

Present :

Mr. Justice Md. Lutfur Rahman

Civil Revision No. 156 of 2021

Md. Hanif Howlader

... Petitioner

-vs-

Md. Ali Reaz Khan and another

..... Opposite parties

Mrs. Salina Akter, Advocate

.... For the Petitioner

None appears

.....for the opposite parties

Heard on 21.10.2025.

Judgment on 13.11.2025.

This Rule has been issued calling upon the opposite party no. 1 to show cause as to why the judgment and decree dated 30.09.2020 passed by the District Judge, Barishal in Civil Appeal No. 35 of 2020 dismissing the appeal and affirming those dated 27.11.2019 passed by the Assistant Judge, Agoilzhara, Barishal, in Civil Suit No. 157 of 2018 dismissing the suit for declaration that the Power of Attorney being No. 271 of 2014 dated 06.01.2014 in respect of the suit land is forged, fabricated, null and void and also not binding upon the petitioner should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Short facts, for disposal of the Rule are that, the Plaintiff-Petitioner filed Title Suit No.157 of 2018 before the court of learned Senior Assistant Judge, Barishal for declaration that the Registered Power of Attorney being No. 271/2014 dated 06.01.2014 in respect of the suit land is forged, created, fabricated, null and void and also not binding upon the petitioner. The suit was subsequently heard by the court of learned Assistant Judge, Agoilzhara, Barisal. The learned trial court on perusal of the plaint framed as many as 3 (three) issues for determination of the suit. The defendants neither appeared nor contested the suit. At the trial, the plaintiff was examined as P. W. 1. The learned Assistant Judge, Agoilzhara, Barisal on perusal of the records and on consideration of both oral and documentary evidence was pleased to dismiss the suit by his judgment and decree dated 27.11.2019 (decree signed on 28.11.2019).

Being aggrieved by and dissatisfied with the judgment and decree dated 27.11.2019 (decree signed on 28.11.2019), the plaintiff preferred Title Appeal No.35 of 2020 before the learned District Judge, Barisal, who was pleased to dismiss the appeal on an ex parte hearing by his judgment and decree dated 30.09.2020 (decree signed on 07.10.2020) on affirming those of the trial court.

Being further aggrieved, the plaintiff petitioner moved this Court by filing an application under section 115 (1) of the Code of

Civil Procedure before this Court and obtained the instant Rule and status quo.

Mrs. Salina Akter, the learned advocate appearing on behalf of the petitioner submits that that the disputed Power of Attorney is a registered deed. The plaintiff through two different registered deeds i.e. Deed no. 3867 dated 25.07.1996 and Deed no. 4045 dated 05.08.1996 purchased .50 acres (50 decimals) of land described in the Schedule “Ka” of the plaint from Shahajahan Mollah, Rejia Begum and Kulsum Bibi and mutated the said land in his name and has been in peaceful possession of the said property. That the defendant no.1 with an ulterior motive to grab the aforesaid property of the plaintiff created a forged and false Power of Attorney described in the “Kha” schedule of the plaint as being Deed no. 271 of 2014 dated 06.01.2014 (actually 09.01.2014) registered with Barishal Sub-registry office by false personification showing one Amir Hossain Khan and Md. Hanif Hawladar (the plaintiff) falsely as the executants of the alleged forged Power of Attorney. That actually the alleged forged Power of Attorney was registered on 09.01.2014 but mistakenly it was written in the plaint “06.01.2014” in place of “09.01.2014”. That learned lawyer while preparing the plaint wrote perhaps the date of execution or the date of computer composing as the date of registration. That the alleged forged deed was created beyond the knowledge of the plaintiff

by using another one's picture/photograph and by showing another man in place of the plaintiff. That the plaintiff never executed any such Power of Attorney, his signature is forged. That the date of birth of the plaintiff is 05.03.1966 but it was falsely written as 22.04.1955 in the said forged Power of Attorney. That one Md. Amir Hossain Khan has been shown to be one of the executants of the alleged false and forged Power of Attorney as executant no.1 and the said Md. Amir Hossain Khan already filed Title Suit No. 250 of 2014 in the Court of Senior Assistant Judge, Sadar Court, Barishal for cancellation of the alleged Power of Attorney Deed and the present plaintiff had been impleaded in the said suit as proforma defendant. Thereafter the present plaintiff came to know about the forgery and subsequently he collected the certified copy of the said power of Attorney and filed the present suit separately.

