

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**Civil Revision No. 997 of 2022**

Bishwajit Debnath  
Third Party- Petitioner  
Versus

Dipak Kumar Nath  
for the Defendant Nos. 1 to 2-Opposite  
Parties

Chaitanna Charan Nath and others  
Plaintiffs-Opposite Parties

The Deputy Commissioner, Munshiganj  
and others  
Defendants-Opposite Parties

Mr. Bivash Chandra Biswas, Advocate  
for the petitioner

Mr. Palash Mallick, Advocate  
for the opposite party Nos. 1-2

**Judgment on: 21.8.2023**

This Rule was issued calling upon the opposite party Nos. 1-2 to show cause as to why the impugned Judgment and Order No. 7 dated 15.11.2021 passed by the learned District Judge, Munshiganj in Civil Revision No. 12 of 2021 rejecting an application for addition of party under Order 1 rule 10(2) of the Code of Civil Procedure should not be set aside and/or such other

or further order or orders passed as to this Court may seem fit and proper.

In this Revision petitioner's father Narayan Chandra Debnath being attorney for the plaintiff Nos. 06 to 09 along with another Attorney namely Sombu Debnath represents the plaintiff Nos. 01 to 05 and instituted Title Suit No. 50 of 2004 before the Court of learned Senior Assistant Judge, Shirajdikhan, Munshigonj challenging the Order of defendant No. 03 (D.C. Munshigonj) vide Order Memo No. JE:PRO:MU:/R:S:106/97-99 dated 08.08.1999 rejecting the prayer for re-stamping the alleged two Power of Attorneys.

The defendants-opposite party Nos. 1 and 2 submitted an application for rejection of Plaint under Order VII rule 11 of the Code of Civil Procedure before the learned Senior Assistant Judge, Shirajdikhan, Munshigonj in Title Suit No. 50 of 2004 which travelled up to Honourable Appellate Division where the defendants-opposite parties application under Order VII rule 11 of the Code of Civil Procedure was finally rejected on the ground that the matter of rejection of stamping order can be decided only on hearing before the Court of original jurisdiction. On receiving the Honourable Appellate Division's Order, the learned Senior Assistant Judge, Shirajdikhan passed an Order on 25.03.2019 for

maintainability hearing on 11.04.2019 and 07.05.2019 for further hearing. The defendants-opposite parties filed an applications on 07.05.2019 and 23.01.2020 challenging the maintainability of the Title Suit No. 50 of 2004 and the plaintiffs-opposite parties contested the maintainability application by submitting written objections on 01.08.2019 and 10.12.2020. The learned Senior Assistant Judge, Sirajdikhan, Munshigonj heard both the parties and disposed of the maintainability application on 01.04.2021 and kept the same maintainability application on record and the suit was fixed for peremptory hearing. The defendants-opposite-parties being aggrieved by and dissatisfied with the said Order dated 01.04.2021 filed the Civil Revision No. 12 of 2021 in the Court of learned District Judge, Munshigonj.

During pendency of the Civil Revision No. 12 of 2021 Biswajit Debnath son of deceased Attorney Narayan Chandra Debnath as 3<sup>rd</sup> party-applicant-petitioner filed two applications on 13.10.2021 before the learned District Judge of Munshugonj in Civil Revision No. 12 of 2021 under Order 1 rule 10 (2) of the Code of Civil Procedure, 1908 one of which was seeking kind leave of the Court for adding him as a party to the Civil Revision No. 12 of 2021 in the place of Attorney whose Power of Attorney is not yet acted upon and the other one was to make him a party for

the death of Attorney for Plaintiff Nos. 06 to 09 in the Title Suit No. 50 of 2004 now pending before the Court of learned Senior Assistant Judge, Sirajdikhan, Munshigonj.

Both the applications were contested by the defendants-opposite-parties by filing written objections, and after hearing both the parties, the learned District Judge of Munshigonj rejected both the applications on 15.11.2021 and challenging the said Order the 3<sup>rd</sup> party-petitioner preferred the instant Civil Revision under Section 115(4) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Bivash Chandra Biswas, learned Advocate for the appellants-petitioners, submits that after the judgment and Order passed by the Appellate Division the suit was posted for hearing finally. Then the petitioners filed an application under Section 151 of the Code of Civil Procedure as the suit is not maintainable and the learned Trial Court rightly rejected the said petition vide Order dated 13.10.2021 and the petitioner of the instant revision filed an application as 3<sup>rd</sup> party for adding him as party before the learned District Judge, Munshigonj and on the other hand, the petitioners of Civil Revision No. 2826 of 2021 filed another application for serving summons and notices upon the principals of power of attorney who are residing in the foreign country and the learned

District Judge vide impugned order dated 15.11.2021 rejected the application for addition of party and the application for serving summons and notice upon the defendants Nos. 6-9 and challenging the said orders the petitioner Sree Biswajit Debnath filed Civil Revision No. 997 of 2022 and Dipak Kumar and his brother Dilip filed another Civil Revision No. 2826 of 2021. He then submits that as per Act 35 of 2012 the previous power of attorney was not wholly cancelled but the action taken by earlier power of attorney in any action was taken that will be presumed that the action taken by the previous attorney or his principal the said action is perfect and valid and here it is mentioned that the previous attorney Narayan Chandra Debnath gave the possession of the land to his son and since then present petitioner has been possessing the land in question and since a prayer for declaration is there the question of possession ought to be decided by the Court and in this view of the matter the present petitioner may be added as party in the suit as plaintiff. The possession under Order 1 rule 10 of the Code of Civil Procedure 1908 is a provision which is for the real decision in plaintiff may be added for complete and effective adjudication of the matter. He next submits that the principle of law that the object of addition of party is as to avoid multiplicity of the suit but his presence is necessary to determine all the questions involved in

the suit land. He lastly submits that the plaintiff No. 2 Suvasiny Deby and Plaintiff No. 3 Kalpana Debnath, Plaintiff No. 4 Nirmala Debnath, Plaintiff No. 5 Alpana Debnath who are all the principals along with Chaitanna Debnath executed a power of attorney and said Suvasiny, Kalpana, Nirmala and Alpana are plaintiff Nos. 6-9 and as they have been represented by Shambhu Debnath then the notice under Order 5 rule 25 of the Code of Civil Procedure 1908 is not necessary and only for prolonging the suit Dilip Kumar Nath and Dipok Kumar Nath filed application before the learned District Judge for prolonging the suit and for harassment.

Mr. Palash Mallick, learned Advocate for the Opposite Party Nos. 1-2, submits that there are as many as 6 Sections in the Power of Attorney Act, 1882 and no such provision having been laid down therein to the effect that after the death of the constituted attorney, the power of attorney in question is heritable, and as such the instant petitioner i.e. son of the deceased Attorney Narayan Chandra Debnath did not attain any legal right to become a party. He further submits that the Sonaton Dharmo i.e. Hindu Personal Law does not recognize hereditary right in respect of office of Attorney that can be attained through a Power of Attorney executed between Principal and Attorney, and as such the instant petitioner i.e. son of the deceased Attorney Narayan Chandra

Debnath did not attain any legal right to become a party. He next submits that the alleged Power of Attorney was allegedly been executed in the year of 1992 which is not validated till today; and that is long before promulgation of the Power of Attorney Act 2012 and the same is not applicable in the present case. Moreover no such provision laid down in the present law for substitution of the Attorney; and as such the Rule may kindly be discharged for the ends of justice. He then submits that the petitioner submitted that he is the proper and necessary party for the effective disposal of the Title Suit No. 50 of 2004 and Civil Revision No. 12 of 2021, but what the petitioner failed to appreciate law is that right to become a party in the place of deceased Attorney under a Power of Attorney does not arise, since the Power of Attorney Act, 1882 and the Power of Attorney Act, 2012 do not recognise the right of heirs to be substituted for the death of Attorney. He further submits that the 3<sup>rd</sup> party-petitioner tried to mislead and tried to say that the previous Attorney Narayon Chandra Devnath gave the possession to the petitioner and since then the present petitioner has been possessing the land in question which is totally false; the land in question was owned and possessing by the predecessor of the defendants-opposite parties their father namely Binoy Krishna Nath and the suit land was correctly recorded as R.S Plot No 230

and 226 for 05 decimals of land and after his death the present defendants-opposite parties No 1 and 2 possessing the same till today by paid rents regularly. The present petitioner tried to mislead the real facts adducing false statement and miss-interplead the Act 35 of 2012 i.e. the Power of Attorney Act, 2012 as such the Rule may kindly be discharged for the ends of justice. He next submits that proper and necessary means a party without whose appearance and pleadings the suit cannot be effectively disposed of as to avoid multiplicity of the suit, but in the instant case in order to consider the instant petitioner as necessary and proper party, it is essential legal requirement for the Petitioner to show that he has right under any law for the time being in force to become a party in place of deceased Attorney by way of substitution, but the Petitioner could not cite any provision of statutory law or Hindu Personal Law or any decision of the Supreme Court of Bangladesh save and except citing a misconceived decision i.e. 8 BCR, 199 and as such the Rule may kindly be discharged for the ends of justice. He next submits that the alleged power of attorney was allegedly executed in the year of 1992 and the same was produced before the Deputy Commissioner, Munshigonj for stamping and authentication, but the same was rejected. Against the said order they preferred appeal No. 96 of 1999 before the Divisional



Commissioner, Dhaka and the same was dismissed on 08.08.2004 and as such through a void power of attorney no right, title and interest confer upon the alleged executed attorney. Narayan Chandra Devnath filed the instant suit without obtaining a fresh power of attorney from the executants. Consequently, after the death of the so-called Attorney Narayan Chandra Debnath his son namely Biswajit Debnath cannot be added. He further submits that since the power of attorney was declared collusive, fraudulent and void by the Deputy Commissioner, Munshigonj as well as the Divisional Commissioner, Dhaka, none but only the executants can challenge the same. Admitted facts that the executants/principal already died and as such the operation of the alleged power of attorney automatically seized. There is no scope to substitute the heirs of the constituted attorney in the instant suit.

Heard the learned Advocates for the parties and perused the record.

The right as to the Power of Attorney dies with the death of the Attorney, and the right of the Attorney does not extend to his heirs; moreover the said Power of Attorney is not even duly executed and validated by the law and since the law does not recognize any legal or hereditary right to the Power of Attorney rendering the petitioner as a stranger and as such the 3<sup>rd</sup> party

petitioner has no lucas standi to file the instant civil revision and as such the instant petitioner i.e. son of the deceased Attorney Narayan Chandra Debnath did not attain any legal right to become a party.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

**Accordingly, the Rule is discharged.**

The impugned judgment and order No. 7 dated 15.11.2021 passed by the learned District Judge, Munshigonj in Civil Revision No. 12 of 2021 rejecting an application for addition of party under Order 1 rule 10(2) of the Code of Civil Procedure rejecting the said application is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Court's record with a copy of the Judgment to the Courts below at once.