

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4307 of 2023.

In the matter of:

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

And

Tareq Bin Hasan and others

...Petitioners

-Versus-

Md. Muktal Hossain

...opposite party

Mr. Md. Mizanur Rahman, Advocate

...For the petitioners

Mr. Manoj Chandra Bhadury,
Advocate

...For the opposite party

Heard on: 19.11.2024

Judgment on: 20.11.2024.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 08.02.2022 passed by the learned Joint District Judge, 2nd Court, Mymensingh in Other Appeal No.142 of 2017 disallowed the appeal by confirming the judgment and decree dated 09.10.2017 passed by the learned Assistant Judge, Dhobaura, Mymensingh in Other Suit No.389 of 2015 allowed the application for rejection of the plaint under Order 7 rule 11 of the Code of Civil Procedure 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 petitioners as plaintiffs instituted above suit for a decree declaring that the judgment and order passed Pre-emption Case No.6 of 1993 on 11.10.1993 was unlawful, void and not binding upon the plaintiffs.

It was alleged that the defendant as petitioner instituted Pre-emption Case No.6 of 1993 against the registered deed of Hiba Bil Ewaz executed by plaintiffs No.1, 2 and 3. In above case defendant claimed to be a co-sharer as the owner of the contiguous land of the disputed land. It was alleged that the plaintiffs inherited the land of plot No.355 who purchased the same by registered kobla deed dated 03.01.1957 and the defendant while giving evidence as P.W.1 in above case on 02.02.1992 claimed to be a co-sharer by contiguous land owner. But in fact the defendant transferred this total land of plot No.355 by two registered kobla deed and heba deed dated 20.07.1985 and he had no subsisting interest in plot No.355. But the defendant suppressing above material facts and

practicing fraud upon the court obtained impugned judgment and order in above pre-emption case.

In above case the defendant submitted a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint alleging that the issues raised in this case have been finally determined between the parties by a competent court in above pre-emption case which was ultimately affirmed by the Appellate Division and a review petition filed by the plaintiffs to the Appellate Division was also rejected. As such this case is barred by Section 11 of the Code of Civil Procedure.

On consideration of submissions of the learned Advocates for the respective parties and material on record the learned Assistant Judge allowed above petition and rejected the plaint by impugned order dated 09.10.2017.

Being aggrieved by above judgment and decree of the trial court plaintiffs preferred Other Appeal No.142 of 2017 to the District Judge, Mymensingh which was heard by the learned Joint District Judge, 2nd Court, who dismissed above appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellants as petitioners moved to this court with this petition under section 115(1) of the Code of Civil Procedure and obtained this rule.

Mr. Md. Mizanur Rahman learned Advocate for the petitioner submits that on the presentation of a petition under Order 7 Rule 11 of the Code of Civil Procedure by the defendant the learned Judge should have framed an issue on the maintainability of this suit and after recording of evidence if any adduce by the parties pass an appropriate order. The defendants claim that the suit was barred by Section 11 of the Code of Civil Procedure since the issues raised in this suit were conclusively determined in the impugned judgment and order of pre-emption case No.6 of 1993. All above are factual claims which could be determined on consideration of evidence but the learned Assistant Judge without framing any issue and recording evidence most illegally rejected the plaint which is not tenable in law.

Mr. Manoj Chandra Bhadury learned Advocate for the opposite party submits that the learned Assistant Judge rejected the plaint on basis of averment made in the plaint not any contentious

claim made in the petition under Order 7 Rule 11 of the Code of Civil Procedure. Admittedly Pre-emption Case No.6 of 1993 was allowed and the appeal preferred by the opposite parties plaintiffs were dismissed by the court of appeal. A civil revision against above judgment and order of the Appellate Court was rejected by the High Court Division and above judgment and order of the High Court Division was challenged in the Appellate Division which was rejected. The plaintiffs also filed a petition for review to the Appellate Division which was also rejected. As such the issue raised in this suit by the plaintiff that the defendant was not in fact a co-sharer of the disputed holding as the owner of a contiguous land was finally settled by the Appellate Division and the same issue was reopened by the plaintiffs by this suit in the court of the Assistant Judge.

On consideration of above materials on record the learned Assistant Judge rightly rejected the plaint and court of appeal below on correct appreciation of materials on record rightly dismissed the appeal and affirmed the judgment and decree of the trial court which calls for no interference.

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

It is admitted that the defendant as petitioner filed pre-emption Case No.6 of 1993 against the plaintiffs claiming that the defendant was a co-sharer by contiguous land owner and the plaintiffs were stranger in the disputed joma and above pre-emption case was allowed by the trial court and an appeal preferred against above judgment and decree of the trial was dismissed by the court of appeal and a civil revision was preferred to the High Court Division by above appellants was dismissed and then a Civil Petition for Leave to Appeal was filed by above petitioner to the Appellate Division which was rejected and at last the plaintiffs filed a petition for review to the Appellate Division which was also rejected.

As such the judgment and order passed by the learned Assistant Judge in Pre-emption Case No.6 of 1993 was ultimately upheld and endorsed by the Appellate Division. It was finally settled that defendant was a co-sharer in the above disputed holding and the plaintiffs were strangers.

In the suit the plaintiffs have challenged the legality and propriety of above judgment and order passed in Pre-emption case No.6 of 1993 alleging that the plaintiffs obtained above judgment and order from the trial court by practicing fraud. The issue raised by the plaintiffs in this suit has been finally determined by the Appellate Division and above decision has reached its finality. Challenging the judgment and order passed by the Appellate Division in the court of Assistant Judge is highly misconceived and contemptuous.

It is true that a plaint cannot be rejected on the basis of facts and the question of resjudicata as defined in section 11 of the Code of Civil Procedure is a fixed question of law and facts. But all above facts have been clearly stated in the plaint of this suit and admitted fact does not require further prove by legal evidence. A plain reading of the plaint clearly shows that this suit is barred by Section 11 of the Code of Civil Procedure since the issue raised in this suit has been finally determined by the Appellate Division of the Supreme Court of Bangladesh in correction of pre-emption Case No.6 of 1993. The learned Assistant Judge on correct

appreciation of materials on record rightly rejected the plaint of this suit on the basis of the statements made in the plaint not on consideration of submissions of the learned Advocate for the defendant or the statements made in the petition under Order 7 Rule 11 of the Code of Civil Procedure.

In above view of material on record I am unable to find any illegality and infirmity in the impugned judgment and decree passed by the learned Joint District Judge in Other Appeal No.142 of 2017 on 08.02.2022 and I find no substance in this revision and the rule in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to cost.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.