

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 279 of 2012

In the matter of:

Md. Munir Hossain and another
... Appellants

-Versus-

Hamida Begum
... Respondent

Mr. Ranjit Kumar Barman, Advocate
... For the appellants

No one appeared
.... For the respondent

**Heard on 09.06.2024 10.06.2024
and Judgment on 10.06.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

This appeal is directed against the judgment and order dated 21.05.2012 passed by the learned Joint District Judge, 3rd Court, Dhaka in Revocation Miscellaneous Case No. 623 of 2008 initiated by the respondent under section 383 of the Succession Act, 1925 allowing the same ex parte dated 01.04.2008 and thereby cancelling the succession certificate in Succession Case No. 441 of 2008 issuing succession certificate in favour of the opposite parties (herein the appellants) to the Revocation Miscellaneous case.

The short facts leading to preferring this appeal are:

The present appellants as applicants originally filed a succession case being no. 441 of 2008 for the property and the money stands in the

account at taka 5,75,126/97 left by their father named Abdus Satter Bhuiyan who died on 06.02.2008. In the said succession case since no body entered appearance it was allowed ex parte on 01.04.2008. Being informed about the said ex parte judgment passed in succession case no. 441 of 2008, the present respondent claiming to be the second wife of the deceased Abdus Satter Bhuiyan filed the revocation Miscellaneous case no. 623 of 2008 for cancelation of the said succession certificate. The precise facts so have been described by the respondent no. 1 as petitioner in the said Revocation Miscellaneous case are that, her husband namely, Abdus Satter Bhuiyan died on 06.02.2008 leaving behind her as well as one son and one daughter, the opposite party nos. 1 and 2 (here in the appellants) and they by fling the said succession case got an ex parte order on 01.04.2008 where she was not made any party to the case. However, in order to get the property so left by her husband she had also filed a succession case being no. 410 of 2008 where the appellants were made parties. They on. 07.05.2008 also filed a written objection in the said case when the present respondent first came to learn about the judgment and order passed in succession case no. 441 of 2008 dated 01.04.2008 and got the succession certificate and hence the Revocation Miscellaneous Case.

On the flipside, the present appellants as opposite parties to the said revocation case jointly filed written objection contending inter alia that, the revocation Miscellaneous case is liable to be dismissed stating that, their father used to be a government service holder and he was a highly educated person. Apart from that, the appellant no. 1 is also educated person and he gave gob to the present respondent no. 1, Hamida

Begum as their house maid in their house and there had been no marriage ever solemnized by that respondent with his father. It has further been stated that, while their father had been living with them, he died in their house at Lalmatia on 06.02.2008 leaving behind one son and one daughter, the present appellants and accordingly they filed succession case no. 441 of 2008 and got the succession certificate on 01.04.2008. It has further been stated that, the *kabinnama* which was submitted by the respondent is forged and fraudulent rather her first husband namely, Kajum Uddin is still alive and their conjugal life has still been subsisting and they have also a son born out of their wedlock and finally prayed for dismissing the Revocation Miscellaneous case.

The learned Joint District Judge, 3rd court, Dhaka in order to dispose of the said case framed as many as 3 different issues and the respondent no. 1 who is the petitioner in the said revocation Miscellaneous case adduced two witness including herself and produced several documents which were marked as exhibit nos. 1-9. On the contrary, the present appellants who were the opposite parties to the said case also adduced two witnesses including the appellant no. 1 himself as OPW-1 and another and produced several documents which were marked as exhibit nos. ka-ga. The learned judge after hearing the parties to the case, then vide impugned judgment and order allowed the same and set aside the judgment and order passed in succession case no. 441 of 2008 dated 01.04.2008.

Being aggrieved by and dissatisfied with the said judgment and order the opposite parties to the said revocation Miscellaneous Case No. 623 of 2008 as appellants preferred this appeal.

Mr. Ranjit Kumar Barman, the learned counsel appearing for the appellants by reading out the impugned judgment and order at the very outset submits that, the learned Joint District Judge under misconception of law passed the impugned judgment which cannot be sustained in law. To fortify his such submission, the learned counsel then contends that, since it has been proved that during the existence of the marriage of Hamida Begum with her first husband, Kajim Uddin she got second marriage with the father of the present appellants so the said marriage cannot said to be any legal marriage In support of his submission the learned counsel then referred the provision of section 256 of Mulla's "Mohammedan Law" and read out the said section and contends that, the second marriage so solemnized with the father of the appellants is void and thus she is not entitled to any share of any property left by Abdus Satter Bhuiyan, the father of the appellants.

The learned counsel by referring to the impugned judgment also contends that, though the present respondent no. 1 produced exhibit no. 5 (Talaknama) showing that, before solemnizing the marriage with the father of the appellants dated 16.06.2000 she got divorced from her first husband, Kajim Uddin on 13.09.1983 but that very *talaknama* has not been certified by the respective marriage registrar yet the said *talaknama* has been exhibited as exhibit no. 5 still the learned judge out of the blue came to a finding that, by that very *talaknama* the marriage between the

respondent with her first husband, Kajim Uddin has been dissolved without taking into consideration of the genuineness of the said *talaknama* and therefore the marriage of the respondent with her first husband, Kajim Uddin was still subsisting at the time of alleged marriage with the father of the present appellants dated 16.06.2000.

