

7 SCOB [2016] HCD 61

HIGH COURT DIVISION

CIVIL REVISION NO. 3196 OF 2002.

No one appears.

.....for the petitioner

Md. Bazlur Rahman,

.... Defendant-Petitioner.

Mr. Mohammad Abdullah,

Advocate.

.....for the opposite parties

Versus

Shamsun Nahar and others.

....Plaintiff –Opposite- parties.

Heard on: 25.02.2015 & Judgment on:
26.02.2015.

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

Family Courts Ordinances, 1985

Section 9(6):

It appears that both the courts after proper consideration of the evidence on record rightly opined that since the petitioner himself received the summons so without filing any appeal against the *experte* judgment and decree he cannot get any relief. ...(Para 10)

The code of civil procedure, 1908

Section 115(1):

It is settled principle that the concurrent findings of facts cannot be interfered with in revisional jurisdiction under section 115(1) of the code of civil procedure. This principle support by the decision of the case of Sambunath Poddar and others-Versus-Bangladesh Railway reported in 43 DLR (AD)-82. ...(Para 11)

Judgment

S.M. EMDADUL HOQUE, J:

1. On an application of the petitioner Md. Bazlur Rahman under section 115 (1) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment of affirmance dated 02.05.2002 passed by the Joint District Judge, Tangail, in Family Appeal No. 1 of 2002 should not be set-aside.

2. Fact necessary for disposal of the Rule, in short, are the opposite party No.1 as plaintiff instituted Family Suit No. 10 of 2000 in the Court Assistant Judge, Basail, Tangail, against the defendant petitioner claiming dower Money and her maintenance along with the maintenance of her 2 minor children. The trial Court after consideration of the evidence on record decreed the suit *experte* and directing the petitioner to pay Taka 98,000/- as dower money and maintenance. Aagainst the said *experte* order the defendant petitioner filed miscellaneous case No. 28 of 2000 but since in the trial Court the defendant petitioner though appeared and prayed for time for filing written objection but ultimately he did not appeared and thus trial Court passed *experte* judgment on 21.08.2000. The petitioner without preferring

appeal filed an application under section 9(6) of the family Courts ordinances 1985 claiming that without any summons the *experte* decree was passed by the trial Court.

3. The trial court after consideration of the evidence on record found that the summons was duly served even the defendant himself admitted that he has received the summons.

4. Against the said order of the trial court the petitioner filed Family Appeal No. 1 of 2002 before the learned District Judge, Tangail. The said appeal was heard by the Joint District Judge, Artha Rin Adalat, Tangail, who after hearing the parties and considering the evidence on record upheld the order of the trial Court by its judgments and order dated 02.05.2002.

5. Being aggrieved by and dissatisfied with the impugned judgment of the courts below the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the Rule.

6. Mr. Md. Abdullah, the learned Advocate enter appeared on behalf of the opposite parties through Vokatnama to oppose the Rule.

7. The matter has come up in the daily cause list in a couple of days with the names of the learned Advocates of both the sides but none turned-up to press the Rule. Since this is a long pending case and against an order of affirmance, I am inclined to dispose of the matter on merit.

8. However Mr. Md. Abdullah the learned Advocate of the opposite parties argued that since the petitioner admitted that he received the summons and thus the trial Court rejected the application of the petitioner and the Appellate Court upheld the said order which is a findings of facts and the concurred findings of facts cannot be interfered with in revisional jurisdiction under section 115(1) of the Code of Civil Procedure.

9. It appears that the opposite party No.1 Mrs. Shamsun Nahar Rehana filed family suit No.10 of 2000 claiming his dower money and her maintenance along with the maintenance of her 2(two) minor children. The summons was duly served upon the defendant and the defendant filed application for adjournment of the suit in several times and prayed for time for filing written objection. But he did not filed written objection and thus the trial Court took the matter for *experte* hearing and accordingly passed the *experte* decreed directing the defendant to pay Tk. 98,000/- for the dower money and maintenance. Thereafter the petitioner filed application for recalling the judgment and decree of the Courts below dated 21.8.2000 under section 9(6) of the Family Courts Ordinances 1985, claiming that no summons was served upon him. The courts below found that in his deposition the present petitioner admitted that he received the summons and claimed that he was engaged to restore the law and order situation of the Hiltracks so, he could not appear when the matter was called on for hearing. The trial Court after consideration of the evidence on record and the Ain opined that since the summons was duly served and the petitioner obtained time for filing written objection as such rejected the application. Against which the petitioner filed Family Appeal No. 1 of 2002 and the Appellate Court after consideration of the evidence on record and on consideration of the admission of the petitioner that he received the summons thus upheld the order of the trial Court by its judgment and order dated 02.05.2002.

10. I have perused the judgment of the Courts below and the papers and documents as available on the record. It appears that both the courts after proper consideration of the evidence on record rightly opined that since the petitioner himself received the summons so without filing any appeal against the *experte* judgment and decree he cannot get any relief.

11. It is settled principle that the concurrent findings of facts cannot be interfered with in revisional jurisdiction under section 115(1) of the code of civil procedure. This principle support by the decision of the case of Sambunath Poddar and others-Versus-Bangladesh Railway reported in 43 DLR (AD)-82.

12. Considering the facts and circumstances of the case and the discussions made above, I find no merit in the Rule.

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

14. The order of stay granted earlier by this court is hereby recalled and vacated.

15. Send down the lower court's records at once.