

13 SCOB [2020] HCD

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO.2725 OF 2014

Md. Zohurul Islam
... Petitioner

-Versus-

Sree Aokkhoy Kumar Roy and others
... Opposite party

Mr. Md. Shafiur Rahman, with
Ms. Nasrin Begum, Advocates
... For the petitioner.

Mr. Subrata Chowdhury, with
Mr. Md. Mominul Islam,
Mr. Rabin Chandra Paul,
Mr. Samir Majumder, and
Ms. Shagufta Tabassum Ahmed,
Advocates
... For the opposite party No.1.

Heard on 10.04.2018 and 11.04.2018.

Judgment on 12.04.2018.

Present:

Mr. Justice Md. Miftah Uddin Choudhury

Ego cannot be allowed by the court of law:

In the facts and circumstances as it appears from the record, I find that the deceased Most. Hosneara Begum Laizu/Lipa Rani Roy was a Hindu lady, but she was converted to a Muslim and she died as a Muslim, presence in her father's house at the time of committing suicide can be a reason to find that she was reconverted to a Hindu.

... (Para 15)

As a Muslim or a believer in Islam she is entitle to get burial as per the Islamic rituals.

... (Para 16)

The prayer of Mr. Subrata Chowdhury as mentioned above cannot be considered by this Court since the deceased herself did not donate her dead body to any institution.

... (Para 17)

Apparently, the father of the deceased has been suffering from some ego and for his such ego Mr. Subrata Chowdhury, as well as Mr. Md. Mominul Islam made such prayers finding themselves helpless to establish that the deceased was reconverted to a Hindu. Such ego cannot be a reason for the Court to decide any dispute like the instant one.

... (Para 18)

For such ego a dead body has been rotting in mortuary since last four years. Keeping dead body of a human being for such long time cannot be allowed by any religion, rather it amounts to an inhuman act. Apparently the father just for his ego behaved like an inhuman being, and such sort of ego cannot be allowed in the society or by the court of law.

... (Para 19)

JUDGMENT

Md. Miftah Uddin Choudhury, J

1. This Rule arises out of the judgment and decree dated 18.06.2014, passed by the Joint District Judge, Nilphamari, in Title Appeal No.24 of 2014 setting aside and reversing those dated 04.05.2014, passed by the Assistant Judge, Domar, Nilphamari, in Other Suit No.10 of 2014.

2. The petitioner Md. Zohurul Islam as plaintiff instituted the suit impleading (1) The then District Magistrate, Nilphamari (2) Sree Aokkhoy Kumar Roy, Son of Norendra Nath Roy of Village- Khamar Bamunia, P.S. Domar, District- Nilphamari, and (3) The Officer-in-charge, Domar Police Station, Nilphamari as defendant Nos.1, 2 and 3 respectively for declaration, that deceased Most. Hosneara Begum Laizu (previously named as Lipa Rani Roy) was a Muslim and her dead body should be given to him since he is her father-in-law for burial as per the Islamic Sariah.

3. The plaint of the plaintiff in brief, that the Most. Hosneara Begum Laizu (previously named as Lipa Rani Roy) is daughter of defendant No.2 Sree Aokkhoy Kumar Roy. She was aged about 19 years and being attracted to the religion of Islam on 18.10.2013 converted to a Muslim and named herself as Most. Hosneara Begum Laizu. In respect of her such conversion on 24.10.2013 she sworn an Affidavit before the Notary Public, Nilphamari and declared herself as a Muslim. She married his son late Md. Humayun Farid Lazu on 24.10.2014 as per the Muslim law with a dower of Taka 1,51,000/ (one lac fifty one thousand), and she declared such marriage by swearing another Affidavit on the same day before the same Notary Public. Their such marriage was registered with the Nika registrar on 24.10.2013 as per the Muslim law. Since then she had been leading her life as a Muslim. That her father (the defendant No.2) instituted G.R. Case No.164 of 2013 under Nari-O-Shishu Nirjatan Daman Ain alleging kidnapping of her. Knowing about such case the said Hosneara willingly appeared before Domar Police Station on 04.11.2013, and prayed before the Senior Judicial Magistrate –cum- Court of Cognizance-3, Domar, Nilphamari for releasing her to self custody. The said Court did not allow such prayer, rather sent her to safe custody in Rajshahi. While she was in safe custody radiological test was done by Doctor to ascertain her age, and as per doctor's report she was about 18-19 years. In the said case she made statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain stating that willingly she was converted to muslim and married Md. Humayun Farid Lazu. That by this time his son Md. Humayun Farid Lazu while had been returning from Rajshahi by train suddenly started to suffer from poisoning and ultimately died in Rangpur Medical College Hospital. That his son's wife Most. Hosneara Begum Laizu on 16.01.2014 was released from the safe custody and allowed to released to her self custody. After such release she came to Domar with Police Scott, but her father against her wish forcibly took her to his house and confined therein. The defendant No.2 created pressure upon her to reconvert to Hinduism. Being denied, she was tortured physically and mentally and in such condition on 10.03.2014 at 1:00 P.M. she was taken to Domar Upazilla Health Complex and expired therein at 6.00 P.M. For such unnatural Death a Case being U.D. Case No.7 of 2014 dated 10.03.2014 was instituted in Domar Police Station. The Officer-in-charge of Domar Police Station (defendant No.3) to ascertain cause of death arranged post-mortem of the dead body. Since the deceased was a Muslim he as her father-in-law for her burial as a Muslim prayed for the dead body to the defendant No.1 (District Magistrate, Nilphamari). The defendant No.2 also made such prayer. Being not in a position to ascertain the religious faith of the deceased, without handing over

the dead body to him (plaintiff) or to the defendant No.2, the Magistrate directed the defendant No.3 (Officer-in-charge, Domar Police Station) to keep the dead body in mortuary, and suggested the plaintiff to take shelter of the Court. That deceased Most. Hosneara Begum Laizu was a major sue-juries and a Bangladeshi citizen. As per the Constitution of Bangladesh she had right to express her own opinion, and having such right she was converted to a Muslim and declaring herself as Muslim on 24.10.2013 sworn an Affidavit. His son Md. Humayun Farid Lazu married Most. Hosneara Begum Laizu as per the Islamic Sariah performing “Izab” and “Kabul” and as such he (plaintiff) as her father-in-law is entitle to get her dead body for burial as per Islamic rituals. As per Section 174 of the Code of Criminal Procedure the defendant No.1 is bound to hand over the dead body to him. That for not handing over the dead body to him he constrained to institute the suit for declaration as mentioned above.

4. The defendant No.2, the father of the deceased Most. Hosneara Begum Laizu previously known as Lipa Rani Roy contested the suit by filing written statement denying the claim of the plaintiff, and stating that the plaintiff’s son Md. Humayun Farid Lazu and others kidnapped his daughter, and as such he instituted a case alleging such kidnapping accusing six persons being Domar Police Station Case No.15 dated 25.10.2013 corresponding to G.R. Case No.164 of 2013. His daughter was recovered by police and produced before the Magistrate who directed to keep her in safe custody. By order dated 16.01.2014 the Magistrate finding as major lady released her to her self custody. In the Zimmanama furnished for such release she signed her name as Lipa Rani Roy. Thereafter she came to his house and started to lead life as a Hindu. She disclosed to him that the plaintiff’s son Md. Humayun Farid Lazu and others forcibly took her signature and created illegal Affidavits and Nikahnama, but she did never convert to Muslim. To humiliate him and his daughter in society they have committed such occurrence. By a Brahman on 20.01.2014 in presence of local elites he arranged an occasion for expiation (প্রায়শ্চিত্ত) on setting fire (অগ্নিযজ্ঞ). While residing in his house she had been following the Hinduism. That being annoyed and angry she had committed suicide on 10.03.2014 by taking poison. That for such suicide, an unnatural death case being U.D. Case No.7 dated 10.03.2014 was instituted in Domar Police Station. That in fact Lipa Rani Roy never left Hindu religion. That plaintiff’s son Md. Humayun Farid Lazu and others forcibly kidnapped Lipa Rani Roy and against her will created some false Affidavits. She never went to the house of plaintiff or his son, nor she lead family life with him. The Affidavits and Nikahnama had not been acted upon and for that reason she willingly by a Puruhit (Brahman) performed expiation (প্রায়শ্চিত্ত) and had been living in his house. In case of her conversion she was not supposed to return to her father’s house after getting release to her self custody. During her life time the plaintiff did not claim her as his daughter-in-law, and as such the plaintiff is not entitle to get any relief, and the suit is liable to be dismissed.

5. During trial 3 PWs and 4 DWs were examined on behalf of plaintiff and contesting defendant No.2 respectively.

6. In deciding the suit the Assistant Judge framed five issues that, (1) whether the suit is maintainable, (2) whether the deceased willingly converted to a Muslim and lead her life as muslim till death (3) whether she after performing expiation had been leading life as a Hindu in her father’s house (4) whether the Affidavits and Nikahnama were forcibly created, and (5) whether the plaintiff is entitled to get any relief as prayed for.

7. The learned Assistant Judge decided all the issues in positive and by the judgment and decree dated 04.05.2014 decreed the suit, and directed the defendant No.1 to hand over the dead body immediately to the plaintiff. In passing such judgment the Assistant Judge after considering the evidences on record arrived into his decision that the deceased willingly converted to a Muslim, and she was a Muslim till her death, and willingly she sworn the Affidavits and executed the Nikahnama, and though residing in father's house she did not lead life as a Hindu.

8. Against the said judgment and decree the defendant No.2 preferred Title Appeal No.24 of 2014 before the District Judge, Nilphamari, and on transfer it was heard by the Joint District Judge, Nilphamari who by the impugned judgment and decree set aside and reversed the judgment of the Assistant Judge, and dismissed the suit.

9. Being aggrieved by and dissatisfied with the impugned judgment and decree dated 18.06.2014 the plaintiff as petitioner invoked the revisional jurisdiction of this Court and obtained the Rule.

10. Mr. Md. Shafiur Rahman, learned Advocate, appearing for the petitioner took me through the judgments of the Courts below and submits, that the Trial Court on proper consideration of the exhibited documents like the Affidavits sworn by the deceased, the Nikahnama, the concerns papers of the criminal case, and the depositions of the witnesses found that the deceased was a Muslim, and rightly directed the defendant No.1 to hand over her dead body to her muslim father-in-law. But the Appellate Court without proper consideration of the depositions of the witnesses and the said papers on surmise and conjecture illegally reversed the judgment of the Trial Court and on setting aside the same dismissed the suit.

11. He also took me through the depositions of the witnesses and submits, that admittedly the deceased Most. Hosneara Begum Laizu previously named as Lipa Rani Roy was a Hindu and daughter of the defendants No.2, but she was converted to a Muslim by reading "Kalema", and she declared such conversion by swearing an Affidavit before the Notary Public and married plaintiff's son late Md. Humayun Farid Lazu as per Muslim Law. She was a major sui-juries as per the report of the Doctor gave after radiological test made at the instance of the defendant No.2 and a major girl like her has right to choose her husband or religion. That out of love and affection she married plaintiff's son and before such marriage she was converted to a Muslim to marry her lover according to Muslim law. But the defendant No.1 feeling himself humiliated instituted a false criminal Case against her husband and others. In the said case the deceased was initially send to safe custody and thereafter she was released to her own custody. Before such release her husband died by poisoning, and naturally finding herself as helpless she may took shelter in her father's house, but this does not mean that she was reconverted to a Hindu by performing expiation as claimed by the defendant No.2. She made statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain before the Court stating that she willingly converted to a muslim and got married with plaintiff's son. He further submits that a Muslim can never be converted to Hindu and as such her alleged conversion is impossible, and the judgment and decree passed by the Appellate Court is illegal.

