

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. 33 OF 2020.

Anowara Begum and another.

...Petitioners.

-Versus-

1(ka) Dr. Md. Nizam Uddin Faruque and others.

...Opposite parties.

Mrs. Zubaida Gulshan Ara, Advocate.

...For the petitioners.

Mrs. Aynunnahar Siddiqua, Advocate

... For opposite party No. 3

Heard and Judgment on: 30.06.2024.

Md. Badruzzaman, J:

This Rule was issued calling upon opposite party Nos. 1-3 to show cause as to why order dated 24.10.2019 passed by learned Joint District Judge, 1st Court, Bhola in Title Suit No. 1 of 2017 rejecting an application filed by the defendant-petitioners praying for a direction upon the plaintiffs to produce deed Nos. 7793 and 1205 dated 10.12.1960 and 30.06.1970 respectively and fixing the date for pronouncement of judgment *ex- parte* should not be set aside.

Facts, relevant for purpose of disposal of this Rule, are that opposite party Nos. 1-3 as plaintiffs instituted Title Suit No. 1 of 2017 praying for a decree of declaration that 'Kha' schedule deed of declaration of *heba* is fraudulent, forged, ineffective and not binding upon the plaintiffs.

Defendant Nos. 1 and 2 filed separate written statements to contest the suit and P.W.1 was examined and on the prayer of the defendants the suit was fixed for further peremptory hearing (F.P.H). At that stage the defendants filed an application praying for production of registered deed Nos. 7793 dated 10.12.1960 and 1205 dated 30.06.1970 by the plaintiffs. The plaintiffs filed an application for dispensing with production of the aforesaid deeds as those were not in their possession. During pendency of the application the defendants took several adjournments for cross-examination of the P.W.1. The trial Court, upon hearing the parties, vide order dated 24.10.2019 rejected the application and fixed the next date for pronouncement of judgment *ex-parte*.

Being aggrieved by said order dated 24.10.2019 the defendants have preferred this revisional application and obtained the instant Rule.

None appears for the petitioners when the matter was taken up for hearing on 30.04.2024 and after hearing the learned Advocate for the opposite parties, we adjourned the matter. Today, also, none appears for the petitioners when the matter is taken up for hearing.

Mrs. Aynunnahar Siddiqua, learned Advocate appearing for the opposite parties supports the impugned order passed by the trial Court and submits that after P.W.1 was examined, the defendants took several adjournments for cross-examination of P.W.1 and as such, the trial Court committed no illegality in fixing the suit for pronouncement of judgment *ex-parte*. Learned Advocate further submits that the deeds which have been sought for production by the plaintiffs are in the custody of the defendants and as such, they cannot seek for direction upon the plaintiffs to produce those deeds

and accordingly, the trial Court committed no illegality in rejecting the application 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 and the grounds taken therein, the impugned order and other relevant documents available on record. On perusal of the impugned order as well as other relevant documents, it appears that the defendants prayed for the production of two registered deeds by the plaintiffs stating that those are in the custody of the plaintiffs. The trial Court upon consulting the materials on record came to the conclusion that the beneficiary of those deeds are defendant Nos. 1 and 2 and accordingly, they could not ask the plaintiffs to produce those deeds. We find no illegality in the finding of the trial Court.

It also appears that the defendants took several adjournments for cross-examination of P.W.1 during pendency of hearing of the application for production of the deeds. The trial Court, by the impugned order dated 24.10.2019, rejected the application and on that date fixed the next date for pronouncement of judgment *ex-parte*. Since during pendency of the hearing of the application for production of documents by the plaintiffs, the defendants took adjournments for cross-examination of P.W. 1 and after rejection of the application, the trial Court did not fix any date for cross-examination of P.W. 1, we are of the view that the trial Court committed illegality in fixing the date for pronouncement of judgment *ex-parte*.

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

Accordingly, this Rule is made absolute in-part.

The impugned order so far it relates to fixing the date for pronouncement of judgment *ex parte* is set aside.

The trial Court is directed to give the defendants an opportunity to cross-examine the P.W.1 and thereafter, proceed with the suit and conclude the trial within 2 (two) months from the date of receipt of the copy of this judgment in accordance with law.

There shall be no order as to costs .

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)