

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2066 OF 2017

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Mohammad Nurun Nabi Bhuiyan

.... Petitioner

-Versus-

Sirajul Haq being dead her heirs- Abu Bakkar Siddique and others

.... Opposite parties

Mr. Md. Nazmul Karim, Advocate

.... For the petitioner.

Mr. Das Tapon Kumar, Advocate

.... For the opposite party

No.1(a) - 1(h).

Heard and Judgment on 10.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned order No.16 dated 07.02.2017 passed by the learned Additional District Judge, 3rd Court, Chattogram in Miscellaneous Appeal No.127 of 2014 rejecting in application under Section 151 of the Code of Civil Procedure affirming the order No.14 dated 25.10.2016 passed by the same Court rejecting an application for recalling witnesses 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 in short are that the opposite party as petitioner filed Miscellaneous Case No.27 of 2005 under Section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption against registered kabla deed No.931 dated 06.03.2005 executed by opposite party No.2 to opposite party No.1 transferring 6 decimal land of the disputed holding.

Opposite party Nos.1 and 14 contested above case by filing two separate written objection. Opposite party No.14 alleged that he purchased above land from opposite party No.1 by registered kabla deed dated 12.05.2005.

At trial petitioner examined two witnesses and produced documents which were marked as exhibits but above PWs were not cross examined by opposite party Nos.1 or 14 nor any evidence was adduced by opposite party No.1 or 14 in support of their respective written objection.

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge allowed above case on contest against opposite party Nos.1 and 14.

Being aggrieved by above judgment and order of the trial Court opposite party No.14 as appellant preferred Miscellaneous Appeal No.127 of 2014 to the District Judge, Chattogram which was transferred to the 3rd Court of learned Additional District Judge for hearing. In above appeal appellant submitted a petition on 25.07.2016 for recalling PW1 and PW2 for cross examination and the learned

Additional District Judge rejected above petition vide impugned order dated 25.10.2016.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above appellant as petitioner moved to this court and obtained this Rule.

Mr. Najmul Karim, learned Advocate for the petitioner submits that opposite party No.14 purchased disputed land from opposite party No.1 before filling of above case for pre-emption but he was not impleaded as opposite party in above case and opposite party No.14 himself was added in above case and he submitted a written objection. His appointed Advocate assured him that he would do everything to contest above case but subsequently the petitioner came to know that his Advocate did not cross examine PW1 and PW2 nor any evidence was adduced on his behalf. The appellant submitted above petition for cross examination of opposite party Nos.1 and 2 but the learned Additional District Judge utterly failed to appreciate above facts and circumstances of the case and relevant laws and most illegally rejected above petition and thereby closed the door of justice for the appellant which is not tenable in law.

Mr. Das Tapan Kumar, learned Advocate for the opposite party Nos.1(a) – 1(h) submits that the petition of the appellant for recall of PW1 and PW2 was rejected by the Court of Appeal below by order dated 25.10.2016. The appellant should have challenged above order to this Court but instead the appellant filed a petition under Section 151 of

the Code of Civil Procedure to the Court of Appeal below which was rejected on 07.02.2017 and the petitioner has challenged the legality and property of the later mentioned order which is not tenable in law.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that in above Miscellaneous Case opposite party Nos.1 and 14 both submitted two separate written objections but at trial no PWs was cross examined nor any evidence was adduced for the opposite party Nos.1 or 14. Since the opposite parties neither cross examined PWs nor adduced any evidence in support of their written objection above case was not contested by the opposite parties. As such above case should have been allowed ex-parte but the learned Assistant Judge committed serious illegality and disposed of above Miscellaneous Case as contested against opposite party Nos.1 and 14. Had above case been disposed of ex-parte opposite party Nos.1 or 14 could resort to the provision of Order 9 Rule 13 of the Code of Civil Procedure to redress there grievance against above judgment and decree of the trial Court.

Since PW1 and PW2 were not at all cross examined the appellant rightly submitted a petition for recall of above two witnesses for cross examination. The claim of the appellant that his appointed Advocate did not cross examine above PWs nor informed him to bring witness deserved serious consideration. An innocent litigant should not made to suffer for the errors or mistakes of his appointed Advocate.

The learned Additional District Judge erred to understand that the impugned judgment and decree of the trial Court was erroneously designated as contested in fact that was an ex-parte judgment.

On consideration of above facts and circumstances of the case and materials on record I hold that the ends of justice will be met if the learned Judge of the Court of Appeal below is directed to reconsider the petition of the appellant filed on 25.10.2016 in the light of observations made above.

The learned Additional District Judge is directed to reconsider the petition of the appellant for recall of PW Nos.1-2 for cross examination in the light of observations made above and proceed to dispose of above appeal in accordance with law.

This Rule is disposed of with above direction.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER