

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

Present:

Mr. Justice Md. Shohrwardi

Civil Revision No. 2840 of 2025

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:

Dr. Nobokrishno Gosh

.....Petitioner

-Versus-

Suvash Chandra Gosh and others

... Opposite parties

Mr. Md. Anis Uz Zaman Prince,
Advocate

....For the petitioner

Mr. Mollah Jibon Ahmed, Advocate

...For the opposite parties.

Heard on 20.04.2026, 28.04.2026 and

05.052026.

Judgment on: 07.05.2026

On an application under section 115(1) of the Code of Civil Procedure filed by the plaintiff appellant petitioner the Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 17.05.2025 passed by Additional District Judge, Court No. 5, Satkhira in Miscellaneous Appeal No. 55 of 2024 affirming the judgment

and order dated 06.11.2024 passed by Joint District Judge, Court No. 2, Satkhira in Miscellaneous Pre-emption Case No. 49 of 2022 rejecting the application under Order VII Rule 11 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 facts for disposal of the Rule are that the opposite party No. 1 filed Miscellaneous Pre-emption Case No. 49 of 2022 under section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption of the suit land against the petitioner stating that the applicant is the co-sharer of suit land appertaining to RS Khatian No. 1739 and 737 sold to the opposite party petitioner by registered Deed No. 2849 dated 01.11.2022. It has been asserted that without giving any notice to the pre-emptor, the vendor sold the property to the pre-emptee petitioner Dr. Nobokrishno Gosh. During pendency of the said suit, the pre-emptee petitioner filed an application on 06.11.2024 under Order VII Rule 11 read with section 151 of the Code of Civil Procedure, 1908 for rejection of the plaint stating that vendor Tapon Kumar Gosh purchased 2.71 acres of land by registered deed No. 225 dated 26.10.1998 and .33 acres of land by registered deed No. 217 dated 02.02.2022 and thereafter his name was mutated in BRS Khatin No. 2624 and holding No. 2522 was recorded in his name. Therefore, the pre-emptor is not a co-sharer of the suit land. Subsequently, the pre-emptee, by registered deed No. 2849 dated 01.11.2024, purchased the suit land and mutated his name, and Khatian No. 2624 and Dag No. 3134 were recorded in the name of the pre-emptee petitioner.

Since the pre-emptor is not the co-sharer by inheritance in the suit land, he is not entitled to file the case under section 96 of the State Acquisition and Tenancy Act, 1950.

After hearing the parties, the trial court, by order dated 06.11.2024, rejected the said application holding that whether the pre-emptor is a co-sharer of the suit land or not is a matter of evidence. Against the said order, the pre-emptee petitioner filed Miscellaneous Appeal No. 58 of 2024 in the Court of the District Judge, Satkhira. The Additional District Judge, Court No. 5, Satkhira heard the appeal and after hearing the parties, the appellate Court affirmed the order passed by the trial court holding that there is no scope to consider the statement made in the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 to reject the plaint and that the statement made in the application for rejection of plaint is required to prove during trial of the case against which the pre-emptee-petitioner obtained the Rule.

The learned Advocate Mr. Md. Anis-Uz-Zaman Prince appearing on behalf of the petitioner submits that in view of the decision made in the case of Mosharaf Hossain vs. Rekha Khatun reported in 74 DLR (AD) 146, Order VII Rule 11 is applicable in the proceeding of the pre-emption case and the pre-emptor is not the co-sharer by inheritance of the suit land for which he is not legally entitled to file the pre-emption application under section 96 of the State Acquisition and Tenancy Act, 1950 and both the courts below failed to consider the provision made in section 96 of the State Acquisition and Tenancy Act, 1950 and illegally arrived at a finding that the evidence is required to

determine whether the pre-emptor is a co-sharer of the suit land or not and committed an error of law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

The learned Advocate Mr. Suproakash Dutta appearing on behalf of the pre-emptor opposite party No. 1 submits that there is no scope to consider the statement made beyond the statement made in the plaint at the time of disposal of the application under Order VII Rule 11 of the Code of Civil Procedure, 1908. He further submits that Order VII Rule 11 is not applicable in the proceeding of the pre-emption case filed under section 96 of the State Acquisition and Tenancy Act, 1950. He also submits that both the courts below arrived at a concurrent finding of facts that the issue raised by the pre-emptee can only be adjudicated by the trial court after taking evidence during trial of the case. In support of his submission, he relied on decisions reported in 29 BLT 291, 25BLC 287, 26 DLR(AD) 1 and 38 DLR(AD) 33. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Anis Uz Zaman Prince who appeared on behalf of the petitioner and the learned Advocate Mr. Shuproakash Dutta who appeared on behalf of the opposite parties, perused the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, the impugned judgment and order passed by the courts below and the records.

The issue involved in the instant Rule is whether Order VII Rule 11 of the Code of Civil Procedure, 1908 is applicable in the preemption proceeding under section 96 of the State

Acquisition and Tenancy Act, 1950, and whether the statement made by the pre-emptee petitioner in the application under Order VII Rule 11 can be considered at the time of disposal of the said application.

At this stage, it is relevant here to quote section 141 of the Code of Civil Procedure, 1908, which runs as follows;

“The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.”

On a bare reading of section 141 of the Code of Civil Procedure, 1908 it reveals that the procedures provided in the Code of Civil Procedure, 1908 concerning the suit shall be followed as far as it can be made applicable in all proceeding in the court of civil jurisdiction which clearly indicates that the provision made in Order VII Rule 11 of the Code of Civil Procedure, 1908 is also applicable in the proceeding initiated under section 96 of the State Acquisition and Tenancy Act, 1950.

The above view of this court lends support from the decision made in the case of Mosharaf Hossain vs. Rekha Khatun, reported in 74 DLR(AD) 146, in which it has been decided by our Apex Court that;

“The submission of the learned Advocate for the respondent that an application under Order VII, rule 11 does not lie since the application for pre-emption is not based on a plaint, is clearly erroneous in view of section 141 of the Code. In this regard, we take support from the case of Abdul Baten vs Abdul

Latif Sheikh and others, 1993 BLD (AD) 56=45
DLR (AD) 26.”

On a bare reading of the provision made in Order VII Rule 11, it appears that the trial court is empowered to reject the plaint if, from the statement made in the plaint, it appears that the suit is barred by law or there is no cause of action of suit or the plaintiff failed to comply with the order passed by the court under Sub-Rule (b) and (c) of the said Rule. There is no scope to consider the statement made in the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the plaint, which requires evidence at the time of trial. Both the courts below arrived at a concurrent finding of facts that whether the pre-emptor is a co-sharer of the suit land by inheritance is a matter of fact which can only be adjudicated by the trial court after taking evidence. I do not find any illegality in the impugned judgments and orders passed by the courts below.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

The trial court is directed to dispose of the miscellaneous case expeditiously.