

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 5353 of 2022

Rabeya Abedin

.....Petitioner.

-Versus-

Mst. Sufia Begum and others

.....Opposite parties.

Mrs. Shiuli Khanom, Advocate

.... For the petitioner.

Mr. Md. Ahsanullah, Advocate with

Mr. B.M. Maklechur Rahman, Adv.

..... For the opposite parties.

Heard and judgment on 5th March, 2024.

A.K.M.Asaduzzaman,J.

Opposite party as plaintiff filed Title Suit No. 18 of 2022, challenging a succession certificate issued by the local chairman regard being the ownership of the landed properties of Late Kamrul Ahsan Khan Santi, before the Court of Assistant Judge,

Motlob, Chandpur impleading the petitioner as the defendant, who is the wife of late Kamrul Ahsan Khan Santi.

During pendency of the suit on 11.5.2022, plaintiff filed three applications, one is for recalling the P.W.1 and another is under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint and another is for calling the registered volume of the Nikahnama at the stage of argument of the case.

Learned Assistant Judge rejected the three applications vide order dated 16.05.2022.

Challenging the said order plaintiff moved a revision before the Court of District Judge, Chandpur in Civil Revision No. 18 of 2022, who by the impugned judgment and order dated 04.10.2022 allowed the revision and after reversing the order of the trial court allowed the three applications.

Challenging the said order of the District Judge, defendant petitioner moved before this court for Leave under section 115(4) of the Code of Civil Procedure but due to inadvertently instead of granted leave instant rule was issued.

In view of the above factual aspect of this case main question to be decided in these applications as to whether the order passed by the District Judge in allowing the above three applications was at all justified or not.

Mrs. Shiuli Khanom, the learned advocate appearing for the petitioner drawing my attention to the provision as laid down under Order 18 Rule 17 of the Code of Civil Procedure submits that in order to get an order to recall any witness, who has already been examined, applicant is required to furnish the questions in the said application, which he needs to re-examine from him but in the instant case no such question has been put forward in the said application. The learned advocate further drawing my attention to the amended provision of the Code of Civil Procedure submits that at present no application for amendment would be allowed after the trial has commenced under Order 6 Rule 7 of the Code of Civil Procedure unless the court is of the opinion that in spite of due diligence the party could not have raised the matter before, during the commencement of trial. In the instant case there is no such averment in the application for amendment of the plaint. The learned advocate further submits that when the

deceased Kamrul Ahsan Khan died long before and put several signature in different needs in different manner and it is very difficult to find his admitted signatures, the order passed by the Revisional court allowing the said application for examining the Handwriting Expert in the Nikahnama along with any signature of the admitted document it is apparently impossible and the order passed by the District Judge is not executable and accordingly it is liable to be set aside. She finally prays that since in view of the above factual aspect of this case all the applications of the plaintiff appears to be not in consistent with the law, fact and circumstances of this case and was made at the very belated stage of the proceedings, trial court has rightly rejected the same applications. But the Revisional court without applying judicial mind most arbitrarily allowed the applications. The impugned order is thus not sustainable in law, which is liable to be set aside.

Mr. Md. Ahsanullah, the learned advocate appearing for the opposite party frankly considered that although the application for recalling the witness was not made in terms of the legal requirements and the averments, which was sought for is not very essential and not been made properly that application has rightly

been rejected by the trial court. But finally he prays that since in the order passed by the Revisional court on calling the volumes to examine the signature of the said deceased Kamrul Ahsan Khan with his admitted signature of any documents contains nothing to be prejudiced by anybodies, it has rightly been allowed by the appellate court and no illegality is there, he finally prays that the rule may be disposed of accordingly.

Heard the learned advocate and perused the Lower Court Record and the impugned judgment.

In a suit challenging the succession certificate given by the local chairman three applications were pressed by the plaintiff admittedly at the stage of argument. Trial court rejected the said applications on a non-speaking order saying that at this belated stage there is no scope to consider this application. Revisional court reversed the said order of the trial court. But upon perusal of the application filed by the plaintiff it appears that the application for recalling the P.W.1 was made without complying the legal requirements i.e. without mentioning the questions, which are required to be re-examined from the mouth of the P.W.1 on recall. Accordingly it was not in a position to allow but the revisional

court failed to consider this aspect of the case and allowed the application most arbitrarily. On the application for amendment of the plaint, the legislature has intended to formulate a procedure to make an application to follow. There must be an averment that with due diligence, the petitioner was unable to put forward the said fact during trial, which are very essential to dispose of the suit. Which is absent in the application. It was not ever before been drawn attention to the court and as such the trial court although rejected the said application on a non-speaking order but rightly said that at the belated stage when the suit was fixed for argument, it cannot be allowed.

However upon going through the application for recalling the volume of the Nikahnama, I find not proper been adjudicated. It was essential to examine the signature of the deceased Kamrul Ahsan Khan with his any admitted signature as to whether the said Nikahnama was at all been executed by him or not. Accordingly in allowing the said application by the Revisional Court, District Judge committed no illegality.

Regard being had to the above law, fact and circumstances of this case, I am of the opinion that the learned District Judge

committed illegality in allowing the two applications one is for amendment of the plaint and another is for recalling the witness but has rightly reversed the order of the trial court in allowing the application for calling the volume of the Nikahnama.

I thus find substances in the application.

In the result, the leave is allowed and the order of calling the volumes of the Nikahnama as has been allowed by the District Judge is hereby affirmed.

Trial court is hereby directed to disposed of the suit expeditiously as early as possible after allowing the application for calling the volumes in order to examine the signature of the deceased Kamrul Ahsan Khan with his any admitted signature of any document with the Nikahnama, accordingly the application is allowed.

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

Send down the Lower Court Record and communicate the judgment at once.