IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 2295 of 2023

IN THE MATTER OF

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

-AND-

IN THE MATTER OF:

Md. Mahmudul Hassan and another

……Petitioners

-Versus-

Md. Rafiqul Islam and another

… Opposite parties

Mr. Ashfaqur Rahman, Advocate

….For the petitioners

Ms. Tasmia Prodhan, Advocate

Mr. Mohammad Golam Kibria, Advocate

…For the opposite parties.

Heard on 23.07.2026

Judgment on: 10.08.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 23.03.2023(decree drawn on 27.03.2023) passed by Joint District Judge, Sirajganj in Other Class Appeal No. 04 of 2022 affirming the judgment and decree dated 30.11.2021 (decree drawn on 05.12.2021) passed by Assistant Judge, Rayganj, Sirajganj in Other Class Suit No. 443 of 2021 rejecting the plaint should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant fact for disposal of the Rule is that the petitioners as plaintiffs filed Other Class Suit No. 443 of 2021 in the Court of Assistant Judge, Rayganj, Sirajganj impleading the opposite party Nos. 1 and 2 as defendant Nos. 1 and 2, praying for a decree of declaration that the Deed No. 3164 dated 19.08.2021 is illegal, forged, collusive and not binding upon the plaintiffs. The defendant Nos. 1 and 2 filed written statement in the suit. During pendency of the suit, the defendant Nos. 1 and 2 filed an application under Order VII Rule 11 (a) of the Code of Civil Procedure, 1908 for rejection of the plaint. After hearing, the Assistant Judge, Raygonj, Sirajgonj, by judgment and decree dated 30.11.2021, rejected the plaint, against which the plaintiffs filed Other Class Appeal No. 4 of 2022 in the Court of the District Judge, Sirajgonj. The Joint District Judge, Sirajganj heard the appeal and by impugned judgment and decree dated 23.03.2023, dismissed the appeal, affirming the judgment and decree passed by the trial court rejecting the plaint. Thereafter, the plaintiffs-petitioners obtained the Rule.

The learned Advocate Mr. Ashfaqur Rahman, appearing on behalf of the plaintiffs-petitioners, submits that in the plaint, the specific cause of action has been asserted and the plaint has been rejected considering the disputed question of facts stated in the application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908, and the trial court is not legally empowered to reject the plaint on the ground of maintainability of the suit. Having drawn the attention of this court to the impugned judgment and decree passed by the Courts below, the learned Advocate submits that the disputed deed of the defendant was not acted upon since the plaintiffs are possessing the suit land, and whether the suit land was inherited by defendant No. 2 is a question of fact which can only be adjudicated after taking evidence; thereby, both the courts below committed an

error of law resulting in an error in the decision, occasioning failure of justice. He prayed for setting aside the impugned judgment and decree passed by the courts below.

The learned Advocate Ms. Tasmia Prodhan, appearing along with learned Advocate Mr. Mohammad Golam Kibria on behalf of the opposite parties Nos. 1 and 2, submits that admittedly the defendant-opposite party No. 2 inherited suit land from her husband and transferred the same to the defendant No. 1 and handed over the possession of the suit land. Therefore, the suit filed by the plaintiffs is barred by section 44 of the Transfer of Property Act, 1882, and both the Courts below arrived at a concurrent finding of fact that defendant No. 2 gifted the suit land to the defendant No. 1 and handed over the possession of the suit land. Therefore, no illegality was committed by the courts below. She prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Ashfaqur Rahman, who appeared on behalf of the petitioners, and the learned Advocate Ms. Tasmia Prodhan, who appeared on behalf of the opposite party Nos. 1 and 2, and have perused the revisional application, the impugned judgments and decrees passed by the courts below, and the records.

