

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 842 OF 2018.

Md. Fazle Rabbi alias Babu.

...Petitioner.

-Versus-

Selina Begum and others.

....Opposite parties.

None appears

... for the petitioner

Mr. Md. Golam Rasul with

Mr. Md. Bokhtiar Hossain, Advocates

... for the opposite parties

Heard and judgment on: 08.01.2024,

Md. Badruzzaman,J

This Rule was issued calling upon opposite party Nos. 1, 2(Ka)-2(Gha) to show cause as to why judgment and order dated 09.11.2017 passed by learned District Judge, Rangpur in Miscellaneous Judicial Case No. 18 of 2016 dismissing the miscellaneous case with cost filed under section 24 of the Code of Civil Procedure for analogous trial of Other Suit No. 59 of 2014 now pending in the 1st Court of learned Joint District Judge, Rangpur with Other Suit No. 226 of 2014 now pending in the Court of learned Senior Assistant Judge, Sadar, Rangpur should not be set aside.

At the time of issuance of Rule this Court stayed further proceedings of those suits for a period of 06 (six) months which was, subsequently, extended time to time.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioner as plaintiff instituted Other Suit No. 226 of 2014 in the Court of Senior Assistant Judge, Rangpur for a decree of declaration that judgment and decree dated 30.11.2011 passed in Other Suit No. 199 of 2011 by learned Senior Assistant Judge, Rangpur in respect of .32 acre land of C.S Plot No. 1214, .21 acre land of C.S Plot No. 908 and .49 acre land of C.S Plot No. 907 was illegal, void and not binding upon the plaintiff. On the other hand, opposite party No. 01 Selina Begum as plaintiff instituted Other Suit No. 49 of 2014 before the 1st Court of Joint District Judge, Rangpur against the present petitioner and others for a decree of partition of .70 acre land of C.S Plot Nos. 908 and 907. Both the suits were pending in those Courts for disposal. At that stage the petitioner filed Miscellaneous Judicial Case No. 18 of 2016 before the learned District Judge, Rangpur under section 24 of the Code of Civil Procedure praying for analogous trial of both suits by one Court for avoiding conflicting decisions by separate Courts. The learned District Judge, Rangpur at the time of disposal of the miscellaneous case found that the son of the petitioner though filed the miscellaneous case as attorney of his father but he did not file power of attorney and accordingly, came to the conclusion that the son of the petitioner had no authority to file the transfer miscellaneous case and on that ground dismissed the miscellaneous case without going into its merit by impugned order dated 09.11.2017.

Challenging the legality of said order dated 09.11.2017 Md. Fazle Rabbi the plaintiff of Other Class Suit No. 226 of 2014 has come up with this application under section 115(1) of the Code of Civil Procedure and obtained the instant Rule and order of stay.

None appears for the petitioner when the matter is taken up for hearing.

Mr. Md. Golam Rosul, learned Advocate appearing for opposite party Nos. 1, 2(Ka) - 2(Gha) submits that since the son of the petitioner filed the transfer miscellaneous case as attorney of his father but failed to produce the power of Attorney at the time of hearing of the miscellaneous case, the learned District Judge committed no illegality in dismissing the miscellaneous case and as such, interference is not called for by this Court.

We have heard the learned Advocate for the opposite parties, perused the revisional application, plaints of both suits, impugned order and other materials available on record. At the time of filing of the revisional application the petitioner has annexed the original Power of Attorney executed by Fazle Rabbi in favour of Raziuddin Ahmed on 08.11.2015 which is duly notarized by the Notary Public. It has been stated in the revisional application that due to bonafide mistake on the part of the concerned Advocate the Power of Attorney could not be produced at the time of hearing of the miscellaneous case and the miscellaneous case has been dismissed only on a technical ground without going into its merit and that since the subject matter of both the suits are more or less same those should be tried analogously by one Court for avoiding conflicting decisions.

We have heard the learned Advocate for the opposite parties and also considered the grounds stated in the revisional application along with the documents available on record. It appears that Other Class Suit No. 226 of 2014 has been instituted by the petitioner for setting aside an *ex-parte* judgment and decree passed in favour of the predecessor of opposite party No. 01 herein and Other Class Suit No. 49 of 2014 has instituted by opposite party No. 01 against the petitioner and others for partition of the land which is covered by the suit land of Other Class No. 226 of 2014. Though issues involved in both suits may be some sort of different but the subject matter of the suits and the parties are more or

less same and accordingly, both the suits should be disposed of simultaneously by one Court with a view to avoiding conflicting decisions by different Courts. It appears that the learned District Judge without taking into consideration of above aspect of the matter considered technical issue that the Attorney holder could not produce Power of Attorney before him and as such, we are of the view that the order passed by the learned District Judge is not tenable under law.

In that view of the matter we find merit in this Rule.

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

The Miscellaneous Judicial Case No. 18 of 2016 be allowed.

Let Other Class Suit No. 226 of 2014 be withdrawn from the Court of Senior Assistant Judge, Sadar, Rangpur and be transferred to the 1st Court of Joint District Judge, Rangpur for disposal.

The 1st Court of Joint District Judge, Rangpur is directed to try Other Suit No. 49 of 2014 now pending before it simultaneously with Other Class Suit No. 226 of 2014 in accordance with law.

Communicate a copy of this judgment to the 1. Court of Senior Assistant Judge, Rangpur, 2. Joint District Judge, 1st Court, Rangpur for information and necessary action.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)