

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 14 of 2024

Md. Rana Sheikh @ Babu Sheikh
..... Petitioner

-Versus-

Md. Golam Zakaria and others
..... Opposite Party

Mr. Manabendra Roy, Advocate
.... For the Petitioner

Mr. Md. Abdul Hai Sarker, Advocate
... For the Opposite Party No. 1

Judgment on 13.08.2025

In this revision Rule was issued granting leave to revision at the instance of the petitioner calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 15.06.2023 passed by the learned District Judge, Sirajgonj in Civil Revision No. 09 of 2023 dismissing the same and affirming the order dated 29.01.2023 passed by the learned Assistant Judge, Belkuchi, Sirajgonj in Partition Suit No. 77 of 2022 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 relevant for disposal of this revision, in short are that, the opposite parties, as plaintiff, filed Partition Suit No. 77 of 2022 in the court of learned Assistant Judge, Belkuchi, Sirajgonj, against the present petitioner along with others. At the stage of hearing and recording

evidence, the defendants filed application for sending the disputed deed No. 6082 dated 26.11.1989 to the handwriting expert for opinion. The trial court allowed the application accordingly obtained opinion from handwriting expert who found the thumb impression in order. The defendants did not file any written objection against the report, praying for rejection of the same on the ground of inaccuracy even did not move before the higher court. Subsequently, the defendants filed another application on 29.01.2023 praying for further expert opinion sending the disputed deed to the handwriting expert. The trial court after hearing the said application by its judgment and order dated 23.01.2023 rejected the same. Against the order of the trial court present petitioners moved before the District Judge, Sirajgonj by filing Civil Revision No. 09 of 2023 who heard the revision and after hearing by the impugned judgment and order dated 15.06.2023 rejected the same affirming judgment and order of the trial court. At this juncture, the petitioner moved this Court by filing this civil revision and obtained the present rule and order of stay.

Mr. Manabendra Roy, learned Advocate appearing for the petitioner submits that the defendants in their written statement categorically stated that the thumb impression contain on the deed No.

6082 of 1989 is not the thumb impression of the executant Abdul Wahab Sheikh, but it was given by a different person. To that effect the defendant earlier prayed for sending the deed to the handwriting expert for opinion, said prayer was allowed and handwriting expert furnished a report, that report was not correct and obtained by the plaintiff somehow managing the handwriting expert. After recording evidence of P.Ws. and D.Ws. present petitioner, as defendant, felt it necessary to pray for further opinion from handwriting expert, accordingly, filed the application, but the trial court as well as the revisional court without appreciating the fact and evidences rejected the prayer, though the revisional court observed that the earlier report was given by the handwriting expert only examining the thumb impression with magnifying glass without applying other scientific methods in this regard, as such, committed an error of law in the decision occasioning failure justice.

. Md. Abdul Hai Sarker, learned Advocate appearing for the opposite party No. 1 submits that grievance of the present petitioner earlier addressed by the trial court by sending the disputed deed to the handwriting expert for opinion, who after examination of the thumb

impression in question furnished report finding that the thumb impression is of Wahab Sheikh.

The defendant had ample scope to raise objection against that report and get the same rejected when the report was submitted by the hand writing expert, but they did not file any objection or cross examine the handwriting expert by citing as witness to establish their claim that the report was furnished being biased by other party.

He submits that for the self same matter, the defendant cannot file same application praying for same relief, as such, the trial court as well as the revisional court rightly refused the prayer of the defendant and both the courts below have not committed any illegality or error in law in the decision occasioning failure of justice, as such, the rule is liable to be discharged.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(4) of the Code of Civil Procedure, plaint in suit, application for expert opinion and the expert opinion furnished by the handwriting expert on 16.05.2022 and the impugned judgment and order of both the courts below.

This is a suit for partition, the plaintiff claimed decree for partition on the basis of registered sale deed No. 4082 dated 21.11.1989 executed and registered by Abdul Wahab Sheikh. The defendant challenged the deed to be forged and fabricated claiming that thumb impression contain on the said deed is not the thumb impression of Abdul Wahab Sheikh, but other person posing himself as Abdul Wahab Sheikh put the thumb impression, consequently, they prayed for sending the deed to the handwriting expert for opinion, the court allowed the same and the handwriting expert furnished report on 16.05.2022 stating that the thumb impression contain on the deed in question is the thumb impression of Abdul Wahab Sheikh, defendant No 2 in suit. Against the said report, the defendant did not file any written objection or took any step against the report seeking cancellation of the same. Resultantly, the report so have been submitted by the handwriting expert remains valid unless it is knocked down by the court.

It is the settled principle of law that an expert opinion obtained by the court lying with the record unless is rejected on the objection from any party, on the self same matter either party cannot pray for further opinion of the handwriting expert, but in the instant case the defendants keeping

the earlier expert report in record without objection or rejection of the same by the court filed second application praying for sending the sale deed to the handwriting expert for further opinion which is not at all permitted by law. Because of this situation, the trial court rejected the application and the revisional court rejected the revision maintaining order of the trial court.

From perusal of both the judgment and order of the court below, I find that in refusing the application of the defendant for further expert opinion committed no illegality or error of law in the decision occasioning failure of justice.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the learned Advocate for the petitioner calling for interference by this Court.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to proceed with the hearing and dispose of the suit expeditiously.

Communicate a copy of this judgment to the court concerned at once.

Md. Akteruzzaman Khan (B.O)