

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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.6677 OF 2023

In the matter of:

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

And

Sabir Ahmed and others

.... Petitioners

-Versus-

Custodian vested and Non-resident Property,
Chandpur

.... Opposite party

Mr. Sherder Abul Hossain, Advocate

.... For the petitioners.

Mr. Md. Moshihur Rahman, Assistant Attorney General

.... For the opposite party.

Heard on 10.11.2024 and Judgment on 11.11.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 31.08.2023 passed by the learned Additional District Judge, 1st Court, Chandpur in Title Appeal No.50 of 2004 by striking out of the written statements dated 28.02.1999 filed by the defendant respondent No.1 under the provision of Order 11 Rule 21 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 party as plaintiff filed about suit for declaration that the registered kabala deed dated 18.06.1972 allegedly executed by defendant No.2 Amulla Krishno Roy Chowdhury in favor of defendant No.1 Abdul Hakim showing transfer of 'Kha' schedule land is illegal, forged, fraudulent and not binding upon the plaintiff. Above suit was dismissed on contest by the trial Court.

Being aggrieved by above judgment and decree of the trial Court plaintiff preferred Title Appeal No.46 of 1998 to the District Judge, Chandpur which was transferred to the Court of Additional District Judge, 1st Court, Chandpur for hearing and disposal .

In above appeal the appellant submitted a petition on 27.02.2019 for directing the respondent for production in Court of registered kabala Deed No.7175 dated 21.06.1972 allegedly executed by defendant No.2 in favor of defendant No.1.

The learned Additional District Judge allowed above petition and directed the respondent for production of above document. But the respondent did not produce above document in Court and the learned Additional District Judge struck out the written statement of the defendant under Order 11 Rule 21 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with above order of the learned Additional District Judge above respondent as petitioner moved to this Court and obtained this Rule.

Mr. Sherder Abul Hossain, learned Advocate for the petitioners submits that in compliance of the order of the Court of Appeal below

the petitioners brought above registered kabala deed No.7175 dated 22.06.1972 executed by defendant No.2 in favor of defendant No.1 to court and showed above document to the learned Additional District Judge. Due to lack of confidence as to the safety of documents in above Court he did not produce above document in Court. The learned Advocate frankly concedes that if he is given an opportunity he would produce above document within 1(one) month to the Court of Appeal below for the inspection of the learned Judge and the appellant.

On the other hand Mr. Md. Moshihur Rahman, learned Assistant Attorney General for the opposite party submits that the genuinity or forgery of above registered kabala deed No.7175 dated 22.06.1972 was the sole issue in the above appeal. At trial the defendant did not produce above document in original. But the defendant claimed that above original document was in his possession. As such the learned Additional District Judge rightly directed the respondent for production of above document but the respondent deliberately disobeyed above order and did not produce above document in Court. As such the learned Additional District Judge lawfully passed the impugned order under Order 11 Rule 21 of the Code of Civil Procedure which calls for no interference

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

At the very outset it needs to be mentioned that order 11 of the Code of Civil Procedure provides for discovery and inspection of facts

and documents before recording of evidence. Above provisions are rarely utilized at appeal although appeal is considered as continuation of the trial. In a civil litigation parties are required to prove their respective cases by legal evidence. If any party fails or deliberately omits to produce a document to prove his claim he would suffer the consequence. A party to a suit shall determine what evidence he would produce in Court to prove his claim and the other party cannot dictate him in his regard.

The defendant did not produce and prove above original kabala deed No.7175 dated 22.06.1972 at trial. The trial could draw an adverse presumption against the defendant for non production of above document since the defendant claimed that above document was in his possession. But instead the learned Judge of the trial Court most illegally admitted a photocopy of above kabala deed into evidence and marked the same as Exhibit No.Gha. The learned Additional District Judge could keep the above photocopy of above document outside of consideration if the petitioner failed to produce above original document. An order of striking out the written statement before recording of evidence for disobediences of order of the Court by the defendant is an effective and lawful order. But in an appeal such an order bears no cause consequence since on the basis of the written statement defendants evidence had been recorded and trial was concluded.

Since the learned Advocate for the petitioners has agreed to produce above original document for the inspection and comparison by the learned Additional District Judge and the appellant, in my view the ends of justice will be met if the impugned order is set aside and the petitioner is given one month time for production of above original document to the Court of appeal below.

In above view of the materials on record I find substance in this revisional application under section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order dated 31.08.2023 passed by the learned Additional District Judge, 1st Court, Chandpur in Title Appeal No.50 of 2004 is set aside.

The petitioner is directed to produce original kabala deed No.7175 dated 22.06.1972 allegedly executed by defendant No.2 in favour of defendant No.1 to the Court of Appeal below within 01(one) month from the date of receipt of this order and the learned Additional District Judge shall proceed with the disposal of the above appeal on merit expeditiously within a period of 6(six) months.

However, there is no order as to costs.