

**IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)**

PRESENT:

Mr. Justice Md. Abdul Wahhab Miah
Mr. Justice Muhammad Imman Ali
Mr. Justice Md. Nizamul Huq.

CIVIL REVIEW PETITION NO.189 OF 2015

(From the judgment dated the 20th day of November, 2014 passed by the Appellate Division in Civil Petition for Leave to Appeal No.189 of 2010)

Suza Uddoula and others : . . . Petitioners

-Versus-

Arshad Hossain Haider and others : . . . Respondents

For the Petitioners : Mr. Abdul Wadud Bhuiyan, Senior Advocate, with Mr. Nurul Amin, Senior Advocate, instructed by Mrs. Madhumalati Chy. Barua, Advocate-on-Record

For the Respondents : Mr. Shamsul Haque, Advocate instructed by Mr. Syed Mahbabur Rahman, Advocate-on-Record

Date of Hearing : **The 21st day of August, 2016**

(JUDGMENT)

Md. Abdul Wahhab Miah, J: This civil review petition has been filed by the plaintiffs for reviewing the judgment passed by this Court on the 20th day of November, 2014 in Civil Appeal No.189 of 2010 allowing the same.

The said appeal arose out of the judgment and order dated the 14th day of May 2009, passed by the High Court Division in Civil Revision No.3839 of 2001 making the Rule absolute.

The predecessor of petitioner Nos.1-3 and petitioner No.4 as the plaintiffs filed Title Suit No.339 of 1986 in the First Court of Senior

Assistant Judge, Dhaka for declaration of title and for recovery of khas possession of the suit property impleading the present respondents as the defendants. The plaintiffs' case, in short, was that the suit property measuring 5 kathas land equivalent to more or less 8 decimals was allotted to Md. Jamiruddin by a deed of settlement dated 27.07.1953 by the then Government of East Pakistan. Md. Jamiruddin constructed a semi-pucca house on the allotted land and resided therein with his family members. He paid rents and taxes of the Union Parishad. On 01.06.1968, Md. Jamiruddin applied to the concerned authority for issuing clearance certificate to construct a two storied building as per approved plan of the then DIT and the authority issued a clearance certificate on 21.07.1968. While owning and possessing the suit property, Md. Jamiruddin being in need of cash money proposed to sell the same to the plaintiffs in the first week of March, 1971. The plaintiffs agreed to purchase the suit property for a consideration of Tk.40,000.00. On 12.03.1971, Md. Jamiruddin on receipt of Tk.20,000.00 from the plaintiffs executed a bainapatra in favour of plaintiff No.1. As per stipulation of the said binapatra, the sale was required to be completed within 3 years from the date of the bainapatra. After that, Jamiruddin died on 13.04.1973 leaving behind his only son Nasiruddin as his heir. While owning and possessing the suit property, Nasiruddin admitted the liability of his late father under the said bainapatra as he was an attesting witness thereto. On several occasions, Md. Jamiruddin received part of the balance consideration money from the plaintiffs by putting his signatures on the back page of the said bainapatra. On 13.04.1985, Nasiruddin executed and registered the deed of sale in favour of the plaintiffs on receipt of the balance consideration of taka 11,500.00 and delivered physical possession of the suit

property to them. Nasiruddin is a Bangladeshi National and he never opted for Pakistan. He obtained a succession certificate from the Third Court of Subordinate Judge, Dhaka, vide Succession Certificate Case No.1011 of 1984. While the plaintiffs were in possession of the suit property, defendant No.1 with a group of men forcibly dispossessed them therefrom on 15.04.1986 on the plea that he purchased the suit property from one Rahim Bashak on 28.09.1977 by a registered deed of sale. Rahim Bashak was alleged to have purchased the suit property from Md. Jamiruddin by a deed of sale dated 23.04.1975. Md. Jamiruddin never sold the suit property to Rahim Bashak who never owned and possessed the same. The deed of sale alleged to have been executed and registered by Rahim Bashak was a forged and fabricated document. Defendant No.1 did not acquire any right, title and interest in the suit property on the basis of the said deed. The plaintiffs acquired valid right, title and interest in the suit property by purchase from the lawful owner. Hence the plaintiffs were constrained to file the suit for the relief aforementioned.

