

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 3904 of 2019.

Amena Begum Himu.

..... Petitioner.

-Versus-

Masuma Begum and another.

..... Opposite parties.

Mr. Md. Eunus Ali, Advocate.

..... For the petitioner.

Mr. Shihab Uddin Mahmood, Advocate

..... For the opposite parties.

**Heard on: 08.05.2015 & 14.05.2025 and
Judgment on: 18.05.2025.**

Md. Khairul Alam, J.

This Rule was issued calling upon the opposite parties No. 1(ka)-4 to show cause as to why the judgment and order dated 22.08.2019 passed by the learned Additional District Judge, Charfashion, Bhola in Civil Revision No. 32 of 2012 rejecting the revisional application and thereby affirming the order dated 17.09.2012 passed by the learned Senior Assistant Judge, Charfashion, Bhola in Title Suit No. 259 of 2000 rejecting the application filed by the petitioner praying for re-calling the P.W 1 and D.W 1 for cross-examination should not set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the rule are that the present opposite parties No. 1-4 as plaintiffs instituted Title Suit No. 259 of 2000 in the Court of Senior Assistant Judge, Charfashion, Bhola impleading the petitioner and others as defendants for partition of the suit property. The present petitioner and another as defendants No. 39 and 40 have been contesting the suit jointly by filing a separate written statement denying the material allegations made in the plaint. In the said suit, P.W-1 and D.W-1 were examined but they were not cross-

examined by the defendants No. 39 and 40. In such a context, defendants No. 39 and 40 (present petitioner and another) filed an application for recall of the P.W-1 and D.W-1 to cross-examine. The learned Assistant Judge, Charfashion, Bhola after hearing the parties by the order dated 17.09.2012 rejected the said application.

Challenging the said order, the present petitioner preferred Civil Revision No. 32 of 2012 before the Court of District Judge, Bhola. The learned District Judge, Bhola after hearing the said Civil Revision by the judgment and order dated 22.08.2019 dismissed the said Civil Revision and thereby affirmed the order passed by the Trial Court.

Being aggrieved thereby the present petitioner moved before this Court and obtained the Rule and order of stay of the further proceedings of Title Suit No.2509 of 2000.

Mr. Md. Eunus Ali, the learned Advocate appearing on behalf of the petitioner submits that both the courts below failed to consider that the petitioner is the owner of 6.68 acres of the suit land and they have a great interest and therefore, the impugned judgment and order rejecting the application for recalling P.W-1 and D.W-1 for cross-examination is an error of law which occasioned failure of justice.

On the other hand, Mr. Shihab Uddin Mahmood, the learned Advocate appearing for the opposite parties submits that the petitioner did not cross-examine the witnesses in time and without any excuse, so they are not entitled to recall the witnesses for cross-examination.

Heard the learned Advocates, perused the revisional application and other materials on record including the impugned judgment and order.

It appears that on several occasions the PW 1 was examined and cross-examined. P.W-1 was lastly cross-examined by other DWs on 17.02.2011, but the lawyer of the defendants No. 39 and 40 did not cross-examine the PW 1. D.W. 1 was examined on 15.11.2011, but he was not cross-examined by anyone.

After 15.11.2011, eleven dates were fixed for the hearing of the suit but defendants No. 39 and 40 did not take any steps to cross-examine the witnesses. After the conclusion of the partial argument, defendants No. 39 and 40 filed the application for recall, which appears to me to delay the trial of a 12-year-old suit. After careful perusal of the application, I do not find any explanation as to why the defendants No. 39 and 40 failed to cross-examine the witnesses and what prejudice will be caused if the witnesses are not cross-examined by them.

It also appears that both the Courts below, after an elaborate discussion of the said facts, passed the impugned judgment and order.

The learned Advocate for the petitioner filed to show that the courts below committed any error of an important question of law resulting in an erroneous decision occasioning failure of justice.

Therefore, I am of the view that both the Courts below after proper consideration of the facts and law passed the impugned judgment and order and do not find any reason to interfere with the same.

Accordingly, the Rule is discharged.

However, there is no order as to costs.

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

Let a copy of this judgment and order be communicated at once.

Kashem/BO