

District-Satkhira.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4775 of 2023.

Shree Kitopod Sardar @ Sarkar and others.

----- Plaintiff-Respondent-Petitioners.

-Versus-

Md. Soleman Sarder and others.

----- Defendant Nos.1-9- Appellant-Opposite parties.

Mr. Md. Imrul Haydar, Advocate

----- For the Plaintiff-Respondent-Petitioners.

Mr. Sachchidananda Ballav, Advocate

----- For the Defendant Nos.1-9- Appellant-Opposite parties.

Heard and Judgment Delivered On: 26.10.2025.

Md. Toufiq Inam, J:

This Rule was issued calling upon the opposite parties to show cause as to why the impugned order No. 21 dated 29.05.2023 passed by the learned Joint District Judge, 1st Court, Satkhira in Title Appeal No. 65 of 2018—arising out of the judgment and decree dated 08.04.2018 (decree signed on 15.04.2018) passed by the learned Senior Assistant Judge, Sadar, Satkhira in Title Suit No. 38 of 2006 decreeing the suit—allowing an application filed by the appellants under section 45 of the Evidence Act for obtaining opinion from a Handwriting Expert, should not be set aside and/or why such other or further order or orders as may seem fit and proper should not be passed.

The present petitioners, as plaintiffs, instituted Title Suit No. 38 of 2006 in the Court of the learned Senior Assistant Judge, Sadar, Satkhira, seeking a declaration of title in respect of the scheduled property.

During pendency of the suit, the defendant Nos. 1–9 filed an application praying for expert opinion on the genuineness of a disputed signature. The trial court allowed that application and accordingly referred the document to the Forensic Laboratory, Dhaka. However, the laboratory failed to provide any conclusive opinion for want of admitted specimen signatures of the predecessor of the defendants, namely Abdul Wahab Sarder. Thereafter, the suit proceeded and was ultimately decreed in favour of the plaintiffs.

Aggrieved by the said judgment and decree, the defendant Nos. 1–9 preferred Title Appeal No. 65 of 2018 before the appellate court. At the final stage of hearing of the appeal, the appellants filed another application—this time under section 45 of the Evidence Act—seeking a fresh handwriting expert’s opinion on the signature of their predecessor, claiming that they had in the meantime obtained the original deed No. 847788 dated 20.11.1986. The learned appellate court, by the impugned order, allowed the said application. Being aggrieved thereby, the plaintiffs-petitioners moved this Court and obtained the present Rule.

Mr. Md. Imrul Haydar, learned Advocate appearing on behalf of the petitioners, submits that the application for obtaining expert opinion at such a belated stage is manifestly an afterthought and a dilatory tactic intended to frustrate the expeditious disposal of the appeal. He contends that the defendants had already availed an opportunity before the trial court to obtain expert opinion but failed to supply the necessary specimen signature, thereby rendering the earlier exercise futile. He further argues that allowing a similar application after long lapse of time, when the appeal is ripe for final disposal, amounts to giving the appellants a second bite at the cherry and causes undue prejudice to the decree-holders. He therefore submits that the learned appellate court committed a serious error of law and misdirection in allowing the said application.

Per contra, Mr. Sachchidananda Ballav, learned Advocate appearing for the defendant Nos. 1–9, contends that the authenticity of the signature of their predecessor, Abdul Wahab Sarder, lies at the very root of the dispute. Without a definite finding as to whether the signature is genuine or forged, the determination of the title and validity of the impugned deed would remain inconclusive. He submits that since the defendants have now procured the original document containing the disputed signature, the appellate court rightly exercised its discretion to call for expert opinion to ensure that justice is not defeated on mere technicality. He further contends that the application was filed bona fide and not with the object of delaying the appeal.

Having heard the learned Advocates for both sides and upon perusal of the materials on record, this Court proceeds to consider the matter on merit.

It appears that the central issue in the suit concerns the genuineness of the signature of the predecessor of the defendants. The record shows that the defendants had indeed applied before the trial court for obtaining expert opinion, but no conclusive report could be obtained due to unavailability of the admitted specimen signature. It further appears that the defendants have now secured the original deed No. 847788 dated 20.11.1986, which is claimed to contain the admitted signature sought to be verified. In such circumstances, the appellate court, being the final fact-finding court, is empowered under section 45 of the Evidence Act to obtain expert opinion in aid of proper adjudication.

This Court is of the view that the discretion exercised by the appellate court was intended to clarify and remove any factual ambiguity touching upon the genuineness of a crucial document, which goes to the root of the dispute. The order in question does not confer any substantive right upon either party, nor does it take away any vested right of the decree-holders. It is purely procedural in nature, made to assist the court in arriving at a just and correct conclusion on the evidence.

The settled principle is that the appellate court possesses inherent power to take additional evidence or call for expert assistance if such action facilitates a fair and effective adjudication of the issues involved. Seeking expert opinion in such a context cannot be termed as an illegality, irregularity, or jurisdictional error warranting interference under Section 115 of the Code of Civil Procedure.

Accordingly, this Court finds no legal infirmity or impropriety in the impugned order.

Resultantly, **the Rule is discharged.**

The impugned order dated 29.05.2023 passed by the learned Joint District Judge, 1st Court, Satkhira in Title Appeal No. 65 of 2018 is hereby affirmed.

The learned appellate court is directed to obtain the expert report promptly and thereafter dispose of the appeal expeditiously, preferably within six (6) months.

Let the lower court records be transmitted to the appellate court forthwith.

(Justice Md. Toufiq Inam)