

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No.6677 of 2024

Md. Ibrahim Khan and others

... Petitioners

-Versus-

Farzana Begum alias Farzana Kashem and others

...Opposite-parties

Mr. Md. Nurul Huda, Advocate

...For the petitioners

Mr. Ashfaqur Rahman, Advocate with

Mr. Sumit Kumar Sarker, Advocate

...For the opposite-party No.1.

Judgment on 14th August, 2025.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioners, Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 26.05.2024 passed by the learned Additional District Judge, 7th Court, Dhaka in Civil Revision No.145 of 2021 disallowing the same and thereby affirming the judgment and order dated 11.11.2021 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No.193 of 2020 rejecting the application under Order VII Rule 11 (a) and (b) read with Section 151 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 relevant for disposal of this Rule, in short, are that the opposite-parties, as plaintiff, filed Title Suit No.193 of 2020 against the present petitioners, as defendant, for decree of declaration in the following terms;

“(ক) নালিশী “খ” তফসিল বর্ণিত সম্পত্তিতে বাদীর স্বত্ব আছে মর্মে ঘোষণামূলক আদেশ ও ডিক্রী দিতে;

(খ) সাব রেজিস্ট্রি অফিস শ্যামপুর ঢাকা এর দফতর বন্টন নামা দলিল নং-৫৯৪১, তারিখ ১১/১২/২০১৯ইং দলিলটি বাতিল, অবৈধ, অকার্যকর, যাহা প্রথম হই-তই অকার্যকর, যাহা বাদীর উপর বাধ্যকর ন-হ মর্মে ঘোষণামূলক আদেশ ও ডিক্রী দি-ত;

(গ) বিজ্ঞ আদাল-তর আ-দশ মোতা-বক তর্কিত দলিল নং-৫৯৪১, তারিখ ১১/১২/২০১৯ইং এর ভলিউম সং-শাধন কর-নর আ-দশ দি-ত;”

In the suit the plaintiff also filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure prying for temporary injunction against the defendants.

The defendants appeared in the suit and filed application under Order VII Rule 11(a) and (b) read with Section 151 of the Code of Civil Procedure praying for rejection of plaint, on the ground that the suit is barred by Section 42 of the Specific Relief Act, as the plaintiff has no legal status and character and also locus standi to file the instant suit. It was also claimed that the plaintiff is adopted daughter

of Ashrafun Begum alias Ashrafun Nesa and not a biological daughter of Ashrafun Begum, as such, she cannot claim title in the property. Plaintiff filed written objection against the application for rejection of plaint. The trial court heard the application and objection thereto and after hearing by judgment and order dated 11.11.2021 rejected the same.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the defendants filed Civil Revision No.145 of 2021 before the Court of learned District Judge, Dhaka. Eventually, the revision was transferred to the Court of learned Additional District Judge, 2nd Court, Dhaka for hearing and disposal who after hearing by the impugned judgment and order dated 26.05.2024 rejected the same affirming the judgment and order of the trial court. At this juncture, the petitioner moved this Court by filing this application under Section 115(4) of the Code seeking leave to revision and obtained the present Rule and order of stay.

Mr. Md. Nurul Huda, learned Advocate appearing for the petitioners submits that both the learned courts below failed to consider that the plaintiff has not filed any heirship certificate in

support of her claim in the suit and as such, the instant suit for cancellation of Partition Deed being No.5941 dated 11.12.2019 is not maintainable. He further submits that both the courts below failed to consider that the plaintiff without filing the suit for declaration to establish their status and character, has filed the instant suit for cancellation of Partition Deed No.5941 dated 11.12.2019 and as such, the suit is not maintainable and hence, the order dated 11.11.2021 is liable to be set aside.

Mr. Ashfaqur Rahman with Mr. Sumit Kumar Sarker, learned Advocates appearing for the opposite party No.1 at the very outset submit that the question raised by the defendants in their application for rejection of plaint that the plaintiff is not biological daughter of Ashrafun Begum alias Ashrafun Nesa Begum but she is adopted daughter and she did not acquire any title in the property claiming to be heir of Ashrafunessa Begum are matter to be decided on evidence. He submits that the defendants earlier filed Title Suit No.271 of 2021 against the present plaintiff for a declaration that Farzana Begum alias Farzana Kashem obtained National ID Card, Passport, Birth Certificate showing her as daughter of Ashrafun Begum

illegally, purposely, collusively and those documents are not binding upon the plaintiff. The said suit was dismissed against which they preferred Title Appeal No.133 of 2021 and the said appeal was also dismissed. They also filed another Title Suit No.70 of 2018 for a declaration to the effect that Farzana Begum is not heir of Ashrafun Begum which was subsequently, withdrawn by them on 25.03.2021. In the instant case they also prayed for rejection of the plaint on that ground which requires trial of the suit on evidence. The trial court while rejecting the application for rejection of plaint and rightly held and observed that the matter agitated by the defendants in their application for rejection of plaint are matter of evidence which cannot be decided in an application for rejection of plaint. The revisional court also concurred with the findings of the trial court and observed that the situation as embodied in Order VII Rule 11 of the Code of Civil Procedure are not attracted in the instant case and none of the grounds reflected in the application for rejection of the plaint and as such, the plaint in suit is not liable to be rejected.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint, application for rejection of

plaint and the impugned judgment and order of the trial court as well as the revisional court.

This is a suit for simple declaration of title along with other ancillary reliefs in the form of declaration. In the plaint, the plaintiff categorically stated that her mother Ashrafun Begum alias Ashrafun Nesa purchased the suit property by 03(three) registered sale deeds being registered Deed No.1384 dated 11.05.1977 from one Md. Sobed Ali, registered Deed No.1567 dated 12.12.1977 from one Abdul Gani and registered Deed No.30386 dated 14.11.1974 from one Abdus Sobhan. The plaintiff is only daughter of Ashrafun Begum has been mentioned in the said Deed No.1567 and she also inherited property left by her mother. On the other hand, the defendants claimed that the plaintiff is adopted daughter of Ashrafun Begum and as such, she inherited no property from Ashrafun Begum. If it is so, the matter in dispute has to be decided by the court on trial of the suit after recording evidence.

Whether plaintiff Farzana Begum is biological daughter of Ashrafun Begum or adopted daughter is a matter of evidence and claim of the defendants can only be established at the time of hearing

of the suit. None of the situations stated in Rule 11 of Order VII of the Code of Civil Procedure found present in the application for rejection of the plaint.

From perusal of judgment and order of both the courts below this Court find that in rejecting the application filed by the defendants the trial court as well as the revisional court committed no illegality or error of the law in the decision occasioning failure of justice.

From the very conduct of the defendants, it appears that they are trying to obstruct the plaintiff in the instant suit in various manner, such as, filing Title Suit No.70 of 2018, Title Suit No.271 of 2021, Title Appeal No.133 of 2021 and finally by filing application for rejection of plaint in the instant suit unsuccessfully.

The defendants instead of contesting the suit by filing written statement and getting the suit heard and disposed of on merit on this and that plea avoiding adjudication of the matter in dispute. Therefore, I find that the trial court and the revisional court committed no illegality in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule.

In the result, the Rule is discharged, with costs of Tk.10,000/- to be paid to the plaintiffs within 15 days from the date of receipt of this judgment and order failing which they will be debarred from filing written statement and contesting the suit.

Order of *stay* granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to dispose of the suit within a shortest possible time giving top most priority preferably within 6(six) months from the date of receipt of this judgment and order and positively.

Communicate a copy of the judgment to the Court concerned at once.