

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 3484 OF 2016.

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Most. Shamsunnahar alias Samchhia Khatun being dead his heirs:

1(ka) Md. Chan Mia and others

..... Defendant-Petitioners

-Versus -

Mosammat Samsunnesa being dead her Heirs:

1(ka) Md. Nasu and others

..... Opposite parties.

Mr. Abdur Rahman, Advocate

..... For the petitioner.

Mr. Md. Salahuddin, Advocate

.....For the opposite parties.

Heard on: 26.05.2024 and

judgment on: 28.05.2024.

On an application of the petitioner Most. Shamsunnahar alias Samchhia Khatun being dead his heirs: 1(ka) Md. Chan Mia and others under section 115(1) of the Code of Civil Procedure the Rule was issued calling upon the opposite party Nos.1(ka)-1(Cha) to show cause as to why the impugned judgment and order dated 19.07.2016 passed by the learned Additional District Judge, Bhola in Title Appeal No.05 of 2012 disallowing the application for reviewing the order dated 21.09.2015 in

respect of examination of the registered deed in question being No.2991 dated 10.06.1981 with a non-suited registered deed No.183 dated 13.01.1982 by handwriting ex-part 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 necessary for disposal of the Rule, in short, is that the opposite party No.1 now deceased Most. Shamsunnahar alias Samchhia Khatun as plaintiff instituted a Title Suit No.22 of 2006 in the Court of Assistant Judge, Daulatkhan, Bhola for a declaration of title and further declaration that the impugned deed No.2991 dated 10.06.1981 is illegal, fraudulent and not binding upon the plaintiffs.

The suit was contested by the defendant Nos.1-3 by filing written statement denying all the material assertions made in the plaint.

The trial Court after hearing the parties and considering the evidence on record dismissed the suit by its judgment and decree dated 24.09.2011.

Against the said judgment and decree of the trial Court the plaintiff petitioner preferred a Title Appeal No.05 of 2012 before the learned District Judge, Bhola.

At the appellate stage the plaintiff side filed an application for comprising a deed No.183 dated 13.01.1982 with the thumb impressions of the executants present in the deed No.2991 dated 10.06.1981 of late Mamela Khatun.

The appellate Court after hearing the parties allowed the said application by its order dated 21.09.2015.

Thereafter, the defendant side filed an application for recalling the said order dated 06.10.2015. The learned Additional District Judge, Bhola rejecting the said application by its judgment and order dated 19.07.2016.

Being aggrieved by and dissatisfied with the impugned judgment of the appellate Court the defendant-petitioner filed this revisional application under Section 115(1) of the Code of Civil Procedure before this Court and obtained the Rule.

Mr. Md. Salahuddin Talukder, the learned Advocate enter appeared on behalf of the opposite party No.1(ka)-1(cha) through vokatnama to oppose the Rule.

Mr. Abdur Rahman, the learned Advocate appearing on behalf of the petitioner submits that the learned Additional District Judge committed serious error of law in allowing the application for comprising the thumb impressions of the executants Mamela Khatun present in the deed being No.183 dated 13.01.1982 with the deed No.2991 dated 10.06.1981. He further submits that not mentioning regarding the said deed in the plaint not only that the deed was not been exhibited as a evidence. In such a case without any prayer for considering the said deed the Court should not pass such order. He also submits that the signature or the thumb impressions admitted to be proved to the satisfaction of the Court provided under Section 73 of the evidence Act whereas the

appellate Court allowed the application for comprising the impugned deed with the deed which was not the subject matter of the instant case at all. In support of his argument the learned Advocate cited the decision of the case of *Shawkat Hossain (Md) and another Vs. Golam Mohammad and another reported in 20 BLC (AD)-27*.

He then submits that in the instant case the plaintiff did not produce the said documents with the plaint, even in the application as admitted documents and without any application for taking the said deed as evidence the Court should not pass such order for comprising of the thumb impressions present in two deeds. He further submits that the petitioner purchased the land by registered deed No.2991 dated 10.06.1981 and the plaintiff has challenged the said deed but the subsequent deed which was also executed by said Mamela Khatun being deed No.183 dated 13.01.1982 should not be taken for comprising the thumb impressions of the said two deeds since the defendant petitioner purchased the land in the Year 1982 and subsequently transferred some portion of the land to the daughter of said Mamela Khatun who executed the deed in favour of defendant and the plaintiff purchased some portion of the land from the daughter of said Mamela Khatun who purchased the land from the defendant and which clearly proves that the plaintiff admitting the transfer by executant Mamela Khatun as such the appellate Court committed serious error in law resulting in an error in the decision occasional failure of justice. He prayed for making the Rule absolute.

Mr. Md. Salahuddin Talukder, the learned Advocate for the opposite party submits that since the deed No.183 dated 13.01.1982 also executed by Mamela Khatun and in such a case there is no bar to comprising the thumb impressions of Mamela Khatun present in the deed being No.2991 dated 10.06.1981. He prayed for discharging the Rule.

I have heard the learned Advocates of both the sides, perused the impugned judgment and order of the Courts below and the papers and documents as available on record.

It appears that plaintiff side challenging the impugned deed No.2991 dated 10.06.1981 as it was illegal, fraudulent and not binding upon the plaintiff. It also appears that the trial Court after considering of the evidence on the record adduced by the parties dismissed the suit.

Against the said dismissal order the plaintiff opposite party preferred Title Appeal No.5 of 2012. Wherein the plaintiff opposite party filed an application for comprising the thumb impressions of the executants Mamela Khatun present in the impugned deed with the deed No.183 dated 13.01.1982. It appears that the defendant-petitioner purchased the land through registered deed No.2991 dated 10.06.1981 from Mamela Khatun and thereafter the defendant-petitioner transferred some portion of the land in favour of the daughter of the executants Mamela Khatun from the said land and the plaintiff also purchased the land from the said daughter of Mamela Khatun.

It also appears that the plaintiff in their application dated 07.04.2015 prayed for comprising the thumb impression of Mamela Khatun present in the deed No.2991 dated 10.06.1981 with the signature present in the deed No.183 dated 13.01.1982.

But it appears that the plaintiff did not produce the same for evidence even no application for considering the said deed for Additional evidence, in such a case it is my view that without filing any application for taking additional evidence of the deed being No.183 dated 13.01.1982 the plaintiff opposite party filed an application for comprising the thumb impressions of the executant Mamela Khatun whereas the same is not admitted documents, as such it is my view that the impugned order passed by the appellate Court is erroneous one.

In the case of *Shawkat Hossain (Md) and another Vs. Golam Mohammad and another reported in 20 BLC (AD)-27* our Apex Court held:

“where other evidence produced before court are sufficient to prove the genuineness of any disputed signature or document the court may not insist for expert's opinion, but where the evidence adduced before court are not sufficient for proving a disputed signature or document the court should obtain expert's opinion.”

However, if the plaintiff filed an application for taking additional evidence of the said deed being No.183 dated 13.01.1982 and if the Court

allowed the same then the plaintiff can file application for comprising the thumb impression present in the said two deeds.

Having considered the facts and circumstances of the case I find merit in the Rule.

In the result, the Rule is made absolute. The impugned judgment and order dated 19.07.2016 passed by the learned Additional District Judge, Bholra in Title Appeal No.05 of 2012 is hereby set-aside.

However, the Court may consider the application if file by the parties if so advised in accordance with law.

Since this is a long pending case the appellate Court is directed to dispose of the appeal as early as possible preferably within 06 (six) months from the date of receipt of this order in accordance with law.

The order of stay granted earlier by this is hereby recalled and vacated.

Communicate the order at once.