Learned counsel further submits the suit was heard exparte as the defendants had not appeared before the trial court. The plaintiff was examined-in-chief and the documents submitted by the plaintiff were exhibited with exhibit marks. The trial court on exparte hearing dismissed the suit on the findings that the plaintiff had failed to prove his case by producing and examining sufficient witnesses in connection with the alleged forgery. Moreover, the plaintiff did not take any step for any expert opinion with regard to his alleged forged

signatures on the disputed Power of Attorney. Learned trial court further observed that the alleged Power of Attorney is a registered deed and the plaintiff failed to adduce sufficient evidence necessary for proving forgery of a registered deed and accordingly dismissed the suit even though on exparte hearing.

Learned counsel further submits that signature of the petitioner on the alleged power of Attorney is forged, his date of birth was wrong and mother's name of the alleged executant no.1 (proforma defendant) was also wrong. That the signature of alleged executants No. 1 of the said Power of Attorney was also forged and that Amir Hossain Khan on 24.09.2014 filed Title Suit no. 250 of 2014 before the Court of the Senior Assistant Judge, Sadar, Barisal to cancel the alleged disputed Power of Attorney and during trial of that suit the present plaintiff petitioner came to know that his 50 decimals of land was also included in that disputed Power of Attorney. After searching, he obtained the certified copy of that disputed Power of Attorney deed from the Sub-Registry Office, Barisal Sadar and for the first time became able to know that the opposite party no.1 created a forged Power of Attorney in respect of his 50 decimals of land also and got it registered by false personification.

The plaintiff thereafter filed the instant suit on 03.05.2016 for a declaration that the alleged Power of Attorney is forged and for cancellation of the same.

Mrs. Salina Akter, learned counsel submits that appellate court dismissed the appeal on the observations and findings concurrent with the trial court, though on an ex parte hearing. The defendant No.1 (the respondent No. 1) neither appeared nor contested the suit as well as the appeal. Both the learned courts below committed an error of law resulting in an error in the decision occasioning failure of justice by ignoring all other matters and aspects incidental thereto and as such the same is not sustainable in law and liable to set-aside. She submits that in Title Suit No. 250 of 2014 filed by Amir Hossain Khan, the Sadar Senior Assistant Judge, Barisal declared vide judgment and order dated 28.05.2017 that the disputed Power of Attorney deed is forged, created, null and void and legally not binding. But in the present suit both the courts failed to consider that the self same Power of Attorney had already been declared forged, and null & void by a competent civil court and committed an error of law resulting in an error in the decision occasioning failure of justice and as such the same is not sustainable in law and the same is liable to set-aside.

Heard the learned advocate for the petitioner, perused the application, impugned judgment and order and other relevant papers of this instant revisional application.

I am of the same view with the concurrent findings of the courts below in as much as the plaintiff did not take sufficient steps to prove his case by producing necessary documents which were either available in his hands or he could easily collect and produce those documents before the courts during trial and appeal. But for unknown reason or reasons, he failed to do so, might it be he had been ill-advised and misguided in this regard. However, I cannot but hold that the trial court did not consider the materials available on records by applying Judicial mind. The appellate court passed the impugned Judgment and decree affirming those of the trial court in a slipshod manner and mechanical way and failed to follow the provision of law contained in order 41 Rule 31 of the Code of Civil Procedure which causes error of law resulting error in decision occasioning failure of Justice.

