

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2180 OF 2022

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Sarwar Hossain and others

.... Petitioner

-Versus-

Nannu Sheikh and others

.... Opposite parties

Mr. Talukder Ayub Ali, Advocate

....For the petitioners.

Mr. Mohammad Sazzadul Islam with

Mr. Shahriar Mehedi Fardous, Advocates

.... For the opposite party Nos.2-3,
5-8, 10-17, 21-24 and 28-29.

Heard and Judgment on 26.02.2025

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 16.03.2022 passed by the learned Senior District Judge, Faridpur in Title Appeal No.226 of 2020 allowing the appeal and thereby reversing the judgment and decree dated 16.11.2020 passed by the learned Senior Assistant Judge, Bhanga Court, Faridpur in Title Suit No.225 of 2020 dismissing the suit should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for partition of property of R. S. Khatian Nos.1753 and 1754 corresponding to S. A. Khatian Nos.1902 and 1889 and B. S. Khatian Nos.1030, 1031, 2197, 2198 and 3887 claiming a separate saham for 11.14 decimal land as successive heir of Choto Khatun.

It was alleged that above Choto Khatun was a recorded tenant of R. S. Khatian Nos.1745 and 1754 and plaintiffs are successive heirs of above Choto Khatun. But in above B. S. Khatians the names of the plaintiffs or their predecessor were not recorded and the names of the defendants were erroneously recorded. Above joint property was not partitioned by meets and bounds and the defendants refused to effect an amicable partition.

Defendant Nos.1-10 contested above suit by filling a joint written statement alleging that the plaintiffs are not heirs of Choto Bibi and the succession certificate they submitted in above suit from the Bhanga Municipality was a forged document which was cancelled by above Municipality. The plaintiffs do not have any right, title and possession in the above land.

In above suit defendants submitted a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint alleging that Choto Khatun died leaving two sons Dabir Uddin Sheikh and Shukur Sheikh and one daughter Morjina Begum. Above Choto Khatun did not have two other daughters namely Amena Begum and Aysha Begum as

have been alleged by the plaintiffs. In support of above claim the plaintiffs submitted a succession certificate issued by the Bhanga Pourashaba which was subsequently cancelled by above Municipality on the ground that above certificate was obtained on erroneous information.

On consideration of submissions of the learned Advocates for respective parties and materials on record the learned Senior Assistant Judge allowed above petition and rejected the plaint.

Being aggrieved by above judgment and decree of the trial Court above plaintiffs as appellants preferred Title Appeal No.226 of 2020 to the District Judge, Faridpur who allowed above appeal and set aside the judgment and decree of the trial Court and rejected above petition under Order 7 Rule 11 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with above judgment and decree of the learned District Judge above respondents as petitioners moved to this Court with this Revisional application under Section 115 of the Code of Civil Procedure and obtained this Rule.

Mr. Talukder Ayub Ali, learned Advocate for the petitioners submits that Choto Khatun was the owner and possessor of disputed property and she died leaving two sons and one daughter Morjina khatun and she did not have any other daughters namely Aysha and Amena as has been alleged by the plaintiffs. As such the plaintiffs are not the successive heirs of Choto Khatun and they have no right to

maintain above suit for partition. The plaintiffs produced a succession certificate of above Choto Khatun issued by the Bhanga Pourashaba which was subsequently cancelled by above Pourashava on the ground that above succession certificate was obtained by erroneous information. On consideration of above materials on record the learned Judge of the trial Court rightly rejected the plaint but the learned Judge of the Court of appeal below utterly failed to realize that the ends of justice will be defeated if above fruitless and useless suit is allowed to continue and most illegally allowed above appeal and set aside the lawful judgment and decree of the trial Court which is not tenable in law. In support of above submissions the learned Advocate refers to the case laws reported in 44 DLR (AD) Page-242 and 53 DLR (AD) Page-12.

On the other hand Mr. Md. Sazzadul Islam, learned Advocate for Opposite party Nos.2-3, 5-8, 10-17, 21-24 and 28-29 submits that a plaint cannot be rejected on the basis of contentious facts. Plaintiffs have filed above suit for partition claiming that they are the successive heirs of Choto Khatun by her daughters Amena and Aysha. The defendants have denied that Aysha and Amena were daughters of Choto Khatun. Above contentious facts can be determined by the trial Court on consideration of evidence to be adduced at trial. In above view of the materials on record the learned Judge of the Court of Appeal below rightly allowed the appeal and set aside the flawed judgment and decree of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the opposite parties as plaintiffs instituted above suit for partition claiming to be successive heirs of Choto Khatun by her daughters Aysha and Amena. It is admitted that Choto Khatun was the original owner of disputed property but the defendants claim that Choto Khatun did not have daughters namely Aysha and Amena and plaintiffs are not successive heirs of above Choto Khatun.

The provision of Order 7 Rule 11 of the Code of Civil Procedure is most stringent provision of the Code of Civil Procedure. Above which empowers the Judge to refuse to entertain a suit filed on the prosecution of the plaint and on payment of necessary Court fees by rejecting the plaint and shutting the door of justice for plaintiff without recording of evidence. The application of above provision under Order 7 Rule 11 has been permitted if from a plain reading of the plaint it appears that the plaint is barred by a law or the plaint does not disclose any cause of action or the plaint is under valued and insufficiently stamped and despite direction of the Court the plaintiff fails to update the valuation or supply deficit Court fees. While dealing with a petition under Order 7 Rule 11 of the Code of Civil Procedure the Court must remain confined within the periphery of the plaint and must not take into consideration any material of the defendant. A plaint cannot be rejected on the basis of contentious facts. Such contentious facts require

determination on consideration of evidence to be adduced at trial. The question whether the plaintiffs are successive heirs of Choto Khatun or not is a contentious question of facts which can be settled on consideration of evidence to be adduced by the parties at trial. A succession certificate is not conclusive proof of the facts. Above certificate has been admitted into evidence and the witness who admits above document into evidence must be subjected to cross examination.

The learned Judge of the Court of Appeal below on correct appreciation of above facts rightly held that the plaint cannot be rejected on consideration of above contentious facts and rightly allowed the appeal and rejected above petition for rejection of plaint which calls for no interference.

The facts and circumstances of the cases referred to above by the learned Advocate for the petitioners is quite distinguishable from the facts and circumstances of this case in hand and above case laws have no manner of application in this case.

In above view of the materials on record I am unable to find any substance in this civil revisional application under section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

The learned Senior Assistant Judge is directed to conclude the trial of the case expeditiously within a period of six months from the date of receipt of this judgment.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER