

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

Civil Revision No. 1419 of 2013

IN THE MATTER OF

Most. Khatemunnesa

.....Pre-emptor-Appellant-Petitioner

-Versus-

Mrs. Samela Khatun and others

.....Pre-emptee-Respondents-Opposite parties

Ms. Purabi Rani Sharma, Advocate

.....For the petitioner

Mr. Ahmed Nowshed Jamil, Advocate

.....For opposite party No. 1

**Heard on 09.02.23, 12.02.23, 13.02.23, 15.02.23 and judgment
passed on 22.02.2023**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

“Record need not be called for. Let a Rule be issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and order dated 23.01.2013 passed by the learned Additional District Judge, Kurigram in

Miscellaneous Appeal No. 21 of 2002 rejecting an application praying for admitting in evidence the pre-empted kabala No. 1595 dated 30.07.1996 in appeal and to sign the deposition given in the Trial Court in Miscellaneous Case No. 02 of 2001 before the learned Assistant Judge, Roumari, Kurigram should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper."

At the time of issuance of the Rule, all further proceedings of Miscellaneous Appeal No. 21 of 2002 were stayed.

The present petitioner as the pre-emptor filed the instant Miscellaneous Case No. 02 of 2001 before the Court of learned Assistant Judge, Roumari, Kurigram for pre-emption in respect of the case land transferred by Kabala dated 3.9.1992 claiming that he is a co-sharer in the case jote by inheritance. The present opposite party Nos. 1 and 2 appeared in the case and filed separate written objections. The case was fixed for a final hearing on 24.09.2001 but on that date, the pre-emptor-petitioner was not found present in the Court on repeated calls, and as such the case was dismissed for default. Against which the pre-emptor as the appellant preferred an

appeal before the learned District Judge, Kurigram, and the same was numbered Miscellaneous Appeal No. 21 of 2022 which is pending for hearing. During the pendency of the appeal the pre-emptor filed an application before the Court praying for admitting a deed mentioned therein in evidence by recalling the pre-emptor as a witness. After hearing the same the learned Additional District Judge, Kurigram by judgment and order dated 23.01.2013 rejected the application. Being aggrieved by the same the pre-emptor as the petitioner had preferred this civil revision before this Court and obtained the instant Rule.

Anyway, Ms. Purabi Rani Sharma, the learned Advocate appearing for the pre-emptor petitioner submits that the kabala sought to be exhibited could be marked as exhibit upon recalling the pre-emptor and allowing him to sign his deposition at the appellate stage as per section 107 of the Code of Civil Procedure, 1908 for the ends of justice.

Conversely, Mr. Ahmed Nowshed Jamil, the learned Advocate appearing for opposite party No. 1 submits that the deed so mentioned in the application for accepting the same as evidence is

out of the plaint and the pre-emptor did not state any reason for admitting the deed in evidence as such, the Court below considering the materials on record rightly rejected the application and thereby committed no illegality, for the pre-emptor did not mention anything in the plaint regarding the deed as mentioned in the application.

I have heard the learned Advocates of both parties and have perused the materials on record. It appears that the pre-emptor at the appellate stage filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 praying for admitting a deed mentioned therein as evidence by recalling the pre-emptor as a witness. But the very fact of the deed was not, in any way mentioned in the pleadings as such, it is being out of the pleadings there is no scope to accept the said deed as a piece of additional evidence as such, the Appellate Court below rightly held that “১৫৯৫ দলিলটির দাতা গ্রহীতাকে উক্ত দলিলটি অত্র মামলার বিচার্য বিষয় নির্ধারনে আদৌ আবশ্যিক কিনা তদমর্মে কোন বক্তব্য আপীলকারী পক্ষের বিজ্ঞ কৌশলী প্রদান করিতে পারে নাই। পক্ষান্তরে প্রতিপক্ষের বিজ্ঞ কৌশলী নিবেদন করেন যে, দরখাস্তের উল্লেখিত দলিলের বিষয় pleadings এ ছিল না বিধায় pleadings বহির্ভূত কোন দলিল প্রদর্শনী চিহ্নিত করার সুযোগ নাই। তর্কিত রায়

পর্যালোচনায় দেখা যায় যে, দরখাস্তের উল্লেখিত দলিলের বিষয়ে কোন আলোচনা করা হয় নাই। কাজেই উল্লেখিত দলিলের বিষয়ে pleadings এ ছিলনা তা মোটামুটি নিশ্চিত। pleadings বহির্ভূত দলিল আইনতঃ প্রদর্শনী চিহ্নিত করার অবকাশ না থাকায় আপীলকারীপক্ষ কর্তৃক আনীত ০৬.০৬.১২ইং তারিখের দরখাস্ত নাকচ করা হইল।”

However, documents out of pleadings are acceptable in Court provided they are relevant to the issue in dispute and the parties have given their consent. The documents have to be properly authenticated and should be admissible evidence. But in the case at hand, the other party admittedly did not give consent to accept the deed in question as evidence. On top of that, whether the deed is relevant to the issue in dispute or not is not clear because the pre-emptor in his application did not mention anything to that effect.

Given the above, I do not find any substance in the submissions so made by the learned Advocate for the petitioner.

Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay vacated.

The impugned judgment and order dated 23.01.2013 passed by the learned Additional District Judge, Kurigram in Miscellaneous Appeal No. 21 of 2002 rejecting the application is hereby affirmed.

Send a copy of this judgment to the Court concerned at once.

(TUHIN BO)