

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 2647 of 2015

Md. Azaher Sikder and others

.....Petitioners.

-Versus-

Md. Mosharaf Hossain Khan and others

.....Opposite parties.

Mr. Md. Abdus Sabur Khan, Advocate.

.....For the petitioners.

None appears.

.....For the opposite parties.

Heard and judgment on 21<sup>st</sup> August, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 03.08.2015 passed by the Joint District Judge, 2<sup>nd</sup> Court, Munshigonj should not be set aside.

Opposite party as plaintiff filed a suit for declaration of title and also for declaration that the deed No. 9017 dated 28.11.2011

is null and void and not binding upon the plaintiffs and Mutation Khatian No. 3394/11-12 dated 11.01.2012 and Mutation Khatian No. 3543/11-12 dated 05.05.2012 are wrong and void.

Defendant petitioner contested the suit by filing written statement.

During trial plaintiff examined 3 witnesses. Defendants cross examined P.Ws. 2-3 but they could not cross-examine the plaintiffs.

Thereafter on 28.06.2015 defendants filed three applications. One is for calling the plaintiff witnesses another application to give them opportunity to produce the defendants witnesses and also filed another application that defendant No.5 Ahmed Sikder died on 09.04.2015 and his heirs are require to be substituted. By the order dated 28.06.2015, Trial Court allowed all the applications upon fixing a next date on 03.08.2015 for taking steps.

On 03.08.2015 plaintiff filed an application under section 151 of the Code of Civil Procedure stated that the heirs of defendant No.5 are already on record as defendant Nos. 1-4 and

there is no necessity to substitute the heirs of defendant No.5. The Joint District Judge by the impugned order dated 03.08.2015 although allowed the application filed by the plaintiff but ignoring to its earlier order of allowing the defendants prayer for recalling the P.Ws. as well as giving them chance to produce defendants witnesses, fixed the case for pronouncement of judgment on 16.08.2015,

Being aggrieved there against the petitioner obtained the instant rule.

Although the notice of the rule has been served upon the opposite parties but none appears to oppose the rule.

Mr. Md. Abdus Sabur Khan, the learned advocate appearing for the petitioner drawing my attention to the order dated 28.06.2015 passed by the Joint District Judge, 2<sup>nd</sup> Court, Munshigonj in Title Suit No. 238 of 2012 submits that although the learned Judge allowed the prayer of the defendants petitioner to cross examine the plaintiff witnesses and allowed him to produce defendants witness but on the following date i.e. on 03.08.2015 just by passing the earlier order, he allowed the

application filed by the plaintiff under section 151 of the Code of Civil Procedure upon accepting the defendant Nos. 1-4 as a legal heirs of defendant No.5 and fixed the suit for delivery of judgment on 16.08.2015 thereby occasioning failure of justice. He thus prays that the impugned order, since not sustainable in law which may be set aside.

Heard the learned advocate and perused the impugned order.

Going through the order dated 28.06.2015 as well as the impugned order dated 03.08.2015, it appears that on 28.06.2015 the trial court passed the following order:

“১-৪নং বিবাদীপক্ষে এক দরখাস্ত দ্বারা দরখাস্তে বর্ণিত কারণে মোকদ্দমাটি রায় প্রচার এর তালিকা হইতে উত্তোলন পূর্বক বাদীপক্ষের স্বাক্ষরকে জেরা ও বিবাদীপক্ষে স্বাক্ষর দেওয়ার জন্য আবেদন করিয়াছে।  
 ..... উভয় দরখাস্তের কপি  
 বাদীপক্ষে আপত্তি সহকারে গ্রহণ করিয়াছে। আবেদন মঞ্জুর।”

Although the trial court vide above order allowed the prayer of the defendant to cross examine the plaintiff witness and also allowed them to produce defendants witness but on the following

date i.e. on 03.08.2015 the learned Judge simply on allowing the application filed under section 151 of the Code of Civil Procedure by the plaintiffs upon allowing his application for substitution fixed up the suit for delivering judgment on 16.08.2015. This scenario of this suit appears to be not in consistent with the legal obligations. When the trial court allowed the defendants to cross-examine the plaintiff witness as well as produce them to produce defendants witness but without giving them a chance to comply the above orders fixed in the case for delivery judgment, obviously can said that defendants was deprived to get fair justice from the court. The impugned order rather appears to be passed illegally without applying judicial mind, which is thus not sustainable in law.

I thus find merits in this rule.

In the result, the rule is made absolute and the impugned order dated 03.08.2015 is hereby set aside.

The Trial Court is hereby directed to allow the defendants to cross-examine the plaintiffs witness as well as give them a chance to produce their witness pursuant to order dated

28.06.2015 and the trial court is further directed to dispose of the suit expeditiously as early as possible.

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

Communicate the judgment at once.