In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)
Present:
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 2453 of 2023

IN THE MATTER OF :
An application under section 115(1) of the Code of Civil Procedure
-And-
In the Matter of:
Abdul Awal being dead his heirs:-
1(a) Rokeya Begum and others
...Defendant-Appellant-Petitioners
Versus
Md. Abdul Karim Fakir and others
......Plaintiff-Respondent-Opposite parties
None

Judgment on: 26.05.2024.

Md. Riaz Uddin Khan, J:

Rule was issued upon an application under section 115(1) of the Code of Civil Procedure asking the opposite party No. 1 to show cause as to why the order dated 19.03.2023 passed by the Joint District Judge, 2nd court, Mymensingh in Other Class Appeal No. 230 of 2021 should not be set aside and or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of Rule operation of the impugned order was stayed for a period of 6 weeks and notice was served by Special messenger at the cost of the petitioner.

When the matter was taken up for hearing no one appears to support or oppose the Rule.

The defendant-appellant filed an application under Rule 27 of Order XLI read with section 151 of the Code of Civil Procedure praying for producing

additional evidence. In his application the appellant stated that one Md. Babul @ Babul Mia @ Abdur Rahman, the vendor of plaintiff-respondent Abdul Karim sold .0675 acre of land to defendant-appellant No. 1F Mst. Nurun Nahar by a registered deed No. 1254 dated 17.05.2022. As such the said deed should be produced before the Appellate Court.

The Appellate Court rejected the application on the finding that since the alleged transaction was held on 17.05.2022 after pronouncement of the judgment and decree dated 30.09.2021 (decree signed on 10.10.2021) passed by the trial court there is no need for production of such deed as the appeal could be considered only those documents executed and produced before the trial court prior to pronouncement of the judgment.

I have gone through the application and the documents annexed thereto. The predecessor of the present petitioners as defendant-appellant filed an application for producing a document as additional evidence before the Appellate Court which was admittedly executed during the pendency of the appeal.

Law is now firmly settled that in allowing additional evidence three conditions must be fulfilled: (i) it must be shown that the evidence could not have obtained with reasonable diligence for use at the trial, (ii) the evidence must have been such that, if given, it would probably have an importance influence, though not decisive, on the result of the case, and (iii) the evidence must be apparently credible although it need not be incontrovertible. In the present case these conditions are not fulfilled, as such, the Appellate Court

rightly rejected the application as it is hit by the doctrine of lis pendens. The parties and their successors including subsequent transferee are bound by the judgment and decree passed by the court.

The appellate court should not allow additional evidence without sufficient explanation for not filing it at the trial stage. In the present case the document sought to be produced before the appellate court was not in any way possible to produce before the trial court, hence the appellate court has no scope to allow the prayer of the appellant. [See 8 BLT (Ad) 1]. The provisions of Rule 27 are not intended to allow a litigant who has been unsuccessful in the lower court to patch up the weak parts of his case and to fill up the gap. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. Under Rule 27 additional evidence may be taken by the appellate court only (i) if the trial court has improperly refused to admit evidence which is ought to have or (ii) where the appellate court itself requires such evidence either to enable it to pronounce judgment or for any other substantial cause. [See 1998 BLD (AD) 50; 2003 BLD 327]. If none of the two situations arise, no additional evidence can be adduced at the appellate stage.

The Appellate Court cannot consider a document which has been admittedly executed after the pronouncement of judgment and decree by the trial court. In that view of the matter, there is no merit in the instant Rule which is liable to be discharged.

Therefore, in the result, the **Rule is discharged,** however, without any order as to cost.

The order of stay earlier passed by this court stands vacated and the appellate court is directed to dispose of the appeal as early as possible keeping is of in the year of 2021, if not already disposed of.

Communicate the judgment and order at once.

Ziaul Karim
Bench Officer