodian of the said properties;

(d) A decree directing the defendant No. 1 not to obstruct, deny and/or resist access of the plaintiff No. 1 to the schedule-B and schedule-C properties during her lifetime and to allow the plaintiff No. 1 to receive all incomes of the schedule-B and schedule-C properties and to spend the same in the manner she wishes;

(e) Entire costs of the suit against the defendant No. 1;and/or

(f) Any other relief to which the plaintiffs are entitled in law and in equity.

The said suit was then fixed for admission hearing on 22.02.2021 and the learned judge of the trial court vide impugned order rejected the plaint holding that, there has been no cause of action in the suit and the relief sought in the plaint by the plaintiffs cannot be sustained relying on the decision reported in 53 DLR AD 12. It is at that stage the plaintiffs as appellants preferred this appeal. After preferring this appeal the plaintiffs filed an application for injunction seeking a direction to the effect that as to why the “operation instruction” given by the defendant no. 1 regarding schedule-B bank account shall not be stayed or restraining the defendant no. 1 from issuing/ giving any further instruction in regard to transaction in schedule-B bank account till disposal of the appeal. On the basis of that application, this court vide order dated 12.12.2023 issued a rule upon the opposite parties which gave rise to Civil Rule No. 691(F) of 2021.

Mr. Morshed Ahmed Khan, the learned counsel appearing for the appellants-petitioners upon taking us to the impugned order as well as the plaint appeared in the paper book at the very outset submits that, the learned judge of the trial court erred in law in dismissing the suit without going into the assertion so made in the plaint where there has been description as to how the cause of action in filing the suit arose though the learned judge of the trial court very misconceivedly rejected the plaint relying upon the provision so provided in Order 7 Rule 11 (a) of the Code of Civil Procedure.

The learned counsel further contends that, though there have been as many as five different prayers in the plaint yet the learned judge erroneously found that, no authority has ever been given to the plaintiffs to ask for stopping defendant no. 1 in operating the bank account so scheduled in schedule-B to the plaint.

The learned counsel further contends that, the decision so have been relied upon by the learned judge of the trial court has got no nexus with the facts and circumstances and point-in-issue in the case in hand, so the learned judge of the trial court has thus misapplied the decision of the Appellate Division while rejecting the plaint and finally prays for allowing the appeal.

None represented the respondents-opposite parties in the appeal as well as the rule.

We have considered the submission so advanced by the learned counsel for the appellants-petitioners and perused the impugned judgment and order vis-a-vis the plaint as well as the prayer and the

schedule so have been appended in the plaint. On going through the plaint we find that, the plaintiffs have described how they have been deceived by the defendant no. 1 who happens to be the son of the plaintiff no. 1 in encashing the bank account which had been maintained by the plaintiff in her own name and subsequently by obtaining a succession certificate the plaintiffs and the defendant got an account opened in joint names but in the said account an “operation instruction” was made not to operate the said bank account by the plaintiffs which caused serious inconvenience for them. And in the plaint, in particular, paragraph no. 16 there has been clear description of cause of action so how the learned judge of the trial court came to a decision that the suit will be barred under clause (a) of Order 7 Rule 11 of the Code of Civil Procedure is totally incomprehensible to us. Furthermore, on going through the plaint we don’t find that the suit is barred by any law even though the relief sought in the plaint can only be disposed of upon taking evidence of the parties to the suit still the learned judge of the trial court on the very date of admission of the suit, in an abrupt manner rejected the same even without bothering to examine the provision so laid down in Order 7 Rule 11 of the Code of Civil Procedure or by perusing the entire plaint where the grievance of the plaintiffs have clearly been described.

We have also perused the decision relied upon by the learned judge of the trial court though we don’t find the facts and point in law so have been discussed in the cited decision has got any manner of

application in the facts and circumstances of the instant case resulting in that very decision is totally inapplicable here as well.

Regard being had to the above facts and circumstances we don't find any iota of substance in the impugned judgment and order which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to cost.

The impugned judgment and decree dated 22.02.2021 passed by the learned Joint District Judge, 3rd court, Dhaka in Title Suit No. 54 of 2021 is thus set aside.

Since the appeal is allowed, the connected rule being Civil Rule No. 691(F) of 2021 is hereby made absolute.

The learned judge of the trial court is hereby directed to proceed with the suit and dispose of the same as expeditiously as possible preferably within a period of 06(six) months from the date of receipt of the copy of this order.

Let a copy of this judgment and order along with the lower court records be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.