

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 2543 of 2021

IN THE MATTER OF

Md. Afsar Ali, Headmaster (In-Charge), Mirgarh Mainuddin High School, Police Station- Panchagarh, District- Panchagarh replaced and appointed by resolution dated 04.08.2021

.....Defendant-Appellant-Petitioner

-Versus-

1. Md. Mahfuzar Rahman

.....Plaintiff-Respondent-Opposite Party

2. Md. Solaiman Hossain and others

.... Defendants-Respondents-Opposite parties

Mr. Haripada Barman, Advocate

.....For the petitioner

Mr. Md. Zulfiqur Matin, Advocate

.....For opposite party No. 1

Heard on 08.11.23, 15.11.23, 16.11.23, 19.11.23, 26.11.23, 03.12.23, and judgment passed on 21.01.2024

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

“Record be called for. Let a Rule be issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and decree dated 25.10.2021 passed

by the learned District Judge, Panchagarh in Other Appeal No. 05 of 2015 disallowing the appeal by affirming the judgment and decree dated 20.01.2015 passed by the learned Senior Assistant Judge, Sadar, Panchagarh in Other Suit No. 22 of 2013 decreeing the suit 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 the Rule, operation of the impugned judgment and decree dated 25.10.2021 stayed for 06(six) months from the date and lastly, it was extended on 15.06.2022 till disposal of the Rule.

The present opposite party No. 1 as the plaintiff filed the instant suit before the Court of learned Senior Assistant Judge, Sadar, Panchagarh imp leading the present petitioner and others as the defendants prying for a decree of declaration that the plaintiff is entitled to be included in the voter list of the election of the School Managing Committee as a founder member.

The case of the plaintiff, in short, is that Mirgarh Mainuddin High School was established in 1962, and at that time plaintiff's father

Mohsin Uddin, and his uncle Mohi Uddin donated Tk. 10,000/- and became the founder members of the school. Thereafter, the School Managing Committee by resolution No. 35 dated 08.10.1965 decided that after the death of a founder member, one of his legal heirs would be selected as a founder member. The plaintiff's uncle Mohi Uddin was a founder member up to 2007 and after his death; the plaintiff was nominated to be a founder member. But in 2013, his name was not included in the voter list as a founder member for the election of the Managing Committee. The plaintiff applied to defendant No.1 on 30.01.2013, praying for the inclusion of his name in the voter list as a founder member but the Managing Committee rejected the application on 16.02.2013 giving a wrong interpretation of the law that as per regulation 10(Kha) of the Probidhanmala, 2009 the plaintiff was not entitled to be nominated as a founder member. The voter list so published by defendant No. 1 is wrong, and the plaintiff is entitled to be included as a founder member and hence the suit.

Defendant Nos. 1-2 and 11 contested the suit by filing a written statement denying the averments made in the plaint contending, inter alia, that the case is not maintainable in its present form and there is

no cause of action for filing the suit, the case is barred by limitation and that of the defect of parties. The defendants further stated that the plaintiff's father Mohsin Uddin was never a founder member of the school, rather; it was Mohi Uddin, the uncle of the plaintiff was a founder member of the school and during that time, the plaintiff was appointed Headmaster of the school. After the death of Mohi Uddin, one Auorongojeb was elected the Chairman of the School Committee. From 2008 to 2011, none of the legal heirs of Mohsin Uddin and Mohi Uddin was included in the voter list as a founder member. In 2011, when the plaintiff was the Headmaster of the school he prepared a voter list on 27.01.2011 where he did not include any of the names of the legal heirs of Mohsin Uddin or Mohi Uddin as a founder member. The plaintiff's father's name was inserted in the resolution dated 10.05.1962 of the Managing Committee of the school by manipulating the same, and in the resolution dated 08.10.1965; the word 'life member' was included by manipulation. But now as per law the legal heir of a founder member is not entitled to be included in the voter list as a founder member and as such, the suit is liable to be dismissed with cost.

During the trial, the plaintiff examined 01 witness and produced documentary evidence, and on the other hand, the defendant also examined 01 witness and produced documentary evidence to prove their respective cases.

After the conclusion of the trial, the learned Senior Assistant Judge, Sadar, Panchagarh by his judgment and decree dated 20.01.2015 decreed the suit on the contest against defendant Nos. 1, 2, & 11, and ex-parte against the rest without cost.

Being aggrieved by the said impugned judgment and decree dated 20.01.2015 the defendant as the appellants preferred an appeal before the learned District Judge, Panchagarh, and the same was numbered as Other Appeal No. 05 of 2015. After hearing the appeal the learned District Judge by his judgment and decree dated 13.09.2015 allowed the appeal by setting aside those of the Trial Court and sent back the case on remand for fresh trial with the handwriting expert opinion of the handwriting of the plaintiff.

Being aggrieved by the said impugned judgment and decree dated 13.09.2015 the plaintiff as the petitioner had preferred Civil Revision No. 4915 of 2015 before this Court, and after hearing the

same this Court sent back the case on remand to the appellate court below to decide all the relevant issues with the handwriting expert opinion of the handwriting of the plaintiff.

On remand, after hearing the appeal afresh the learned District Judge, Panchagrh by his judgment and decree dated 25.10.2021 disallowed the appeal on the contest by affirming those of the Trial Court.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 25.10.2021 defendant No. 11 as the petitioner had preferred this civil revision before this Court and obtained the instant Rule.

Anyway, Mr. Haripada Barman, the learned Advocate appearing on behalf of defendant No. 11-petitioner submits that the school in question was established in 1962, and the plaintiff's uncle Mohi Uddin was the founder member of the school till his death and after his death, neither of his heirs' name nor the plaintiff's name was included in the voter list as the founder member till 2011. He also submits that the plaintiff was the Headmaster of the school and during his period he made a voter list on 27.01.2011 wherein he did not include his father's

name in the voter list as the founder member, which indicates that his father was not the founder member of the school at all. He goes on to submit that the plaintiff manipulated the resolution dated 15.10.1962 and inserted his father's name therein as the founder member of the school during his tenure. He further submits that it appears from the resolutions (Exhibit-Ka-3) that the original resolutions were written by using a 'fountain pen' but the insertion of the plaintiff's father's name was written therein by using a 'ball pen' which indicates the manipulation in the resolutions.

He lastly submits that under regulation 10(Kha) of the মাধ্যমিক ও উচ্চ মাধ্যমিক শিক্ষা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা-২০০৯ there is no provision to fill up the post of a founder member by way of inheritance unless otherwise mentioned in a registered deed executed by the founder himself, that is to say, without any registered deed executed by the founder imposing conditions none can claim himself as the founder member by way of inheritance.

Per contra, Mr. Md. Zulfiqur Matin, the learned Advocate appearing for plaintiff-opposite party No. 1 submits that the resolution dated 08.10.1965 is a 30-year-old document which is not manipulated and therefore, both the Courts below rightly decreed the suit. He further submits that the provision 'registered deed' as mentioned in regulation 10(Kha) of the Probidhanmala, 2009 relates to land registration but the predecessor of the plaintiff donated money in establishing the school, and as per section 60 of the Code of Civil Procedure, 1908 money is also a property, but since money is a moveable property therefore, above provision of registration is not necessary. In the case in hand, the school authority admits accepting money from the predecessor of the plaintiff as such, the provision 'registered deed' as mentioned in the said regulation 10(Kha) would not be applicable in respect of the donation of money. He goes on to submit that the defendant produced the exhibited documents before the Court as a custodian of those documents and therefore, the defendant is liable to explain the alleged manipulation. He lastly submits that both the Courts below on concurrent findings decreed the suit and there is nothing to interfere with the same as such, the Rule is liable to be discharged.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the present opposite party No. 1 as the plaintiff filed the instant suit praying for a declaration that he is entitled to be included in the voter list of the election of the School Managing Committee as a founder member, which was decreed on 20.01.2015 on the contest against defendant Nos. 1, 2 & 11, and ex-parte against the rest without cost. Being aggrieved by the same the defendants preferred an appeal before the learned District Judge, Panchagarh, and the same was numbered as Other Appeal No. 05 of 2015. After hearing the appeal the learned District Judge by his judgment and decree dated 13.09.2015 allowed the appeal by setting aside those of the Trial Court and sent back the case on remand for fresh trial with the handwriting expert opinion of the handwriting of the plaintiff. Against which the plaintiff as the petitioner had preferred Civil Revision No. 4915 of 2015 before this Court, and after hearing the same this Court sent back the case on remand to the Appellate Court below to decide all the relevant issues on discussion all the questions of facts and law along with the handwriting expert opinion of the handwriting of the plaintiff. On remand, after hearing the appeal afresh the learned District Judge, Panchagarh by his impugned judgment and decree dated 25.10.2021 disallowed the appeal on the contest affirming

those of the Trial Court holding, amongst others, that “-----রেজুলেশন বহির ৩ নং দফায় কি এমন জিনিস আছে যাহা Expert করিতে হইবে যাহা অত্রাদালতের নিকট বোধগম্য নহে। বর্তমান আদালত মনে করেন পূর্ববর্তী আপিল আদালত এই বিষয় সমূহ সঠিক ভাবে অনুধাবন বা উদঘাটন করিতে সৰম হন নাই।-----; and thereby the learned Judge of the Appellate Court below disobeyed the direction of this Court concerning obtaining the expert opinion of the handwriting of the plaintiff, and examined the resolutions in question by his bear eyes, which is not desirable in any manner whatsoever. On going through the resolutions in question (Exhibit-Ka-3) it appears that the original resolution dated 10.05.1962 was written by using the ‘fountain pen’ but the insertion of the plaintiff’s father’s name therein was written by using a ‘ball pen’ and in the resolution dated 08.10.1965 the word ‘Ajibon’ has been inserted which proves the manipulation in the resolutions. On top of that, the learned Judge of the Appellate Court below misunderstood the provision of regulation 10 (Kha) of the মাধ্যমিক ও উচ্চ মাধ্যমিক শিবা বোর্ড, দিনাজপুর (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারী শিবা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি) প্রবিধানমালা- ২০০৯, in passing the judgment. The above provision is quoted hereinafter below for ready reference-

“১০। সদস্য নির্বাচনে ভোটাধিকার- প্রবিধান ৪ ও ৭ এর অধীন যে সকল সদস্য পদে

নির্বাচনের বিধান রহিয়াছে সে সকল পদে একজন ভোটারের নিম্নরূপ ভোটাধিকার থাকিবে, যথাঃ-

(ক) কোন শ্রেণীর যে সংখ্যক সদস্য পদে নির্বাচন অনুষ্ঠিত হইবে সে শ্রেণীর প্রত্যেক

ভোটারের সমসংখ্যক ভোট প্রদানের অধিকার থাকিবে;

(খ) একজন প্রতিষ্ঠাতা আজীবন ভোটার হইবেনঃ

তবে শর্ত থাকে যে, কোন প্রতিষ্ঠাতার মৃত্যুতে তাহার কোন উত্তরাধিকারের ভোটাধিকার বা

প্রতিষ্ঠাতা শ্রেণীর সদস্য হইবার অধিকার থাকিবে নাঃ

আরও শর্ত থাকে যে, এই প্রবিধানমালা বলবৎ হইবার অব্যবহিত পূর্বে কোন প্রতিষ্ঠাতা কর্তৃক

মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের কোন বেসরকারি শিবা প্রতিষ্ঠানকে জমি বা সম্পদ দান

সংক্রান্ত রেজিস্ট্রিকৃত দলিলে ভিন্নরূপ কোন শর্ত থাকিলে উক্ত শর্ত কার্যকর থাকিবে;

(গ) আজীবন দাতা সদস্য ব্যতীত একজন দাতা সদস্যের ভোটাধিকার কেবল তিনি যে

মেয়াদে অর্থ বা সম্পদ দান করিয়াছেন সে মেয়াদের জন্য বলবৎ থাকিবে এবং একজন

আজীবন দাতা সদস্যের আজীবন ভোটাধিকার থাকিবেঃ

তবে শর্ত থাকে যে, কোন আজীবন দাতা সদস্যের মৃত্যুতে তাহার কোন উত্তরাধিকারের

ভোটাধিকার কিংবা উত্তরাধিকার সূত্রে দাতা শ্রেণীর সদস্য হইবার অধিকার থাকিবে নাঃ

আরও শর্ত থাকে যে, এই প্রবিধানমালা বলবৎ হইবার অব্যবহিত পূর্বে কোন দাতা কর্তৃক

মাধ্যমিক বা উচ্চ মাধ্যমিক স্তরের কোন বেসরকারি শিবা প্রতিষ্ঠানকে প্রয়োজনীয় জমি বা

সম্পদ দান সংক্রান্ত রেজিস্ট্রিকৃত দলিলে ভিন্ন রূপ কোন শর্ত থাকিলে উক্ত শর্ত কার্যকর

থাকিবে;

(ঘ) একাধিক শিক্ষার্থীর একজন অভিভাবক থাকিলে তিনি অভিভাবক শ্রেণীতে কেবল একজন ভোটার হিসাবে গণ্য হইবেন।”

On a plain reading of the said provision it appears that there is no scope to fill up the post of a founder member by way of inheritance unless otherwise mentioned in a registered deed executed by the founder himself, that is to say, without any registered deed executed by the founder imposing conditions no one can claim himself as a founder member by way of inheritance. Admittedly, there is no such registered deed in the instant case. But the learned Appellate Court Judge misinterpreted the provision and passed the impugned decree holding that “-----১ নং বিবাদী নালিশী বিদ্যালয়ের ০৮-১০-৬৫ খ্রিঃ তারিখের ৩৫ নং রেজুলেশন ভঙ্গ করেন নাই বরং তিনি বে-সরকারি শিবা প্রতিষ্ঠান প্রবিধিমালার ১০(খ) দফা ভঙ্গ করিয়াছেন।---; and thereby committed an error of law occasioning a failure of justice.

However, at the time of hearing the Rule, the learned Advocate for the opposite party raised the issue of locus standi of the petitioner in filing the instant civil revision. But the learned Advocate for the petitioner by filing a supplementary affidavit submits that the petitioner was empowered to file the instant civil revision by resolution dated 04.08.2021 of the then School Managing Committee, which was mentioned in the cause title of the

instant civil revision petition at the time of filing the same. I have gone through the concerned resolution and found substance in the submission made by the learned Advocate for the petitioner; as such the issue so raised by the learned Advocate for the opposite party falls through.

Given the above, I find substance in the submissions made by the learned Advocate for the petitioner, and merit in the Rule. Accordingly, the Rule succeeds.

As a result, the Rule is made absolute without cost.

Stay vacated.

The impugned judgment and decree dated 25.10.2021 passed by the learned District Judge, Panchagarh in Other Appeal No. 05 of 2015 disallowing the appeal by affirming the judgment and decree dated 20.01.2015 passed by the learned Senior Assistant Judge, Sadar, Panchagarh in Other Suit No. 22 of 2013 decreeing the suit is hereby set-aside, and the original suit is dismissed on the contest without cost.

Let a copy of this judgment along with the Lower Court Records be sent to the Court below at once.