Both the courts below could ascertain the fact as to the genuineness of the alleged Power of Attorney by comparing signature of the plaintiff put in the two wokatnamas filed with the plaint and with the Memorandum of Appeal and also his signature put in all 16 pages of the plaint, his signature at the bottom of his deposition as PW-1 with his alleged forged signature apparent on the alleged Power

of Attorney. Moreover the plaintiff appellant put 2 (two) signatures in the application for condonation of delay in filing the appeal on 17.02.2020 along an affidavit therewith. He also put signature on the application for taking back the documents on 24.11.2020 submitted in the appellate court and these signatures could be easily compared with the alleged forged signature. If the courts below had taken this single step, they could arrive easily at the correct decision as to the genuineness of the alleged Power of Attorney.

The only material issue before the courts was whether the alleged Power of Attorney was forged or not and it could have easily been decided and solved by the courts, the expert of all experts by making a comparative scrutiny of the signatures of the plaintiff available in the records before court with his alleged forged signature appearing on the disputed Power of Attorney. But they miserably failed to do so and hopelessly dismissed the suit as well as the appeal with concurrent finding that the plaintiff had not taken any step for expert's opinion forgetting that the court is expert of all experts.

However, I have examined the signatures of the plaintiff appearing on 3 (three) wokatnamas, at the bottom of his deposition as PW-1 and on all 16 pages of the plaint, and on the application dated 17.02.2020 for condonation of delay in filing the appeal and on the application to take back the documents from records preferred on 24.11.2020 in the appellate court and the instant petition before this court and clearly found that all these signatures of the plaintiff-

appellant- petitioner are exactly same (resembling each other) but they do not have any similarity with his alleged forged signature appearing on the alleged Power of Attorney (Annexure-“E”), transpiring it to be a forged one in a vivid and crystal clear manner. Moreover, the plaintiff-petitioner puts signature as “মোঃ হানিফ হাং” but the disputed signature of the plaintiff-peitioner on the alleged Power of Attorney appears as “হানিপ হাং” having a difference of ফ and প and presence and absence of “মোঃ” and having no similarity at all in respect of slant, sizing, writing style & pattern and spacing.

That the alleged Power of Attorney was earlier challenged by the alleged executant No.1 Amir Hossain Khan in Title Suit No. 250 of 2014 filed in the court of the Senior Assistant Judge, Barishal Sadar. Barishal. Both the courts below failed to consider that Md. Ali Reaz Khan, the holder of the disputed Power of Attorney being the principal defendant of both the suits willfully abstained from appearing and contesting both the suits. He neither contested the Title Suit No. 250 of 2014 in trial, nor he contested the present suit i.e Title suit No. 157 of 2018 at any stage of trial, appeal and revision which gives rise to a strong presumption against him in respect of the genuineness and authenticity of the alleged Power of Attorney.

I have gone through the alleged Power of Attorney and found that the alleged Power of Attorney No. 271 of 2014 was registered on 09.01.2014 but while drafting the plaint, learned lawyer wrote

06.01.2014 in place of 09.01.2014 as the date of registration. It was a bonafide mistake apparent on the face of the record. Learned lawyer while preparing the plaint was misled and misconceived by finding a computer typed date as 06.01.2014 at the bottom of the page No. 8 of the alleged Power of Attorney in spite of the remaining fact that in all appropriate places of all the pages, the date of registration of the forged deed appears to be correctly written as 09.01.2014. Though there has been no dispute, controversy or confrontation regarding this matter, the courts below considered this minor discrepancy as a major mistake and dismissed the suit as well as the appeal on misreading of evidence.

However, it cannot be denied that both the courts correctly observed and found that the plaintiff-appellant petitioner did not take sufficient steps to prove his own case. At this conjecture, Mrs. Salina Akter learned counsel for the petitioner being instructed by her client, finally submits in the alternative that the alleged Power of Attorney was declared null and void by the court of the Senior Assistant Judge, Barishal in Title Suit No. 250 of 2014 vide Judgment and decree dated 28.05.2017. This decree remains unappealed and has thus attained finality and is binding upon all parties concerned. The plaintiff-petitioner unnecessarily filed the present suit seeking an identical declaration in respect of the self same alleged Power of Attorney

which already has been declared forged and null & void in its entirety by a competent court in an earlier Judgment and decree at the instance of the alleged executant No. 1 of the Power of Attorney in question. The present petitioner, as the alleged executant No. 2 of the self-same Power of Attorney does not at all require any identical declaration over the self same matter and accordingly she prays for disposing of the instant rule with aforesaid observations.

