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

Present:
Mr. Justice S M Kuddus Zaman
And
Ms. Justice Tamanna Rahman Khalidi

CIVIL REVISION NO.926 OF 2026
In the matter of:
An application under Section 115(1) of the Code of Civil Procedure.
And
Nusrat Hossain Kiwan and another
.... Petitioners
-Versus-
Sadi M. S. Kiwan and others
.... Opposite parties
Mr. Aiman Rahman Khan, Advocate
.... For the petitioners.
Mr. Shah Muhammad Ezaz Rahman, Advocate with
Mr. Sheikh Mohammad Faizul Isdlam, Advocate
.... For the opposite parties.

Heard and Judgment on 02.11.2026

S M Kuddus Zaman, J:

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the order dated 01.02.2026 passed by the learned Joint District Judge, 1st Court, Dhaka in Partition Suit No.69 of 2024 rejecting the application under Order VII Rule 11(b) and (d) of the Code of Civil Procedure, 1908 for rejection of the plaint should not be illegal and or such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that Opposite Party Nos.1-4 through their constituted attorney Mr. Mohammad Golum Faruq Bhuiyan instituted above suit for partition of disputed 4 katha land along with seventh storied building alleging that above property belonged to Mr. Mohd. Subhi A Kiwan who has died leaving three sons plaintiff Nos.1-2 and 3 and wife plaintiff No.4. Above Mohd. Subhi Ahmed A Kiwan also married defendant No.1 and out of above wedlock one son defendant No.2 was born. Plaintiffs and defendants are co-shares for above property which has not been partition my meets and bounds and the defendants refused to effect an amicable partition on 01.01.2024.

In above suit defendant Nos.1 and 2 filed a petition under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of plaint alleging that plaintiff Nos.1-4 are not legal heirs of now deceased Mohd. Subhi Ahmed A kiwan and above plaintiffs did not appoint Mr. Advocate Golum Faruk Bhuiyan as their constituted attorney and that power of attorney deed was not properly validated and regularized and he had no locas standi to file above suit for partition. It was further stated that above suit for partition lacks any cause of action.

The learned Joint District Judge rejected above petition by impugned judgment and order dated 01.02.2026.

Being aggrieved by and dissatisfied with above judgment and order of the trial Court above defendants as petitioners moved to this Court with this civil revisional application under section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

Mr. Aiman Rahman Khan, learned Advocate for the petitioners submits that plaintiff Nos.1-3 are not biological sons of Mohd. Subhi Ahmed A Kiwan nor above Mr. Subhi married plaintiff No.4 Eman Eid Ibrahim Khalil at any point of time and the claim of the plaintiffs that they are legal heirs of Mohd. Subhi Ahmed A Kiwan is false and fraudulent. Above plaintiffs did not appoint Mr. Advocate Golam Faruk Bhuiyan as their constituted attorney and above deed of attorney was not properly notarized and validated and he did not have any legal right to file above suit.

On the other hand Mr. Shah Muhammad Ezaz Rahman, learned Advocate for the opposite party Nos.1-4 submits that Mr. Mohd. Subhi Ahmed A Kiwan married plaintiff No.4 Eman Eid Ibrahim Khalil and she was his lawful wife. Plaintiff Nos.1-3 are

legitimate and biological sons of above Mohd. Subhi Ahmed A Kiwan. Above plaintiffs appointed Mr. Advocate Golam Faruk Bhuiyan as their constituted attorney and above deed of power of attorney was lawfully notarized and validated. Admittedly disputed property belonged to Mohd. Subhi Ahmed A Kiwan and the plaintiffs requested their co-shares defendant No.1 and 2 for amicable partition of above property but they refused. The plaintiff filed above petition for rejection of plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 on factual grounds and the learned Joint District Judge on correct appreciation of materials on record rightly rejected above petition which calls for no interference.

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

It is admitted that disputed property 4 katha land along with a seventh storied building belonged to Mohd. Subhi Ahmed A Kiwan who has died on 30.07.2021. It is also admitted that above Mohd. Subhi Ahmed A Kiwan was Jordanian citizen who settled in Bangladesh and married defendant No.1 and defendant No.2 was born out of above wedlock. Plaintiff Nos.1-3 claimed to be

sons of above Mohd. Subhi Ahmed A Kiwan by his another wife and plaintiff No.4 has claimed to be another wife of Md. Subi Ahmed A Kiwan. Above plaintiffs have appointed Mr. Advocate Md.Golum Faruk Bhuiya as their constituted attorney by executing three separate power of attorney deeds. Above Attorney has filed above suit for partition on behalf of plaintiff Nos.1-4 and he has submitted above power of attorney deeds along with the plaint.

The question whether plaintiff Nos.1-4 are legitimate heirs of Md. Mohd. Subhi Ahmed A Kiwan or not is a disputed question of facts which will be determined by the trial Court on consideration of evidence to be adduced by respective parties. The legality, genunity and correctness of the power of attorney deeds submitted by the attorney of above plaintiffs namely Mr. Golum Faruk Bhuiyan will also be determined by the trial Court and this is also a question of facts.

Order 7 Rule 11 is a stringent and harsh provision of the Code of Civil Procedure, 1908 which throws out case of the plaintiff without recording of evidence if it is revealed from the plaint that the same is barred by any law. A plaint cannot be rejected on the basis of contentions facts or on the basis of claims

and allegations made by the defendant or on consideration of documents of the defendants.

As far as the cause of action of above suit is concerned it is admitted that the disputed property belonged to Mohd. Subhi Ahmed A Kiwan and plaintiffs claim that above property has not been partitioned between the plaintiffs and defendants. All the claims and allegations made by the defendants in the petition for rejection of plaint under order 7 Rule 11 are outside of the plaint and are questions of facts. The defendants be at liberty to adduce evidence to prove that the power of attorney deeds of the attorney of the plaintiffs was not a lawful document or the plaintiffs are not lawful heirs of Mohd. Subhi Ahmed A Kiwan at trial.

On consideration of facts and circumstances of the case and relevant law the learned Joint District Judge rightly rejected the petition of the defendants under order 7 Rule 11 of the Code of Civil Procedure which calls for no interference.

We are unable to find any substance in this civil revisional application and the Rule issued in this connection is liable to be discharged

In the result, the rule is discharged.

The learned Joint District Judge is directed to dispose of the suit in accordance with law expeditiously within a period of six months from the date of receipt of this order.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER