

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4003 OF 2022**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Salina Begum @ Salina Khan  
... Petitioner

-Versus-

The Government of the People's Republic of Bangladesh and others

... Opposite parties

Mr. Maruf Islam Chowdhury, Advocate

.... For the petitioner.

Mr. Saifur Rahman, Deputy Attorney General with

Mr. Arifur Rahman, Assistant Attorney General

Mr. Md. Mizanur Rahman, Assistant Attorney General

Mr. Md. Moshihur Rahman, Assistant Attorney General

.... For the opposite party No.1.

Mr. Olia Ferdows, Advocate

.... For the opposite party No.2.

**Heard on 12.03.2025 and 18.03.2025.**

**Judgment on 21.04.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and order dated 14.02.2022 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Barishal in Title Appeal No.47 of 1999 allowing additional evidence regarding death certificate in violation of Order 41 Rule 27(2) of the Code of Civil

Procedure should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper

Facts in short are that the opposite parties as plaintiffs instituted Title Suit No.28 of 1996 in the Court of Assistant Judge, Barishal for declaration that the judgment and decree dated 22.06.1964 passed by the learned Munsif, 6<sup>th</sup> Court, Barisal in Title Suit No.154 of 1964 on declaring plaintiff's title in 120 ajutangsho land along with a two storied building thereon and permanent injunction against the defendants were fraudulent, void and not bindings upon the plaintiffs. Above suit was dismissed on contest on 27.01.1999 and the plaintiff preferred Civil Appeal No.47 of 1999 against above judgment and decree of the trial Court and the matter ultimately went to the Appellate Division. In Civil Petition for Leave to Appeal No.2264 of 2011 the Appellate Division remanded above appeal to the Court of Appeal below for rehearing with following direction : "The Appellate Court is directed to hear the appeal afresh after giving the parties necessary opportunities permissible in law".

In above appeal the appellant submitted a petition under Order 41 Rule 27 of the Code of Civil Procedure for adducing further evidence and examine Assistant Professor Mr. Akbar Ali as an appellant witness as to the death certificate procured by the appellants from Kolkata Municipal Corporation and duly authenticated by the Consular of Bangladesh Deputy High Commission at Kolkata. Respondents

submitted a written objection on 02.01.2022 against above and on consideration of submissions of the learned advocates for the appellant and respondent No.1 the learned Joint District Judge allowed above petition.

Being aggrieved by and the dissatisfied with above judgment and order of the learned Joint District Judge respondent No.1 as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Maruf Islam Chowdhury, learned Advocate for the petitioner submits that to prove the date of death of Mr. Kunjo Bihari Ghosh a retired District Judge and previous owner of disputed property previously the appellants submitted a death certificate and the learned Judge of the trial Court on a detailed analysis of evidence on record rightly held that above death certificate was not procured in accordance with the provisions of Sections 78(6) of the Evidence Act, 1872 and accordingly disregarded above death certificate. The plaintiffs failed to prove that above Kunjo Bihari Ghosh died on 29.04.1960 at Kolkata. Now the appellant has procured a similar death certificate of above Kunjo Bihari Ghosh without compliance of the provision of Section 78 of the Evidence Act, 1872. But the learned Judge of the Court of Appeal below has utterly failed to appreciate above materials on record and most illegally allowed the petition of the appellants for admitting above death certificate into evidence which is not tenable in law.

Mr. Saifur Rahman, learned Deputy Attorney General for opposite party No.1 submits that the instant Civil Revision has become infructuous since the Court of Appeal below has already recorded the additional evidence of Professor Akbar Ali as an appellant witness and admitted above death certificate into evidence on 30.08.2022. The Appellate Division had permitted both the parties to adduce additional evidence in the Court of Appeal below and pursuant to above direction the learned Joint District Judge has rightly allowed above petition of the opposite party for recording of additional evidence of Professor Akbar Ali which calls for no interference.

Ms. Olia Ferdows, learned Advocate for the opposite party No.2 submits that disputed property comprises a two storied building in the Barisal town which was owned by Mr. Kunjo Bihari Ghosh a District Judge who retired in 1947 and settled in Kolkatta. A town property cannot be transferred by oral settlement. The petitioner has disputed the date of death of Kunjo Bihari Ghosh on 29.04.1960 but the petitioner did not provide an alternative date of his death. Since above Kunjo Bihari Gosh died on 29.04.1960 it was impossible for him to come to Barishal and execute solenama in Title Suit No.154 of 1964 admitting the title of the petitioner in above property. The petitioner has filed this frivolous Civil Revision to delay the hearing of the appeal which is devoid of any substance and the Rule issued in this connection is liable to be discharged.

I have considered the submissions of the learned advocates for the respective parties and carefully examined all materials on record.

It is admitted that the disputed property comprising a two storied building belonged to Mr. Kunjo Bihari Gosh a retired District Judge. The Opposite party has made specific mention in their plaint that above Kunjo Bihari Ghosh retired in 1947 and settled in Kolkata at 25 S. R. Das Road and died there on 29.04.1960. The petitioner did not dispute that above Kunju Behari Gosh settled at 25 S. R. Road Kolkata. The petitioner has disputed the date of death of Mr. Kunjo Bihari Gosh but he could not provide any alternative date of his death.

Admittedly the opposite party produced a death certificate of above Kunjo Bihari Ghosh in the trial Court showing that he died on 29.04.1960 but the trial Court disregarded above death certificate on the ground that above document was not procured in accordance with the provision of Section 78(6) of the Evidence Act, 1872.

The date of death of above Kunjo Bihari Ghosh is an important relevant and disputed fact of this suit and the Appellant Division directed the Court of Appeal below for providing all legal opportunities to the parties of above appeal which includes admission of additional evidence. The appellants submitted above petition for adducing additional evidence of Professor Ali Akbar in support of a new death certificate of above Kunjo Bihari Gosh.

It has been alleged by the appellants that above death certificate has been procured from Kolkata Municipal Corporation on compliance on provision of Section 78(6) of the Evidence Act, 1972. The admissibility of a document into evidence and the evidentiary value of the document are two different things. The petitioners claims that above death certificate was not brought into Bangladesh in accordance with the provision of Section 78 of the Evidence Act, 1872. Above objection of the petitioner relates to the merit or evidentially value of above death certificate which can be established by the respondent by corss examination of Professor Ali Akbar who would admit above document into evidence and by analyzing the contents of above document and not by resisting admission of above death certificate into evidence.

In above view of the materials on record I am unable to find any illegality or infirmity in the impugned judgment and order passed by the learned judge of the Court of Appeal below.

If above witness of the appellant namely Ali Akbar has already been examined as has been submitted by the learned deputy Attorney General the learned Judge of the Court of Appeal below shall provide the petitioner an opportunity to cross examine above witness on recall and then proceed with the disposal of the appeal on merit in accordance with law.

In the result, the Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is vacated.

However, there will be no order as to costs.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*