It appears that the plaintiff instituted the present suit seeking a declaration that the Power of Attorney deed No.271 of 2014 dated 06-01-2014 (actually 09.01.2014) is null and void. It is an undisputed fact that present suit was instituted at a time when another suit, being Title Suit No.250 of 2014 (before the Senior Assistant Judge, Sadar Court, Barishal) had already been pending concerning the very same power of Attorney. The subsequent key event is that the earlier suit being Title suit No. 250 of 2014 had already been decreed. The Judgment and order dated 28.05.2017 in that suit declared the entire Power of Attorney deed No. 271 of 2014 dated 09.01.2014 as null and void. This decree remains unappealed and has thus attained finality and a binding force on all parties concerned.

Now the issue for determination is whether the present suit, seeking a declaration already granted by a prior final decree in Title

Suit No. 250 of 2014, has become redundant and unnecessary in the eyes of law.

I am of the view that the function of a declaratory suit is to provide a legal resolution to an uncertain legal status regarding any matter by an authoritative judicial pronouncement. Once a competent civil court has conclusively determined the legal status of an instrument, that status is established for all purposes. A competent civil court has conclusively determined the legal status of the disputed Power of Attorney deed No. 271 of 2014 dated 09.01.2014 by declaring it to be null and void and that status is established for all purposes. The legal implication is that the alleged Power of Attorney deed No. 271 of 2014 dated 09.01.2014 ceases to exist ab-initio leading to a comprehensive effect upon all concerned and connected with the same. It is not merely void for the party who brought the first suit, but void as a whole. The plaintiff' filed the present suit under the apprehension that as the alleged executant No. 2 of the alleged Power of Attorney he might require a separate declaration to the similar affect is moot. The final decree in Title Suit No. 250 of 2014 is a complete remedy for all connected with the subject matter of the suit. Therefore, the cause of action for the present suit, which is the desire to void the disputed Power of Attorney, has been extinguished by the final and binding decree in the earlier suit. It was a judgment and

decree in rem. It is conclusive and enforceable against everyone in the suit and binding against the entire world. A Judgment in rem determines the status, ownership or disposition of a specific property or thing rather than focusing on the personal liabilities of individuals. The legal action is directed at the alleged Power of Attorney itself and binds everyone connected with or affected by the same.

The present suit has effectively been rendered unnecessary and moot by the progression and final conclusion of the prior litigation over the self same matter and concerning the same parties. Thus, I find that the present suit has lost its efficacy and is now redundant and unnecessary, as the relief sought has already been secured by a final judgment and decree of a competent court. That judgment and decree passed in Title Suit No. 250 of 2014 is binding on the parties of the present suit as it has conclusively settled the status of Power of Attorney Deed No. 271 of 2014 dated 09.01.2014 by declaring it null and void, the present suit seeking an identical declaration in respect of the self same matter is found to be unnecessary.

Thus, from the discussions and reasons stated herein above, this court finds that there is nothing further to adjudicate in the present rule and accordingly the rule is disposed of with observation that the relief sought in the instant suit has been rendered redundant by prior final Judgment and decree dated 27.11.2019 passed by the Court of

Senior Assistant Judge, Sadar Court, Barishal in Title Suit No 250 of 2014 (decree signed on 28.11.2019).

The impugned judgment and decree dated 30.09.2020 (decree signed on 07.10.2020) passed by the District Judge, Barishal in Title Appeal No. 35 of 2020 dismissing the appeal and affirming those dated 27.11.2019 passed by the Assistant Judge, Agoilzhara, Barishal, in Title Suit No. 157 of 2018 are hereby set aside.

However, there is no order as to costs.

Send down the Lower Court Records along with a copy of the judgment to the Court concerned at once.

Bashar B.O.