12. Mr. Subrata Chowdhury, Mr. Samir Majumder, Mr. Md. Mominul Islam, and Mr. Rabin Chandra Paul, learned Advocates, appeared on behalf of the contesting defendant No.2/ opposite party No.1 i.e. the father of the deceased. After reading depositions of the

witnesses Mr. Choudhury find himself helpless and ultimately made a prayer to hand over the dead body to any Medical College for experiment by the students. Mr. Samir Mazumder, subsequently appearing for the opposite party No.1 also cannot deny the facts reveals from the record, but he supports the judgment of the Appellate Court saying that in case of handing over the dead body to the plaintiff bitter relation and enmity can be created in the locality amongst the members of two different communities.

13. Ultimately Mr. Md. Mominul Islam, learned Advocate, made a new prayer that the dead body may be buried as per the religion as decided by the Court in presence of an Executive Magistrate and police force to prevent any illegal activities by any body.

14. After hearing the learned Advocates of both the sides I have gone through the records. Apparently, the execution of the Nikanama and swearing of the Affidavits are admitted. It is also admitted that the said girl went with the son of the plaintiff out of love and affection. For such love and affection she left her father's house and converted to a Muslim and she married Md. Humayun Farid Lazu. Their marriage was performed as per the rituals followed by the Muslim. As per her father she was reconverted into a Hindu by performing a function of expiation (প্রায়শ্চিত্ত) by a Brahmman. Such reconversion is questionable and no where in this subcontinent such reconversion is allowed. However, from the deposition of the defendant No.2 (DW.1) himself it appears that he tried to insist his daughter to reconvert but she denied. For her such denial he created pressure upon her which amounts to serious mental torture, and it is not unlikely that she was even tortured physically. And in such circumstances she was compelled to kill herself by taking poison. Such suicide is also admitted. In case of her reconversion there was no reason of taking poison by herself, and to commit suicide. Apparently, the boy was also died by poisoning. As per Mr. Md. Shaifur Rahman such poisoning also may be caused by the contesting defendant or his party men. However, how he was killed or died is not a matter to be decided in this case, and no certain cause of his death is available in the record.

15. In the facts and circumstances as it appears from the record, I find that the deceased Most. Hosneara Begum Laizu/Lipa Rani Roy was a Hindu lady, but she was converted to a Muslim and she died as a Muslim, presence in her father's house at the time of committing suicide can be a reason to find that she was reconverted to a Hindu.

16. As a Muslim or a believer in Islam she is entitle to get burial as per the Islamic rituals.

17. The prayer of Mr. Subrata Chowdhury as mentioned above cannot be considered by this Court since the deceased herself did not donate her dead body to any institution.

18. Apparently, the father of the deceased has been suffering from some ego and for his such ego Mr. Subrata Chowdhury, as well as Mr. Md. Mominul Islam made such prayers finding themselves helpless to establish that the deceased was reconverted to a Hindu. Such ego cannot be a reason for the Court to decide any dispute like the instant one.

19. For such ego a dead body has been rotting in mortuary since last four years. Keeping dead body of a human being for such long time can not be allowed by any religion, rather it amounts to an inhuman act. Apparently the father just for his ego behaved like an inhuman being, and such sort of ego cannot be allowed in the society or by the court of law.

20. However, for the ends of justice and to prevent any activities in response of such ego this court may direct the administrative authority to take necessary step.

21. With such finding and observation, this Rule is hereby made absolute.

22. In the result the impugned judgment and decree dated 18.06.2014 passed by the Joint District Judge, Nilphamari, in Title Appeal No.24 of 2014 is hereby set aside, and those dated 04.05.2014 passed by the Assistant Judge, Domar, Nilphamari, in Other Suit No.10 of 2014 is hereby restored.

23. The dead body in dispute should immediately hand over to the plaintiff who will bury the same as per Islamic rituals.

24. The Deputy Commissioner, Nilphamari is hereby directed to deploy a Executive Magistrate and some police force during burial (দাফন) of the dead body within 2(two) days from the date of receipt of the copy of this judgment.

25. The parents of the deceased are allowed to see her dead body during such burial if they are interested.

26. However, there is no order as to costs.

27. Send down the lower Courts records immediately.

28. Copies of this judgment be sent immediately to the Deputy Commissioner and the Superintendent of Police, Nilphamari.