Defendant No.1 died during the pendency of the suit and after his death the suit was contested by his heirs respondent Nos.1-7 by filing written statement denying all the material statements made in the plaint. Their case, in short, was that the original allottee Md. Jamiruddin had transferred the suit property to Rahim Bashak by a registered deed of sale dated 23.05.1975. Rahim Bashak subsequently, transferred the suit property to their father deceased defendant No.1 by a registered deed of sale dated 28.09.1977. Since purchase their father had been living in the suit property by constructing houses and some portion of the suit property has been let out to the tenants. After getting settlement from the then Government of East

Pakistan, Md. Jamiruddin constructed a semi-pucca tin shed house and had been residing therein. On the prayer of Jamiruddin the then DIT issued a clearance certificate in his favour on 21.07.1968 who constructed a building on the suit property. After transferring the suit property to Rahim Bashak, Md. Jasimuddin had been residing at 11/6 Bakshi Bazar lane. The defendants got their names mutated and have been paying rents and taxes regularly. The defendants have been in possession of the suit property and the plaintiffs did not have any possession therein. The defendants never dispossessed the plaintiffs from the suit property. The plaintiffs' title deed was false and forged and they (the defendants) had right, title and interest in the suit property. The suit was filed making false statements and as such, the same was liable to be dismissed.

The trial Court by its judgment and decree dated 30.09.1998 dismissed the suit. Against the judgment and decree of the trial Court, the plaintiffs preferred Title Appeal No.406 of 1998 before the District Judge, Dhaka. The learned Additional District Judge, Third Court, Dhaka, by his judgment and decree dated 08.04.2001 dismissed the appeal and affirmed those of the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree of the Appellate Court, the plaintiffs moved the High Court Division by filing a revision application and obtained the Rule in Civil Revision No.3839 of 2001.

A learned Judge of the Single Bench by the judgment and order dated 14.05.2009 made the Rule absolute and decreed the suit.

Against the judgment and order of the High Court Division, the defendant respondents filed Civil Petition for leave to Appeal No.96 of 2010

and leave was granted on 04.02.2010 giving rise to Civil Appeal No.198 of 2010. And this Court by the judgment sought to be reviewed allowed the appeal.

Heard Mr. Abdul Wadud Bhuiyan and Mr. Nurul Amin, the learned Counsel for the petitioners and Mr. Shamsul Haque, learned Counsel who entered caveat on behalf of the defendant-respondents

From the pleading of the respective party it is apparent that the controversies in the suit were (a) whether Md. Jamiruddin, the original allottee of the suit property entered in to an agreement with the plaintiffs on 12.03.1971 to sell the same, (b) whether Md. Jamiruddin died on 13.04.1973 leaving behind Nasiruddin, a son as his only heir and (c) whether Nasiruddin could execute and register the sale deed in favour of the plaintiffs in respect of the suit property.

This Court in the judgment sought to be reviewed noticed that the High Court Division found that the defendants neither in their written statement nor in their deposition claimed that the bainapatra was not executed by Md. Jamiruddin and that Nasiruddin was not his son and that Nasiruddin did not execute and register the deed of sale in favour of the plaintiffs as the son of the original allottee Md. Jamiruddin and then discarded the said findings of the High Court Division with the finding as under:

“The above findings of the High Court Division are contrary to the statements made by the defendants in their written statement. In paragraph-10 of the written statement, the defendants stated, amongst others, that “উক্ত মোঃ জমিরউদ্দিন কস্মিককালেও বাদীপক্ষের সহিত কোন বায়নাপত্র সম্পাদন করে নাই” and in paragraph-12 stated, amongst others, that “উক্ত

মোঃ জমিরউদ্দিনের নাসিরউদ্দিন নামে কোন পুত্র ছিল না বা নাই। সুতরাং তাহাকে বাংলাদেশে রাখিয়া যাওয়ার প্রশ্ন ওঠে না এবং তত দ্বারা কোন দলিল সম্পাদনেরও প্রশ্ন ওঠে না।”

Defendant No.1-(ka) as D.W-1 deposed that it was not a fact that Md. Jamiruddin entered into a contract with the plaintiffs and that the bainapatra (exhibit-8) was forged and collusive and that the signature of Md. jamiruddin was forged and that Md. Jamiruddin did not have a son named Nasiruddin. Admittedly, the plaintiffs could not prove the alleged bainapatra (exhibit-8) by producing any attesting witnesses thereof.”

