

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

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 3884 of 2015

IN THE MATTER OF

An application under section 115(1) of
the Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Banobihari Sardar

... Petitioner

-Versus-

Sree Gobinda Chandra Mondal and
others

... Opposite parties

No one appears

.....For the petitioner

Mr. Md. Abdur Rouf, Advocate

....For the opposite party No. 1

Heard on 29.04.2026 and 05.05.2026

Judgment on: 12.05.2026

On an application filed by the petitioner under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 18.10.2015 passed by Joint District Judge, Satkhira in Miscellaneous Appeal No. 12 of 2012 reversing the judgment and order dated 23.11.2011 passed in Miscellaneous Case No. 32 of 2006 by the Assistant Judge, Kaligonj, Satkhira rejecting the application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 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 pre-emptor opposite party No. 1, as applicant, filed Miscellaneous

Case No. 32 of 2006 in the Court of the Assistant Judge, Kaligonj, Satkhira under section 96 of the State Acquisition and Tenancy Act, 1950 for preemption of total 17 decimals of land purchased by the pre-emptee vide registered deed No. 2968 dated 22.06.2006. After filing the suit, the pre-emptee, opposite party No. 1, filed written statement. During pendency of the suit, the pre-emptee, opposite party No. 1, filed an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of plaint stating that the suit land is a homestead and pond as recorded in the SA Khatian for which the suit under section 96 of the State Acquisition and Tenancy Act, 1950 is not maintainable in law. The pre-emptor filed written objection against the said application stating that the entire land is not non-agricultural land and the disputed land is not situated within the pourashava for which the suit is maintainable under section 96 of the State Acquisition and Tenancy Act, 1950. After hearing the parties, the Senior Assistant Judge, Kaligonj, Satkhira, by order dated 23.11.2011 rejected the said application for rejection of the plaint against which the pre-emptee petitioner filed Miscellaneous Appeal No. 12 of 2012 in the Court of the District Judge, Satkhira. The Joint District Judge, Satkhira heard the appeal and by impugned judgment and order dated 18.10.2015 rejected the plaint holding that on perusal of the Khatian it appears that the suit land was recorded in the SA Khatian as homestead which has been admitted by the pre-emptor and it has been mentioned in the deed dated 22.06.2006 that the suit land is homestead and pond and the investigating report depicts that the suit land is not an agricultural land. Since the suit land is homestead, the suit under section 96 of the State Acquisition and Tenancy Act, 1950 is not maintainable in law.

No one appears on behalf of the petitioner.

The learned Advocate Mr. Md. Abdur Rouf, appearing on behalf of the pre-emptee-opposite party, submits that the suit land is a homestead. Therefore, the miscellaneous case under section 96 of the State Acquisition and Tenancy Act, 1950 is not maintainable in law, and the appellate court below legally passed the impugned judgment and order rejecting the plaint under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Abdur Rouf who appeared on behalf of the opposite party No. 1, perused the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, the impugned judgments and orders passed by the courts below and the records.

On a bare reading of the plaint, it reveals that the nature of the suit land is not stated in the plaint. The appellate court rejected the plaint considering the report submitted by the commissioner, Khatian and the statement made in the application for rejection of the plaint.

On a bare reading of Order VII Rule 11 (d) of the Code of Civil Procedure, 1908, it appears that at the time of disposal of the application filed under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908, the Court shall strictly confine within the plaint and there is no scope to consider the facts stated by the pre-emptee in the application under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908. The court is only entitled to reject the plaint if it appears from the statement made in the plaint that the suit is barred by law, or there is no cause of action for the suit, or the plaintiff failed to comply with the order of the court passed under sub-rule (b) and (c) of the said Rule.

No finding has been arrived at by the appellant court below that from the statement made in the plaint it appears that the suit is barred by any law. I am of the view that the appellate court below travelled beyond the provision made in Order VII Rule 11(d) of the Code of Civil Procedure, 1908 and illegally rejected the plaint.

In view of the above finding, observation and proposition, I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgment and order passed by the appellate court below is hereby set aside.

The ad-interim order of injunction granted at the time of issuance of the Rule is hereby recalled and vacated.

However, the parties are directed to maintain status quo in respect of the possession and position of the suit land till disposal of the suit.

The trial court is directed to dispose of the Miscellaneous Case No. 32 of 2006 after taking evidence of both parties positively within 06 (six) months from the date of receipt of this order.

However, there will be no order as to costs.

Send down the LCR at once.