

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4644 of 2009.

In the matter of:

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

Prokash Chandra Mondal and others

...Petitioners

-Versus-

Narendra Nath Mondal and another

...opposite parties

Mr. Sabya sachi Mondal, Advocate

...For the petitioners

Mr. Shaikh Farhadul Haq, Advocate

...For the opposite party No.1

Heard & Judgment on: 22.10.2024.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 16.09.2009 passed by the learned Joint District Judge, 3rd Court, Khulna in Title Appeal No.15 of 2000 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 petitioner as plaintiff instituted above suit for declaration that registered kobla deeds dated 11.02.1963 and 09.05.1963 purportedly executed by the father of the plaintiff namely Gour Mondal showing transfer

of 1.65 acres land to the defendants is forged, ineffective and not binding upon the plaintiff.

It was alleged that above disputed property belonged to the father of the plaintiff Gour Mondal and relevant S.A. khatian was rightly prepared in his name and he died leaving the plaintiffs as his heirs on 12.03.1960. After about three years of demise of Gour Mondal the defendants created above two impugned forged kobla deeds and claimed title in the disputed land on the basis of the same.

Defendant No.1 contested the suit by filing a written statement alleging that disputed land belonged to Gour Mondal who transferred the same to the defendant by two registered kobla deeds dated 11.02.1963 and 09.05.1963 and defendant is in peaceful possession in above land by mutating his name and paying rent to the government. Above Gour Mondal died on 02.08.1970 long after the execution of above two sale deeds to the defendant.

At trial plaintiffs and defendants examined three witnesses each. Documents produced and proved by the plaintiffs were marked as Exhibit No.1-4 series and those of the defendants were marked as Exhibit Nos.Ka-Chaa.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge decreed the suit.

Being aggrieved by above judgment and order of the trial court defendants preferred Title Appeal No.15 of 2000 to the District Judge, Khulna which was heard by the learned Joint District Judge Khulna for hearing and disposal.

In above appeal appellants submitted a petition on 07.09.2009 for amendment of the written statement and adducing further evidence. It was alleged that above Gour Mondal died on 02.08.1970 in Putul Khali village but the plaintiffs have created a false death certificate showing that their father died on 26.12.1953 and in support of above claim they created a false death register which were detected by the Inspector of the Anti-Corruption Bureau.

On consideration of submissions of the learned Advocates for respective parties and materials on record the learned Joint District Judge allowed above petition for amendment of the written statement vide impugned order dated 16.09.2009.

Being aggrieved by above judgment and order of the learned Joint District Judge respondents-

plaintiffs as petitioners moved to this court and obtained this rule.

Mr. Sabya sachi Mondal learned Advocate for the petitioners submits that in the petition for amendment of the written statement the defendants sought to incorporate an investigation report of the Inspector of the Anti Corruption Bureau, Khulna as to the death of Gour Mondal. No document of any criminal proceedings is admissible in any civil proceedings. As such the learned Joint District Judge committed serious illegality in allowing above amendment of the written statement which is not tenable in law.

Mr. Shaikh Farhadul Haq learned Advocate for the opposite party submits that in above civil suit the date of death of Gour Mondal, father of the petitioners, is a relevant issue. It has been alleged by the petitioners that their father died in 1953 long before he execution of impugned two sale deeds in favour of the defendant. On the other hand defendant claims that above Gour Mondal died in 1970. As such in order to prove the actual date of death of Gour Mondal above amendment of the written statement was necessary. The learned Joint District Judge on correct appreciation of materials of record has rightly allowed the petition for

amendment of the written statement which calls for no interference.

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

As mentioned above two impugned kobla deeds dated 11.02.1963 and 09.05.1963 appears to be executed by Gour Mondal, father of the plaintiffs to defendant No.1.

The plaintiffs instituted this suit for cancellation above two documents alleging that their father Gour Mondal died in 1953 long before the date of execution of above documents.

On the other hand defendants claim that above Gour Mondal died on 02.08.1970 long after the execution of above two kobla deeds.

As such both the parties were required to prove by stating facts and adducing evidence the actual date of death of Gour Mondal. The defendant wants to incorporate a statement in support of his claim that the alleged date of death of Gour Mondal as stated in the plaint was false which was detected in another investigation. Since above amendment of the written statement relates to the actual of date of death of Gour Mondal the same was relevant and

necessary for determination of above controversial issue.

An amendment of the pleading cannot be refused on a perception that the evidence to be adduced in support of above amendment would be inadmissible.

I above view of the materials on record I hold that the learned Joint District Judge on correct appreciation of materials on record has rightly allowed the amendment of the written statement which calls for no interference.

I am unable to find any substance in this petition under section 115(1) of the Code of Civil Procedure and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Let a copy of this judgment be transmitted down at once.