

In the Supreme Court of Bangladesh

High Court Division
(Civil Revision Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

Civil Revision No. 785 of 2012

In the matter of :

An application under section 115(4) of the
Code of Civil Procedure

And

In the matter of :

Sree Sudhir Chandra Sarker and others

.....Plaintiff-Petitioners

-Versus-

Sree Prodip Chandra Sen and others

.....for the opposite parties

Mr. Sanowar, Advocate

.....for the petitioners

No one appears

.....for the Opposite parties

Judgment on 18.11.2020

By order 05.03.2012 a leave for revision was granted calling upon the opposite parties to show cause as to why the impugned judgment and order dated 24.01.2012 passed by the learned Additional District Judge, 4th Court, Mymensingh in Civil Revision No. 37 of 2010 affirming the judgment and order dated 07.04.2010 passed by the Senior Assistant Judge, Sadar, Mymensingh in Other Class Suit No. 176 of 2003 suffers from an error of important question of law resulting in an erroneous decision occasioning failure of justice.

At the time of issuance of leave granting order, this Court stayed all further proceedings of Other Class Suit No. 176 of 2003.

Relevant facts for disposal of the Rule are that the petitioners as plaintiffs filed a Suit being Other Class Suit No. 176 of 2003 before the Senior Assistant Judge, Sadar, Mymensingh for declaration of title wherein the opposite parties were impleaded as defendants.

In the plaint the plaintiffs stated that the suit land originally belonged to Kambini Chowdhury and Superior Landlord Jamider Sree Sashikanta Acharja and thereafter aforesaid Kambini Chowdhury sold out the suit land to plaintiffs' grandfather Sree Goru Charan Sarker who had been possessing and enjoying the same on paying rent to the Sheresta of Jamider. Thereafter Sree Goru Charan Sarker gave mortgage to Durga Chandra Boshak vide registered mortgage Deed No. 2093 dated 28.03.1924 at a consideration of Tk. 600/- and thereafter Guro Charan Sarker redeemed the mortgage deed by paying all dues having written down signature of the back sheet of the mortgage deed that all dues was adjusted and right and title was not subsisted on 27th December, 1935. Thereafter the suit land was rented to Aonath Bodhya Guha and Sons Limited, who is the plaintiff No. 01, on a monthly rent of Tk. 50/- and paid Tk. 100/- in advance in December 1935 and thereafter Guro Charan Sarker died leaving behind a son namely Sree Surendra Kishore Sarker, who then had taken draft porcha which included his name. Thereafter plaintiff Nos. 01 and 02 along with his grand-mother and neighbor Sree Dharendra Chandra Sarker had been studying in Mrittyanjoy School,

Mymensingh and due to 1965 war, they went to India and the plaintiff No. 01 paid rent but the suit house had been destroyed due to liberation war. The tenant agreed to repair the suit house and it was agreed that the cost of repair will be deducted from the monthly rent. But the plaintiffs did not take care of the suit house for various reasons and the Government took steps for requisition of the suit house without sending notice under section 3 and did not pay any compensation money to the plaintiffs. The tenant did not inform about the acquisitions and thereafter when the plaintiffs went to defendant No. 01 for taking rent with adjustment of repairing cost on 04.03.2002, the defendants informed that the suit land was acquired by the govt. and the ROR record was not prepared in the name of plaintiffs. Hence, the plaintiffs' case was started.

Mr. Sanowar Rahman, learned Advocate appearing on behalf of the petitioners submits that although Sree Tarin Proshad Dey was a Director of the Aonath Bondhu Guha and sons Limited, but he subsequently transferred total share of the company to the father of the defendant Nos. 5-8. Thereafter, he died leaving behind his heirs. Now the conduct and signature of the aforesaid Sree Tarin Proshad Dey is necessary to be verified for the interest of the case and that is why the plaintiffs filed an application before the trial court under order I Rule 10 of the Code of Civil Procedure for addition of party of the heirs of late Sree Tarin Proshad Dey but both the courts below without assigning any reasons rejected the application as well as revision application and as such the impugned

judgment and order has resulted in an error in the decision occasioning failure of justice.

None appears to oppose the Rule when it is taken up for hearing.

Heard the submissions of the learned Advocate, perused the application, judgment and order of courts below and connected documents herewith wherefrom it transpires that the present-petitioners filed Other Class Suit No. 176 of 2003 before the Senior Assistant Judge, Sadar, Mymensingh for declaration of title in the year 2003. After around seven years of filing of the suit, the plaintiff-petitioners filed an application before the trial court under order I Rule 10 of the Code of Civil Procedure claiming that the heirs of Late Director Sree Tarin Proshad Dey are necessitated to be added as parties in the suit. It appears that the heirs of late Director of the company do not have any interest over the suit land in question.

The learned Judge of the trial court in his order dated 07.08.2010 stated that there was no need to make the heirs of late director to be added as parties in the suit. Sree Tarin Proshad Dey was a director of the company and subsequently he died. More so, his conduct and acts made in the company have not been stated by the plaintiff-petitioners in the application.

Learned Advocate for the petitioner submits that the signature of late Sree Tarin Proshad Dey is to be identified by his heirs but it can be done by taking evidence from connected persons involved earlier in the

company. So the heirs of late Sree Tarin Proshad Dey are not necessarily to be party in the case.

It also appears from the impugned judgment and order that the learned Additional District Judge opined that the heirs of former director is not a necessary party in the instant title suit. Because the plaintiffs have already made the present director Sree Prodip Chandra Shen as defendant in the case and the plaintiffs can seek relief against him and others. This Court does not find any illegality in the impugned judgment and order passed by the learned Additional District Judge, Mymensingh to interfere. Therefore, the impugned judgment and order does not suffer from any error of important question of law resulting in an error of decision occasioning failure of justice.

Accordingly, the Rule [leave granting order] is, hereby, discharged and the order of stay granted earlier by this Court stands vacated.

Let a copy of this judgment and order be communicated to the concerned court below at once.

[Jahangir Hossain,J]