

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

Present:
Mr. Justice Md. Mozibur Rahman Miah

CIVIL REVISION NO. 4070 OF 2023

In the matter of:

An application Under Section 115(4) of the Code of Civil Procedure.

AND

In the matter of:

Rajaul Karim, son of late Nur Ahmed and Rojoba Khatun of Ichakhali, Post Office- Rangunia, Police Station- Rangunia, District- Chattogram and others.

... Petitioner

-Versus-

Saleha Begum, wife of late sohor Muluk and others.

..... Opposite-parties.

Mr. Md. Jakaria Khan, Advocate

...For the petitioner.

Mr. Ruhul Amin, Advocate

...For the opposite-party nos. 1-5

Heard and Judgment on 18.04.2024.

Md. Mozibur Rahman Miah, J:

At the instance of the defendant nos. 8, 17, 19-23 in Other Class Suit No. 672 of 2014, this rule was issued calling upon the opposite-party nos. 1-5 to show cause as to why the judgment and order dated

05.06.2023 passed by the learned District Judge, Chattogram in Civil Revision No. 145 of 2023 allowing the same and thereby reversing the judgment and order dated 21.05.2023 passed by the learned Joint District Judge, 3rd Court, Chattogram in Other Class Suit No. 672 of 2014 should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned judgment and order dated 05.06.2023 passed by the learned District Judge, Chattogram in Civil Revision No. 145 of 2023 was stayed for a period of 3(three) months. The said order of stay was subsequently extended on 21.11.2023 for another 6(six) months.

The short facts leading to issuance of the instant rule are:

The present opposite-party nos. 1-5 as plaintiffs filed a suit being Other Class Suit No. 672 of 2014 before the court of learned Joint District Judge, 3rd Court, Chattogram for declaration in respect of suit land measuring an area of 9.06 acres. In the said suit, the petitioner as defendant entered appearance and in order to contest the suit filed written statement. After wrapping up the evidence led by the parties, when the suit reached for argument hearing, the plaintiffs on 21.05.2023 filed an application under section 151 of the Code of Civil Procedure for making the *kabuliyat* and municipal tax receipt as exhibits by recalling the P.W-1. The plaintiffs filed another application under order XXXIX, rule 7 as well as order XVIII, rule 18 read with section 151 of the Code of Civil Procedure for holding local inspection. Those two applications were taken up for hearing by the learned Joint District Judge, 3rd Court,

Chattogram and vide order being no. 70 dated 21.05.2023 rejected both the applications. Against that order, the plaintiffs then filed a Civil Revision under section 115(2) of the Code of Civil Procedure before the learned District Judge, Chattogram which he himself heard on 05.06.2023 and allowed the same in-part and thereby reversing the judgment and order passed by the trail court dated 21.05.2023.

It is at that stage, the defendant nos. 8, 17, 19-23 as petitioners came before this court and obtained the instant rule and order of stay.

Mr. Md. Jakaria Khan, the learned counsel appearing for the petitioners upon taking us to the revisional application and by reading the judgment passed by the courts bellow at the very outset submits that, without giving any notice to the present petitioners who are the defendants in the suit, the learned District Judge has very illegally allowed the revision in-part which cannot be sustained in law.

The learned counsel by taking us to the revisional application in particular, Annexure-‘B’ thereof also submits that, since the alleged *kabuliyat* is a mere photocopy so under no scope that photocopy can be made any exhibit since sections 62 and 63 of the Evidence Act does not authorize to make any photocopy of a document as exhibit but the learned District Judge without considering the said legal proposition allowed the application filed under section 151 of the Code of Civil Procedure which also cannot be sustained in law. With those two legal counts, the learned counsel finally prays for making the rule absolute on setting aside the impugned judgment and order passed by the learned District Judge.

On the contrary, Mr. Ruhul Amin, the learned counsel appearing for the plaintiffs-opposite-party nos. 1-5 frankly submits that, he has got no objection if the rule is made absolute and stay vacated.

I have considered the submission of the learned counsel for the contending parties and perused the revisional application in particular, the judgment and order passed by the trial court as well as the first revisional court. I have also perused the photocopy of the *kabuliyat* which has been annexed as Annexure-‘B’ to the revisional application and the provision provided in sections 62 and 63 of the Evidence Act.

On going through the impugned judgment and order passed by the learned District Judge, I find that, the learned Judge just by quoting the entire judgment of the trial court passed the impugned order in four lines admitting the photocopy of the *kabuliyat* as exhibit but there has been no scope to make photocopy of a document as exhibit not to speak without calling for the respective witness to prove the alleged document so the impugned order allowing the application for making the photocopy of the *kabuliyat* as exhibits clearly exemplify the poor legal acumen of the learned District Judge who happens to be the Senior Judicial officer in our lower Judiciary.

Furthermore, it is also found that, on the first day of admission of the revision, the learned District Judge allowed the same in-part without bothering to see whether the notice of the revision has ever been served upon the defendants-petitioners though it is incumbent upon the learned District Judge to make sure that the notice of the revision has been served upon the defendants-petitioners even then the learned District

Judge has abruptly allowed the revision in-part which in no way can be sustained in law.

Given the above facts and circumstances, I don't find any shred of merit in the impugned judgment and order which is liable to be set aside.

In the result, the rule is made absolute however without any order as to costs.

The judgment and order dated 05.06.2023 passed by the learned District Judge, Chattogram in Civil Revision No. 145 of 2023 is hereby set aside.

The order of stay granted at the time of issuance of the rule stands vacated.

Let a copy of this judgment and order be communicated to the court concerned forthwith.