

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 6749 of 2023.

In the matter of:

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

And

In the matter of:

Md. Fazar Ali alias Intaz Ali

...Petitioner

-Versus-

Shah Kamal Md. Tayyab and others

....Opposite parties

Mr. Golam Subhan Chowdhury, Advocate

...For the Petitioner

Mr. Md. Lutfor Rahman, Advocate

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

Heard on: 21.08.2024

Judgment: 22.08.2024

In the instant civil revisional application filed under Section 115(1) of the Code of Civil Procedure (CPC), this Court on 10.12.2023 issued a Rule calling upon the opposite party No.1 to show cause as to why the judgment and order dated 01.11.2023 passed by the Special District Judge, Sylhet in Title Appeal No. 199 of 2011 allowing the application filed by the appellant to obtain expert opinion as to the signature and thumb impression of the appellant Shah Kamal Md. Tayyab (present opposite party No. 1) with those

contained in registered sale deed Nos. 2563 of 2003 and 2564 of 2003 should not be set aside.

At the time of issuance of the Rule, this Court passed an interim order staying operation of the impugned judgment and order dated 01.11.2023 passed in Title Appeal No. 199 of 2011.

The opposite party No. 1 has entered appearance in the Rule.

The present petitioner Md. Fazar Ali as plaintiff filed Title Suit (T.S.) No. 37 of 2007, subsequently renumber as T.S. No. 83 of 2009 for declaration of title in the suit land, for cancellation of the registered sale deed No. 5796 of 2005 dated 10.04.2005 and for permanent injunction in the Court of Senior Assistant Judge, Sadar, Sylhet impleading the present opposite party No. 1 Shah Kamal Md. Tayyab and others as defendants.

Earlier, Shah Kamal Tayyab as plaintiff filed T.S. No. 393 of 2006 for declaration of the title, recovery of Khas Possession and for cancellation of registered sale deed Nos. 2563 of 2003 and 2564 of 2003, both dated 25.02.2003 impleading the present petitioner and others as defendants. Both the suits were tried analogously. Shah Kamal Md. Tayyab (defendant No. 1 in T.S. No. 83 of 2009) filed an application for obtaining opinion of handwriting expert in T.S. No. 83 of 2009 to ascertain the genuineness of the thumb impression of the vendor, who was Shah Kamal Md. Tayyab himself, contained in registered sale deed Nos. 2563 of 2003 and 2564 of 2003 on the ground that he did not execute those deeds as vendor. The application

was allowed. The deeds were examined by the handwriting expert. The expert was examined as PW 2. The report was exhibited in the trial Court.

The trial Court dismissed the T.S. No. 393 of 2006 and decreed T.S. No. 83 of 2009. Challenging the decree passed in the T.S. No. 83 of 2009, Shah Kamal Md. Tayyab filed Title Appeal No. 199 of 2011 before the Court of learned District Judge, Sylhet. The Title appeal was transferred to the Court of Special District Judge, Sylhet and 23.08.2022 was fixed for further hearing of the appeal. On that day, the appellant Shah Kamal Md. Tayyab filed an application for handwriting expert in respect of the same subject matter which was already done in the trial Court. The application was objected by the contesting respondent. Eventually, the appellate Court below, vide order dated 01.11.2023 allowed the said application for handwriting expert. Challenging the same, the respondent Md. Fazar Ali as petitioner filed the instant civil revision, obtained Rule and order of stay.

In respect of the expert opinion, the trial Court in its judgment and order dated 22.06.2011 observed, “It is noted in the report of 10.01.2010 that the specimen thumb impressions are of Md. Sajjad”. The trial Court further observed, “Thereafter, the thumb impression of Shah Kamal Md. Tayyab in the T.I Register and the specimen thumb impression of Shah Kamal Md. Tayyab have been sent to the Thumb Impression Section, C.I.D. Dhaka for expert opinion”. The trial Court

did not consider the expert opinion on various ground including the ground that there is a discrepancy as to the name of the person whose specimen thumb impression was taken *i.e.* whether it was Shah Kamal Md. Tayyab or Md. Sajjad Ali.

I have perused the forwarding report dated 10.01.2010 of the expert (Annexure-H). It appears that the discrepancy as to the name *i.e.* Shah Kamal Md. Tayyab and Md. Sajjad Ali was a mere clerical error. The learned Advocates of both sides candidly submit that the finding of the trial Court as to the discrepancy of the name of the person whose thumb impression was taken arose out of a mere clerical error and the same should not be a ground for non-consideration of the evidence given by the expert. The learned Advocates of both sides concede that since the thumb impression of Shah Kamal Md. Tayyab has already been examined and the handwriting expert has been examined as PW2 and the report has been exhibited, there is no necessity for fresh examination of the same thumb impression which would cause unnecessary delay in disposal of the appeal. On perusal of the judgment passed by the trial Court, this Court finds substance in the submissions of the learned Advocates who have agreed on the point.

Accordingly, the impugned order dated 01.11.2023 passed by the Special District Judge, Sylhet in Title Appeal No. 199 of 2011 allowing the application for obtaining expert opinion is set aside. The concerned appellate Court is directed to dispose of the appeal on merit

considering the evidence, both oral and documentary, on record. However, in respect of the evidence of the expert, the appellate Court shall not take into consideration as to the discrepancy in respect of the name of the person (Shah Kamal Md. Tayyab and Md. Sajjad Ali) whose thumb impression was taken as contained in the forwarding letter dated 10.01.2010 of the expert (Annexure-H) and shall consider the evidence of the expert, both oral and documentary, in accordance with law.

With the above observation and directions, the Rule is disposed of.