IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 2294 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 with

Mr. Mohammad Golam Kibria, Advocate

…For the opposite parties.

Heard on 23.07.2026, 16.08.2026,

02.09.2026 and 13.09.2026.

Judgment on: 14.09.2026

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. 03 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. 456 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. 456 of 2021 in the Court of Assistant Judge, Raiganj, Sirajganj impleading the opposite party Nos. 1 and 2 as defendant Nos. 1 and 2 praying for decree of declaration that the gift deed No. 3165 dated 19.08.2021 is not binding upon the plaintiffs. The defendant Nos. 1 and 2 entered appearance in the suit by filing written statement denying the assertion made in the plaint. 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, Raiganj, Sirajganj, by judgment and decree dated 30.11.2021, was pleased to reject the plaint, against which the plaintiffs filed Other Class Appeal No. 3 of 2022 in the Court of the District Judge, Sirajganj, who, after hearing the appeal by judgment and decree dated 23.03.2023 was pleased to dismiss the appeal affirming the judgment and decree passed by the trial court, against which the plaintiffs-petitioners obtained the Rule.

The learned Advocate Mr. Ashfaqur Rahman appearing on behalf of the plaintiffs-petitioners submits that in the application for rejection of the plaint, it has been stated that the plaintiffs filed a false case and the defendant No. 2 Mosammat Tohura Khatun inherited the suit land from her husband Sirajul Haque Miah and subsequently by impugned deed No. 3165 dated 19.08.2021 transferred the suit land to defendant No. 1 which can only be adjudicated after taking evidence and no grounds under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 has been made out in the application for rejection of plaint and the impugned judgment and decree passed by the courts below are misconceived. He prayed for making the Rule absolute.

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 defendant No. 2 inherited the suit land from her husband and by the impugned deed transferred the suit land to defendant No. 1 and the plaintiffs are not entitled to get a decree of declaration that the impugned deed is not binding upon the plaintiffs. She further submits that both the courts below arrived at a concurrent finding of fact that the plaintiffs are not entitled to claim the entire suit land and after registration of gift deed No. 3165 dated 19.08.2021 the defendant No. 1 is possessing the suit land. Therefore, the revisional court should not interfere with the concurrent finding of fact arrived at by the courts below. She prayed for discharge the Rule.

I have considered the submission 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, perused the revisional application, the impugned judgment and decree passed by the courts below, and the records.

On perusal of the application filed under Order VII Rule 11(a) of the Code of Civil Procedure, 1908, the impugned judgments and decrees passed by the courts below reveals that both the courts below rejected the plaint considering the statement made in the said application. No finding has been arrived at by the courts below that the suit is barred by law or that no cause of action has been stated in the plaint.

On perusal of the order sheets of Other Class Suit No. 456 of 2021, it is revealed that at the time of filing the suit on 07.11.2021, 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 10.11.2021 the Assistant Judge, Raiganj again passed an order to issue summons and fixed the next date on 21.11.2021 for return of summons and AD. On

21.11.2021, the defendant Nos. 1 and 2 entered appearance in the suit and 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 next date on 24.11.2021 for hearing the said application. On 24.11.2021, the Assistant Judge, Raiganj, Sirajganj was on leave and the Judge-in-Charge fixed the next date on '15.01.2022'.

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 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 on '30.11.2021' tempering the date '15.01.2022' inserting a new date '30.11.2021' and 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.

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.

On perusal of the statement made in the plaint and the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, it is revealed that both the parties asserted that after the death of Serajul Haque, the plaintiffs and defendant No. 2 inherited the suit land. Plaintiff No. 2 and defendant No. 2 are the wife of late Serajul Haque Mia. It is found that a cause of action has been stated in paragraph No. 4 of the plaint. The Court cannot reject the plaint considering the disputed question of facts stated in the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, and the truth or otherwise of the cause of action stated in the plaint would be decided after taking evidence. 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. The appellate Court below, without perusal of the records of Other Suit No. 456 of 2021, mechanically affirmed the judgment and decree passed by the trial court and failed to discharge the judicial duty following law.

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 filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, 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 considering the merit 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 continuing till disposal of the Other Class Suit No. 456 of 2021.

Send down the LCR at once.