

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 332 of 2023

Abida Khanam @ Abida Rahman

..... Petitioner.

-Versus-

Jahanjeb Begum and others

With

Civil Revision No. 331 of 2023

Sudipta Kumar Kundu

-Versus-

Jahanjeb Begum and others

.....Opposite parties.

Mr. Ashim Kumar Mollick, Advocate

.....For the petitioner.

Mr. Amir Hossain Chowdhury, Adv.

.....For the Opposite parties

Heard and judgment on 28th April, 2024.

A.K.M.Asaduzzaman,J.

By the judgment and order dated 09.01.2023 the learned District Judge, Khulna passed an order in Civil Revision No. 55 of 2021 affirming the order dated 06.09.2021 passed by the Assistant Judge, Batiaghata, Khulna in Title Suit No. 1757 of 2008 rejecting the application filed by one S.M. Abul Hossain on 24.03.2021

under section 45 of the Evidence Act barring him not to take steps on behalf of the defendant Nos. 1 and 2 in the original Title Suit and rejecting the application filed by One Sudipta Kumar Kundu dated 31.03.2021 under Order 22 Rule 10 of the Code of Civil Procedure for adding him as a party in the suit.

The said two orders are challenged in the instant two leave petitions. Since the said two leave petitions are arisen out of the order passed by the same court in one suit are heard together and disposed of by this single judgment.

Fact relevant to decide the matter in the leave petitions are that opposite party Nos. 1-3 as plaintiff filed Title Suit No. 1757 of 2008 against the opposite party No.4 for declaration that two deeds No. 218 dated 12.01.1979 and 276 dated 17.01.1979 are collusive, illegal, fabricated and not binding upon the plaintiffs.

During pendency of the suit on 24.03.2021 S.M. Abul Hossain claiming to be a power of attorney holder of the defendant No. 1 and 2 filed an application under section 45 of the Evidence Act for examining the handwriting of defendant Nos. 1 and 2 with the power of attorney registered on 31.03.2007 as been

given to him by the defendant Nos. 1 and 2 in order to justify the genuinity of the said power of attorney, which is denied by the defendant Nos. 1 and 2 as not been given to him.

On 31.03.2021 Sudipta Kumar Kundu filed an application under Order 22 Rule 10 of the Code of Civil Procedure paying for addition of party in the said suit.

On 06.09.2021 the Assistant Judge rejected the application filed by S.M. Abul Hossain for handwriting expert and by the order dated 31.03.2021 the Assistant Judge also rejected the application filed by Sudipta Kumar Kundu for addition of party in the suit.

Challenging the said two orders two Civil Revision were filed before the Court of District Judge, Khulna. S.M. Abul Hossain preferred Civil Revision being No. 55 of 2021 and Sudipta Kumar Kundu preferred Civil Revision No. 47 of 2021. Both the revisions were heard together and by the same judgment and order dated 09.01.2023, the learned District Judge rejected both the revisions, which are under challenged in the instant two leave petitions.

Drawing my attention to the application dated 24.03.2021 as well as order passed by the court below on that application, the learned advocate Mr. Ashim Kumar Mollick appearing for the petitioner submits that the learned court below totally misread the application filed by the petitioner and passed the impugned order arbitrarily. In fact petitioner asked to have an opinion from handwriting expert with the registered deed of power of attorney dated 27.03.2007 with the admitted signature of the defendant Nos. 1 and 2 but the court below failed to consider this aspect of this case and held that petitioner claimed to have obtained the opinion from the handwriting expert on a power of attorney being No. 203 dated 12.01.2009 obtained through a Notary public. Which is not in consonant with the actual proposition made by the petitioner in the suit. The impugned order passed by the court below thus contains illegality, which is liable to be set aside.

Mr. Amir Hossain Chowdhury, the learned advocate appearing for the opposite party, on the other hand submits that petitioner S.M. Abul Hossain is not a party in the suit and as such he has got no right to file any application relating to any matter in the suit and to challenge any order passed by the court below. The

court below thus rightly debarred him from contesting the suit. Accordingly the impugned order contains no illegality and the leave petition contains no merits, it may be dismissed.

Heard the learned Advocate and perused the petition together with the annexure annexed to the leave petition and considered the impugned judgment passed by the court below.

The instant suit was filed by Jahanjeb Begum, Ezaz Mahmud and Arif Mahmud as plaintiff against Afia Khatun and Abida Khatun, challenging two registered sale deed being No. 218 of 1979 dated 12.01.1979 and deed No. 276 dated 17.01.1979 as collusive, fraudulent, void and not binding upon the plaintiffs.

In the said suit, this petitioner S.M. Abul Hossain is not a party. He is thereby not been effected in the result of the suit in any manner and accordingly has got no right to poke his nose in any proceedings of the suit. He will not been affected by any means in any result of the suit. So whether defendant has given any power of attorney to him and he accordingly proceeded with the suit land and done some act on their behalf is a matter to be looked into by any successor, who obtained any benefit through

the activities done by the power of attorney holder, is the right person to challenge the activities done through the power of attorney. It is none of his business of the power of attorney holder regarding all been there to stop the proceedings of the suit in this way. The interference by the outsider in the suit is absolutely unwarranted and cannot be acceptable. Moreover if the suit is decreed, right title the documents as been given by Abida Khatun and Afia Khatun are no longer stands and then Sudipta Kumar Kundu can be affected in the suit. Moreover the trial court has rightly found that the suit land as been purchased by the Sudipta Kumar Kundu, during pendency of the suit can also be looked into by the trial court while deciding in the suit.

Regard being had to the above factual aspect of the case I do not find any illegality in the impugned judgment.

Both the leave petition contains no merit.

In the result both the leave petitions are dismissed.

Communicate the judgment at once.