

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

Civil Revision No. 5237 of 2023

In the matter of:

An Application under section 115(1) of the Code
of Civil Procedure, 1908

And

In the matter of:

Md. Jalil Sheikh and others

...Petitioners.

-Vs-

Abdul Mazed Sheikh

...Opposite party.

Present

Mr. Justice Mamnoon Rahman

None appears

...For the petitioners.

Mr. Md. Oliar Rahman, Adv. with

Mr. Mohammad Abdus Salam, Adv. with

Ms. Shayema Chowdhury, Adv.

...For the opposite party.

Heard & Judgment on: **The 3rd March, 2024**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party to show cause as to why the impugned order dated 03.07.2023 passed by the learned Joint District Judge, 1st Court, Faridpur in Title Appeal No. 137 of 2020 (arising out of Title Suit No. 137 of 2016) by fixing a date on 31.07.2023 for the step of the appellant, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts relevant for the disposal of this rule, is that, the present petitioner as plaintiff instituted Title Suit No. 137 of 2016 impleading the opposite party as defendant for declaration of title as

well as recovery of khash possession. It transpires that both the parties contested the suit and the trial court after hearing the parties, considering the facts and circumstances, evidences led by both the parties decreed the suit in favour of the present petitioner. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial court the present opposite party-defendant as appellant preferred Title Appeal No. 134 of 2020 before the District Judge, Faridpur and eventually the matter is pending for disposal in the court of Joint District Judge, 1st Court, Faridpur. It further transpires that during pendency of the appeal the sole appellant Abdul Mazed Sheikh died on 06.04.2021. After death of the sole appellant the heirs of the said appellant filed an application for substitution. It further transpires that the lower appellate court took up the same and came to a conclusion that since 90 days have already been expired there is no scope to allow the substitution without setting aside the abetment. As such, the lower appellate court rejected the application and directed the parties to take necessary steps for setting aside the abetment. Against which the present petitioners preferred the revisional application before the High Court Division and obtained the present rule.

No one appears on behalf of the petitioner to press the rule.

The learned Advocate for the opposite party vehemently opposes the rule.

I have heard the learned counsel for the opposite party. I have perused the impugned judgment and order passed by the trial court, revisional application, grounds taken thereon, necessary papers and documents annexed herewith as well as two applications preferred by the opposite party.

On meticulous perusal of the same, it transpires that admittedly Title Appeal being No. 134 of 2020 is pending before the lower appellate court filed by the defendant-appellant opposite party. It further transpires that during pendency of the appeal the sole appellant Abdul Mazed Sheikh died. After death of the said appellant the heirs of the appellant filed an application for substitution. The appellate court below passed the following order which runs as follows;

আপীলকারী পক্ষ একমাত্র আপীলকারীর মৃত্যুর কারণে ওয়ারিশ কায়েমের প্রার্থনা করিয়াছেন। উক্ত আবেদনে বর্ণিত মতে আপীলকারী বিগত ইং ৬.৪.২০২১ তারিখে মারা যান। দেওয়ানী কার্যবিধির ২২ আদেশের ৩ বিধি ও তামাদি আইনের ১৭৬ অনুচ্ছেদ অনুযায়ী একমাত্র বাদীর মৃত্যুর ৯০ দিনের মধ্যে তা বৈধ প্রতিনিধি/প্রতিনিধিগনকে মামলার পক্ষভুক্ত করতে হবে। কিন্তু আপীলকারী পক্ষ তা করে নাই ফলে এই মামলা আপীলকারী বৈধ প্রতিনিধিগনের স্বত্ব স্বার্থ ইতোমধ্যে abet হইয়াছে। এমতাবস্থায়, abet set aside ব্যতিত সকল ওয়ারিশ কায়েমের আবেদন আইন রক্ষণীয় নয় বিধায় আপীলকারী পক্ষের আবেদন না মঞ্জুর করা হইল।

So, it transpires that the court below came to a conclusion as per the provisions of law that since the substitution was not done within the statutory period and there was no scope for setting aside the

abatement, the lower appellate court rejected the application and directed the parties to take necessary steps.

On perusal of the application for addition of party, it transpires that immediately the heirs of the said appellant filed an application as per Order 22 rule 9A of the Code of Civil Procedure, 1908 before the lower appellate court which is a correct step as per law. So, it transpires that by the impugned order the lower appellate court committed no illegality by allowing the appellant to take necessary steps as per Order 22 rule 9A of the Code of Civil Procedure, 1908. Hence, I find no reason to interfere.

Accordingly, the instant rule is discharged and the impugned judgment and order passed by the court below is hereby affirmed. However, the lower appellate court is directed to proceed with the appeal in accordance with law.

Interim order passed at the time of issuance of rule is hereby vacated.

However, there shall be no order as to cost.

The office is directed to communicate the judgment to the concerned court below at once.

(Mamnoon Rahman,J:)