

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 550 of 2024.

Md. Ruhul Amin Fakir.

..... Petitioner.

-Vs-

Mushammat Manjuara Khatoon and others.

.....-Opposite parties.

Mr. Surojit Bhattacharjee, Advocate

...For the petitioner.

Mr. Md. Rafiqul Islam Sarder, Advocate

.. For the opposite parties.

Heard on: 16.07.2025 and

Judgment on: 23.07.2025.

Leave was granted and Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 14.03.2023 passed by the learned Additional District Judge, 2nd Court, Bogura in Civil Revision No. 46 of 2021 rejecting the civil revision and thereby affirming Order No. 47 dated 16.09.2021 passed by the learned Assistant Judge, Kahalu, Bogura in Other Suit No. 90 of 2017 accepting handwriting expert's report should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for the disposal of the Rule are that the present petitioner as the plaintiff instituted Other Suit No. 90 of 2017 in the Court of Senior Assistant Judge, Kahalu, Bogura impleading the present opposite parties as defendants praying for specific performance of a contract regarding the suit property. The case of the plaintiff, in short, is that the suit land along with other lands belonged

to Masum Fakir, who died leaving behind defendant No.1, Manjuara Begum as his heir. Accordingly, D.P. Khatian Nos. 302 and 1045 correctly prepared in the name of the defendant No.1. Being the owner and possessor of the suit land, defendant No. 1 proposed to transfer the land and the plaintiff agreed to purchase the same. Receiving the full consideration of Taka 2,00,000/-, defendant No. 1, on 11.05.2017, executed a Kabala deed, but before presentation of the deed to the Sub-register, she suddenly became faint and was taken to the local Hospital for treatment, so the deed could not be registered on that day. Subsequently, defendant No. 1 handed over the possession of the suit land to the plaintiff and on several occasions, she promised to register the land in favour of the plaintiff, but on 17.08.2017, she refused to do so. Hence, the suit.

The present opposite party No.1, as defendant No. 1, has been contesting the suit by filing a written statement denying the material averments made in the plaint. The case of defendant No. 1, in short, is that defendant No. 1 became the owner and possessor of the suit land with other lands by way of inheritance. She has been possessing the land through the yearly lessees, including the plaintiff. Being the lessee of the land, the plaintiff executed the impugned deed by false personification only to grab the land.

In the said suit, the defendant No.1 filed an application for examining the signatures of the impugned deed with his admitted signatures. After hearing the parties, the said application was allowed. Accordingly, one Md. Murshed Tuha, Inspector of Police, and handwriting expert, Bangladesh Police, CID, Dhaka submitted a

report on 24.06.2019. Against the said report, the present petitioner filed an objection on 09.09.2019. On the basis of said objection, Md. Murshed Tuha was examined. The learned Assistant Judge, Kahalu, Bogura after hearing the parties and considering the evidence by the order dated 16.09.2021 accepted the report, holding inter alia, that the report was according to the directions and prima facie there were no material irregularities in the report.

Against the order, the petitioner filed Civil Revision No. 46 of 2021 before the Court of District Judge, Bogura which was subsequently transferred to the Court of the Additional District Judge, 2nd Court, Bogura for disposal who by the judgment and order dated 14.03.2023 dismissed the said revision and thereby affirmed the order passed by the trial court holding, inter alia, that there was no question for the appellant to be prejudiced by the report.

Being aggrieved thereby the petitioner moved before this Court and obtained the Rule and an order of stay.

Mr. Surojit Bhattacharjee, the learned Advocate appearing for the petitioner submits that the report was beyond the direction given by the court, but the Courts below, without considering the same passed the impugned judgment and order accepting the report and thereby committed error of law resulting in an error in the decision occasioning failure of justice and the same is liable to be set aside.

Per contra, Mr. Md. Rafiqul Islam Sarder, the learned Advocate appearing for opposite party No.1 submits that since the report of the expert is not conclusive, therefore, there is no scope for the petitioner to be prejudiced by the impugned judgment and order.

Heard the learned Advocates of the contending parties, perused the revisional application and other materials on record.

It appears that the impugned order was passed accepting a handwriting expert's report. Sections 45 to 51 of the Evidence Act deal with the evidence of third persons, including the expert. As per the provisions, the evidence of the expert is an opinion. Amongst the said provisions, sections 45 and 47 relate to handwriting. To form an opinion as to the person by whom any document was written or signed, the former provision is a scientific comparison and the latter is based on familiarity resulting from frequent observations and experience. In either case, the court must satisfy itself by its observation, i.e., in both cases, the Court must come to its conclusion as to who wrote or signed the documents.

In the case at hand, the trial court observed that the report of the expert was in line with the directions. The learned Advocate for the petitioners, though, contended that the report was beyond the directions, but failed to prove the same by any documents on record. As observed earlier, the evidence given by the expert is opinion, and therefore, not conclusive, and it is the Court that has to form the opinion as to the person by whom the impugned document was executed. Hence, the revisional Court below rightly held that by the report of the expert, there was no scope for the appellant to be prejudiced.

Therefore, I am of the view that both the Courts below passed the impugned judgment and order on proper consideration of the

evidence on record and do not find any reason to interfere with the same.

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

The order of stay passed at the time of issuance of the Rule is hereby recalled and vacated.

Communicate a copy of this judgment and order at once.

Kashem, B.O