

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

**Civil Revision No. 813 of 2002**

**IN THE MATTER OF**

Mrs. Ambia Begum and others

..... Plaintiffs-Petitioners

-Versus-

Md. Saifullah Miazi

..... Defendant-Opposite party

No one appears

..... For the parties

**Judgment passed on merit on 20.05.2024**

**Present:**

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This rule, under section 115 of the Code of Civil Procedure, 1908, was issued in the following terms-

*“Records need not be called for. Let a rule be issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 27.01.2002 passed by the learned Assistant Judge, Fourth Court, Dhaka in Title Suit No. 281 of 2000 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 further proceeding of Title Suit No. 281 of 2000 pending before the learned Assistant Judge, Fourth Court, Dhaka was stayed.

The present petitioners as the plaintiffs filed Title Suit No. 281 of 2000 in the Court of Learned Assistant Judge, Fourth Court, Dhaka against the present opposite party as the defendant praying for the recovery of khas possession of the suit property by evicting the defendant therefrom. The defendant contested the suit by filing a written statement for the reasons stated therein.

It has been stated that the suit was fixed for a peremptory hearing on 22.01.2002 and on that date, one Mr. Saud Alam who is the husband of plaintiff-petitioner No. 6 and her appointed Attorney deposed before the Court as P.W. 1 and was cross-examined by the defendant. Thereafter, the defendant filed an application before the Court under section 151 of the Code of Civil Procedure, 1908 praying for expunging the deposition of P.W. 1 Saud Alam on the ground that the Power of Attorney was not registered and as such, the deposition of P.W. 1 was not legal and not acceptable. After hearing the application the learned Trial Judge by his impugned judgment and order dated 27.01.2002 allowed the application and expunged the deposition of P.W.1

made based on the unregistered Power of Attorney. Being aggrieved by the same the plaintiffs as the petitioners had filed the instant civil revision before this Court.

However, no one appeared before the Court on behalf of the parties when the matter was taken up for hearing.

I have gone through the impugned judgment and order as well as the materials on record. It appears that P.W.1 gave evidence before the Court in connection with the suit based on an unregistered Power of Attorney given by his wife, plaintiff-petitioner No.6. Against which the defendant filed an application before the Court under section 151 of the Code of Civil Procedure praying for expunging the deposition of P.W.1 and after hearing the same the learned Trial Judge on elaborate discussions rightly allowed the application and expunged the deposition of P.W.1 and thereby committed no illegality occasioning failure of justice as the alleged Power of Attorney does not purport to have been executed and authenticated by any of the persons mentioned in section 85 of the Evidence Act, 1872 for acting within the per view of Order III rule 2 of the Code of Civil Procedure, 1908.

Given the above, I do not find any substance in the rule. Accordingly, the rule fails.

As a result, the rule is discharged without cost.

Stay vacated.

The impugned judgment and order dated 27.01.2002 passed by the learned Assistant Judge, Fourth Court, Dhaka in Title Suit No. 281 of 2000 expunging the deposition of P.W.1 is hereby affirmed.

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

(Md. Rafiqul Alam, BO)