The learned counsel by referring to two sections of B.R Verma's Islamic Personal law and taking us to the provision of section 24(4) as well as section 6 thereof also contends that, similar implication has been set out there with regard to having second husband in spite of having first husband by any muslim woman and therefore the second marriage of the respondent cannot be termed as legal rather void even though that very legal point has not been taken into consideration by the learned judge while revoking the succession certificate obtained by the present appellants.

The learned counsel also contends that, though the present appellants as OPW-1 and OPW-2 exhibited as many as three documents as exhibit 'ka-ga' through which they were able to prove that, in the voter list so published in the year 1995 and 2000, the name of the husband of the respondent has been mentioned as Kajum Uddin yet the learned judge has sidetracked that very vital piece of evidence observing that, that very voter list has not been proved by bringing the respective officials of the election commission who published the voter list as witness which cannot be sustained in law.

The learned counsel wrapped up his submission contending that, since the OPW-2 who happens to be the cousin of the appellant no. 1 has

clearly proved that, Hamida Begum, respondent no. 1 had been employed as maid servant to the house of appellants brought by him for the time being who had been staying with the father of the appellants for only one year and 6 months and managed to get a marriage with the father of the appellants which was not any legal marriage yet the learned judge failed to comprehend that very vital aspect of the case and therefore the judgment impugned in the instant appeal cannot be sustained in law rather it is liable to be set aside. With those submissions and relying on the legal provision, the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and order.

Though record shows one, Mr. Md. Saidul Islam, entered appearance for the respondent but he did not turn up at the time of hearing of the appeal.

In any case, we have considered the submission so placed by the learned counsel for the appellants and perused the memo of appeal including the impugned judgment and the deposition of the witnesses so adduced by the present appellants as well as the respondent no. 1. There has been no gainsaying the facts that, in order to prove the genuineness of the marriage solemnized between the father of the present appellants and the respondent, the respondent produced the *nikahnama* or *Kabinnama* dated 16.06.2000 which was marked as **exhibit 1** though the authenticity of that very *kabinnama* has not been shaken by the appellants by any convincing evidence. Further, the respective marriage registrar who conducted the said marriage appeared for the respondent as petitioner witness no. 2 (PW-2) who proved his signature in the *kabinnama*. On

going through the deposition so made by the PW-1 and PW- 2 we don't find that the appellants have been able to deviate the assertion so made by those very two vital witnesses in support of the register of marriage dated 16.06.2000 through cross examination. Furthermore, another vital evidence produced by the respondent no. 1 as PW-1 is exhibit 6 which is her National Identity Card (NID) where the name of her husband has been mentioned as Abdus Satter Bhuiyan. Also, it is admitted position that, the father of the present appellants, Abdus Satter Bhuiyan died on 06.02.2008 and on the following date he was buried in the graveyard but interesting enough, the payment slip for the cost of such burial has been produced by both the respondent no. 1 as well as by the daughter of the said Abdus Satter Bhuiyan, appellant no. 2 which was also marked exhibits by both the parties yet no deviation can be made with regard to the said vital piece of document by either party which alternatively construe that, on the date of the burial of the deceased that is, the father of the present appellants, the respondent no. 1 remained there in the graveyard otherwise it would not have been possible for her to collect that payment slip. There appears another vital document produced by the respondent is the succession certificate (ওয়ারিশ সনদপত্র) issued by the city corporation where the name of the present respondent as well as the present appellants has been mentioned as the heirs of late Abdus Satter Bhuiyan. Now the learned counsel for the appellants has placed his reliance in the provision of getting second marriage by a muslim woman despite existence of her first husband though it is well known by all that, though a muslim man can get marriage for four times subject to the prior permission of his existing

wife or wives but a muslim woman cannot get two husbands at a time but that point is not that vital here to adjudicate the appeal because it has been proved by exhibit 5 that, upon giving divorce to her first husband, the respondent no. 1 got married to the father of the appellants so it cannot be said that, during subsistence of the first marriage with one, Kajim Uddin, the respondent no. 1 got married with the father of the appellants because at the time of marking all the documents exhibits not a single objection has been raised by the appellants in particular, with regard to *kabinnama* executed and registered with the father of the appellants and **Talaknama** with Kajim Uddin. Had it been so, then no question can be arisen now that during subsistence of the marriage with Kajim Uddin, the respondent no. 1 got married to the father of the present appellants. So we are not at one with the submission so placed by the learned counsel for the appellants with regard to the legal provision so canvassed as stated hereinabove. Furthermore, the learned Joint District Judge, 3rd court, Dhaka in the impugned judgment has elaborately discussed the evidence adduced and produced by the parties in the Revocation Miscellaneous Case on which we don't find any iota of illegality in it.

Regard being had to the above facts and circumstances and materials and evidence on record we don't find any impropriety in the impugned judgment which is thus sustained.

Accordingly, the appeal is dismissed however without any order as to costs.

Let a copy of this order along with the lower court records be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.

Kawsar/A.B.O.