The learned Counsel for the petitioners failed to show with reference to the written statement and the deposition of DW-1 that the above quoted findings of this Court are the result of improper consideration of the facts stated in the written statement and the deposition of DW-1 or is otherwise perverse.

The High Court Division in coming to the finding that Md. Jamiruddin died on 14.03.1973, relied upon exhibit 19, the death certificate dated 18.11.1991 issued by Dhaka City Corporation and this Court did not consider it proper to rely upon exhibit 19 on the reasoning that according to the plaintiffs Md. Jamiruddin died on 13.04.1973 and his death was recorded on 17.11.1991, that registration of death of Jamiruddin was made long after filing the suit in 1986 without any explanation. We do not see any prima-facie wrong in the above reasoning given by this Court in not relying upon exhibit-19.

If further appears that the High Court Division relied upon exhibit-13, the certificate issued by the graveyard authority. This Court noticed that the Appellate Court having considered the certificate came to the finding that

“under what authority the Vice-Chairman of Relief Committee issued that certificate was not comprehensible and that the Vice-Chairman of the Relief Committee did not have the authority to issue such certificate.”

The learned counsel for the petitioners could not show any law or any other legal instrument authorizing the vice-chairman of the Relief Committee to issue such certificate to nullify the above quoted finding of the Appellate Court. However, they tried to rely upon the death certificate of Md. Jamiruddin issued by Dhaka City Corporation by referring to section 13 of the Registration of Births and Deaths Act, 1969 (the Act, 1969) and the connected rule submitting that mere delay in registering the information of death of a person with the registering authority, as happened in the instant case, shall not make such register and the certificate of such death registry issued by a proper authority invalid or inadmissible in evidence. They have submitted that according to section 13 of the Act, 1969 for the delay in registering the information of death of a person, one is to pay late fee depending on the period of delay in giving such information and also subject to observance of other procedure/formalities and in the instant case the death certificate having been given by the competent authority, this Court committed an error apparent on the face of the judgment in refusing to rely upon the them and as such, the same needs to be reviewed.

From the relevant findings of this Court as quoted and mentioned hereinbefore, it is clear that this Court did not deem it proper or in other words, did not feel it safe to rely upon the death certificate issued by Dhaka City Corporation (exhibit 19), on the ground that though Md. Jamiruddin allegedly died on 13.04.1973, his death was recorded on 17.11.1991 long after filing the suit in 1986 without any explanation.

At the risk of repetition it is stated that the above reason given by this Court in not relying upon exhibit 19 cannot be said to be unreasonable, unjudicious or perverse. For argument's sake if the submission of the learned Counsel for the petitioners that the delay in registering the information of death is permissible subject to payment of late fee and the observance of other procedures/formalities as laid down in section 13 of the Act, 1969, that does not mean that a Court of law would only go by the law itself and would just shut its eyes not to see the broad facts that surface in a particular case, which creates a *prima facie* doubt about the truth of a fact. As in the instant case, the delay in registering the information of death of Md. Jamiruddin was given long after 18 years and that again after the institution of the suit in 1986 without any explanation. To believe or disbelieve a document by a Court or refusal by a Court to rely upon a particular document is dependent upon the appreciation of the evidence adduced in a particular case as well as its facts and circumstances, and a Court has every right either to believe or disbelieve a document or to rely or not to rely upon a document subject to giving reason(s) by it for such believe or disbelieve or non reliance.

It does not require any elaboration to state the law that review is not rehearing of an appeal or to give a defeating party chance to start a second innings and the reasons given by a Court in not relying upon an exhibit in a case do not definitely come within the phraseology "or on account of some mistake or error apparent on the face of the record" within the meaning of rule 1(1) of Order XLVII of the Code of Civil Procedure read with rule 1 of order XXVI of The Supreme Court of Bangladesh, (Appellate Division) Rules 1988.

In view of the above, we do not find any substance in the submission of the learned Counsel for the petitioners and thus no merit in the review petition and accordingly the same is dismissed.

J.

J.

J.

The 21st day of August, 2016
M. Kashem, B.O