

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

CIVIL REVISION NO. 3529 OF 2023

In the matter of:

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

AND

In the matter of:

Md. Abdur Rahim and others

.... Petitioners

-Versus-

Mst. Joynab Bibi and others

....Opposite-parties

Mr. Faysal Hasan Arif, Advocate

... For the petitioners

Mr. Md. Abdur Rahman Hawlader, Advocate

....For the opposite party nos. 1-25

Heard and Judgment on 25.02.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J:

At the instance of the defendant nos. 1-6 in Title Suit No. 377 of 2020, this rule was issued calling upon the opposite-party nos. 1-25 to show cause as to why the order No. 24 dated 02.12.2021 passed by the learned Joint District Judge, 1st Court, Bogura in Other Class Suit No. 377 of 2020 rejecting an application filed under Order VII Rule 11 of the Code

of Civil Procedure should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the further proceedings of the said suit initially for a period of 3(three) months which was lastly extended on 16.10.2023 for another 06(six) months.

The short facts leading to issuance of the instant rule are:

The present opposite party nos. 1-25 as plaintiffs filed the aforesaid suit against the present petitioners and others as defendants for permanent injunction restraining the defendant nos. 1-7 from giving rent of the suit properties to the defendant nos. 8-9 described in scheduled 'ka' to the plaintiff till disposal of Title Suit No. 380 of 2018 or to change the nature and character of 'kha' scheduled land by erecting any multi-storey building in the suit land measuring an area of 25.07 decimals of land. Soon after filing of the suit, the plaintiffs also brought several amendments in the plaint under Order 6 Rule 17 of the Code of Civil Procedure. However, on 01.03.2021 the defendant nos. 1-7 herein petitioners filed an application under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure for rejection of the plaint on the ground that the suit cannot continue for want of cause of action as well as it is barred by law as, plaintiffs have got no possession in the suit land and keeping pendency of a suit filed for partition, the suit cannot run. Against that application, the opposite party nos. 1-25 who are the plaintiffs filed written objection denying all the material statement so made in the application for rejection of the plaint and prayed for rejecting the same. The learned judge of the trial court took up the application and vide impugned order dated 02.12.2021 rejected the

same holding that, there has been no ingredient for rejecting the plaint. It is at that stage the defendant nos. 1-6 as petitioners came before this court and obtained the instant rule and order of stay.

Mr. Faysal Hasan Arif, the learned counsel appearing for the petitioners upon taking us to the prayer so made in the plaint at the very outset submits that, since a suit for partition being Title Suit No. 380 of 2018 has been pending among the plaintiffs and defendants so until and unless that very suit is disposed of, there has been no scope for the said plaintiffs to file a separate suit for permanent injunction when the plaintiffs-opposite parties had every scope to file an application for temporary injunction in that partition suit even though the suit filed for permanent injunction is prima facie barred under section 10 of the Code of Civil Procedure and a separate suit between the same parties cannot lie.

The learned counsel in his second leg of submission also contends that, the impugned order is a non-speaking order because though the defendants filed the application quoting two different clauses of Order 7 Rule 11 of the Code of Civil Procedure, but no reason has been assigned by the trial court while rejecting the application. On those two legal grounds, the learned counsel finally prays for making the rule absolute by setting aside the impugned order.

On the contrary, Mr. Md. Abdur Rahman Hawlader, the learned counsel appearing for the plaintiff-opposite party nos. 1-25 by taking us to the application for rejection of plaint as well as the written objection filed thereagainst at the very outset submits that, since there has been clear

description in regard to cause of action in the fag end of paragraph no. 7 to the plaint, so there has been no scope to reject the plaint.

The learned counsel also contends that, there has been no averment in the four corner of the application under which law the suit will be barred but though the learned judge of the trial court has not assigned any reason for rejection of the application but the learned judge came to a finding that there has been no ingredient in the application for rejection of the plaint which implies that none of the clauses provided in Order 7 Rule 11 ever attracts in rejecting the plaint.

The learned counsel wrapped up his submission contending that, since there has been no legal bar in the Code of Civil Procedure to file a fresh suit seeking separate reliefs so the plaintiffs have very perfectly file the suit for permanent injunction since a new cause of action has been there in the subsequent suit. On those grounds the learned counsel finally prays for discharging the rule by sustaining the impugned judgment and order.

We have considered the submission so advanced by the learned counsel for the defendants-petitioners and plaintiffs opposite parties and perused the impugned judgment and order vis-a-vis the application filed under Order 7 Rule 11 of the Code of Civil Procedure and the written objection filed thereagainst. We have also very meticulously gone through the provision provided in Order 7 Rule 11 in particular, clause (a) and (d) therein. Since the learned counsel for the petitioners has not put any emphasis on the cause of action embodied in clause (a) of order 7 Rule 11 o the Code of Civil Procedure even though quoted in their application so we would like to confine our discussion and observation centring on clause

(d) to the said order. On going through clause (d) of Order 7 Rule 11 of the Code of Civil Procedure we find that, the plaint is to be rejected if from the plain reading of the same it seems that, the plaint is barred by any law. But on going through the application filed for rejection of the plaint we don't find any assertion made therein as to under what law the plaint is to be rejected. Though Mr. Arif insisted that, under section 54 of the Specific Reliefs Act, the instant suit cannot be proceeded with because the plaintiffs could readily get relief by filing an application for temporary injunction in Title Suit No. 380 of 2018. But we cannot simply at one with the said submission as the subsequent suit for permanent injunction has been stemmed from a different cause of action. Furthermore, whether the plaintiffs could seek remedy in their earlier Title Suit No. 380 of 2018 can not any ground to reject the plaint. However, we don't find any legal bar to file the suit for permanent injunction nor the suit is barred under clause (d) of Order 7 Rule 11 of the Code of Civil procedure. Then again, the learned counsel also submits that, the impugned order is a non-speaking order though we find substance in it but since the learned judge while rejecting the plaint came to a finding that, there has been no ingredient in the application to reject the plaint so by that, it construes, none of the clause of (a) or (d) of to Order 7 Rule 11 of the Code of Civil Procedure attracts in rejecting the plaint having no infirmity in the impugned order.

Given the above facts and circumstances we find substance in the submission so advanced by the learned counsel for the opposite parties-plaintiffs.

Accordingly, the rule is discharged however without any order as to

costs.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the court concerned forthwith.

Mohi Uddin Shamim, J:

I agree.

Kawsar /A.B.O