On perusal of the order sheets of Other Class Suit No. 443 of 2021, it is revealed that at the time of filing the suit on 10.10.2021, the Assistant Judge, Raiganj, Sirajganj passed an order to issue summons upon the defendants and fixed the next date on 10.11.2021, but no summons was issued and sent to the defendants. On 31.10.2021, the defendant Nos. 1 and 2 entered appearance in the suit, and the defendant No. 1 filed an application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 for rejection of the plaint, and the Assistant Judge, Raiganj, Sirajganj fixed the said application for hearing on the date fixed. On 10.11.2021 the Assistant Judge, Raiganj

fixed the next date on 21.11.2021 for hearing the application and W/S. On 21.11.2021 the trial court fixed the next date on 24.11.2021 for hearing application and W/S. On 24.11.2021 the presiding judge was on leave and the Judge-in-Charge fixed the next date on 15.01.2022 for hearing the application and W/S.

On scrutiny of the order dated 24.11.2021 passed by Assistant Judge(Judge-in-Charge), Raiganj, Sirajganj it reveals that tempering the date '15.01.2022' a new date '30.11.2021' was written subsequently without any initial of the Judge-in-Charge and Mr. Nur Mohammad Bhuiyan, learned Assistant Judge, Raiganj, Sirajganj illegally heard the application for rejection of plaint on 30.11.2021 although no date was fixed on 30.11.2021 for hearing the said application which is a gross misconduct of Mr. Nur Mohammad Bhuiyan, the then learned Assistant Judge, Raiganj, Sirajganj. Mr. Nur Mohammad Bhuiyan, learned Assistant Judge, Raiganj, Sirajganj illegally heard the application for rejection of plaint tempering the date '15.01.2022' subsequently inserting a new date '30.11.2021' in place of '15.01.2022' and illegally disposed of the said application on 30.11.2021 unusually and an extrajudicial work has been done by the learned Assistant Judge Mr. Nur Mohammad Bhuiyan in rejecting the plaint.

On perusal of the plaint, it reveals that in paragraph No. 2 of the plaint, the plaintiff stated the cause of action of the suit. In the plaint, it has been asserted that the plaintiffs inherited the suit land. The defendant No. 1 asserted in the application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 that the defendant No. 2 inherited the suit land and gifted the suit land to defendant No. 1 by deed No. 3164 dated 19.08.2021 and handed over the possession of the suit land. The plaintiffs are not party to the said deed and there is no cause of action of the suit. The case of the plaintiffs is that by the

disputed deed, the defendant No. 2 transferred the land inherited by the plaintiffs. The plaintiff No. 1 as son and plaintiff No. 2 as wife of late Serajul Haque Mia inherited the suit land. The plaintiff No. 2 and defendant No. 2 are wife of late Serajul Haque Mia. Both the parties claimed title and possession in the suit land by inheritance, which is a disputed question of fact and can only be decided after taking evidence during trial of the case. The truth or otherwise of the cause of action stated in the plaint can only be adjudicated after taking evidence. Therefore, at this stage, it cannot be said that there is no cause of action of the suit.

A bare reading, Order VII Rule 11 of the Code of Civil Procedure, 1908 reveals that a plaint can be rejected: (1) where it does not disclose a cause of action or (2) where the suit appears from the statement in the plaint to be barred by law or (3) the plaintiff failed to comply with the order passed under Sub-rule (b) and (c) of the said Rule.

The Court can not reject the plaint considering the fact stated in the application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908, and the truth or otherwise of the cause of action can only be adjudicated after taking evidence. It is found that a cause of action has been stated in the plaint. The Court cannot prejudge the cause of action of the suit. The court also cannot reject the plaint on the ground of maintainability of the suit. Therefore, I am of the view that the impugned judgments and decrees passed by the courts below are misconceived, and both the courts below committed an error of law resulting in an error in the decision rejecting the plaint considering the fact stated in the application for rejection of plaint, occasioning failure of justice.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and decrees passed by the courts below rejecting the plaint are hereby set aside.

The trial court is directed to dispose of the suit expeditiously.

The plaintiffs are directed to adduce evidence within 06 months from the date of framing issues.

The order of status quo granted at the time of issuance of the Rule on 28.05.2023 will continue till disposal of the suit.

Send down the LCR at once.