

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 2826 of 2021

Dipak Kumar Nath and another
Defendants- Petitioners
Versus

Chaitanna Charan Nath and others
Plaintiffs-Opposite Parties

The Deputy Commissioner, Munshigonj
and others
Defendants-Opposite Parties

Mr. Khandaker Mohammad Musfiqul
Huda, Advocate
for the petitioners

Mr. Bivash Chandra Biswas, Advocate
For the opposite party Nos. 1-5

Judgment on: 21.8.2023

This Rule was issued calling upon the opposite party Nos. 1-9 to show cause as to why the impugned Judgment and Order dated 15.11.2021 passed by the learned District Judge, Munshigonj in Civil Revision No. 12 of 2021 arising out of Order dated 01.4.2021 passed by the learned Senior Assistant Judge, Sirajdikhan, Munshigonj in Title Suit No. 50 of 2004, now pending before the learned District Judge, Munshigonj rejecting an application under Order V rule XXV of the Code of Civil Procedure, 1908 should

not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The defendants-petitioners filed an application under Order-V rule XXV of the Code of Civil Procedure, 1908 before the Court of learned District Judge of Munshigonj in Civil Revision No. 12 of 2021 seeking kind leave of the Court to serve summons upon the principals of the Power of Attorney who are the plaintiff-opposite party Nos. 06 to 09 at the trans-border station namely India. The learned District Judge rejected the application by an Order passed on 15.11.2021. The instant petitioners being aggrieved by and dissatisfied with the order of rejection of the application passed by the learned District Judge in Civil Revision No. 12 of 2021 preferred this Civil Revision under Section 115(1) of the Code of Civil Procedure before this Court.

The plaintiffs-opposite parties filed the Title Suit No. 50 of 2004 before the learned Senior Assistant Judge Court, Sirajdikhan, Munshigonj with prayer for declaration that read as follows:-

ক) মোকদ্দমার ৩নং বিবাদী কর্তৃক বিগত ০৫.০৮.১৯ইং তারিখে বাদীগনের বরাবরে স্মারক নং- জে প্র মু/ আর এম/১৯৭ (২) মূলে প্রেরিত চিঠিতে নালিশী সম্পত্তির আম-মোজারনামা রি-স্ট্যাম্পিং এর আবেদন নাকচ করার আদেশটি এবং একই চিঠিতে একই তারিখে স্মারক নং- জে প্র মু/ আর এম-১৪-৬/১৭-১৯৭ (২)/১ মূলে ৩ নং বিবাদীর স্বাক্ষরিত ৬নং বিবাদীকে নালিশী সম্পত্তি তফসিল বর্নিত সরকারের খাস খতিয়ানভুক্ত করার

নির্দেশটি ফলহীন, বলহীন, বে-আইনী ও অকার্যকর মর্মে ৩-৬নং বিবাদীর বিরুদ্ধে এক ঘোষনামূলক ডিক্রী দিতে;

খ) নালিশী তফসিল বর্ণিত সম্পত্তি সরকারী খাস খতিয়ানভুক্ত করা হইতে বিরত থাকার জন্য ৩-৬নং বিবাদীদের বিরুদ্ধে এক ঘোষনামূলক ডিক্রী প্রচার করিতে;

The present defendant-petitioner Dipak Kumar Nath and Dilip Kumar Nath consecutively contested the suit by filling written statement denying all the material averments made in the plaint.

The plaintiffs case and the written statement have been narrated in details in this Revisional Application.

Thereafter, the defendant-petitioner submitted an application for the rejection of the plaint under Order-VII, rule-11 of the Code of Civil Procedure, the application was contested up to the Appellate Division and the defendants-petitioner's application was finally rejected by the Appellate Division on ground that the matter of rejection of stamping order can be decided only on hearing before the Court below. The learned Assistant Judge received an order from the Appellate Division on 25.03.2019 and on the same date the learned Assistant Judge fixed a date for hearing of the maintainability of the suit on 11.04.2019 and after that another date was fixed on 07.05.2019 for further hearing of the Title Suit No. 50 of 2004. The defendants-petitioners filed an application on

07.05.2019 and 23.01.2020 challenging the maintainability of the Title Suit No. 50 of 2004 and the plaintiffs-opposite parties contested the maintainability application by submitting written objection on 01.08.2019 and 10.12.2020. After hearing both the parties the learned Senior Assistant Judge, Sirajdikhan, Munshigonj disposed of the maintainability application and kept to the same on 01.04.2021 and the suit was fixed for peremptory hearing. The defendants-petitioners being aggrieved by and dissatisfied with the said Order dated 01.04.2021 filed the Civil Revision No. 12 of 2021 before learned District Judge, Munshigonj.

Thereafter the Civil Revision No. 12 of 2021 was fixed for service returned on 13.10.2021 and the Process Server reported that the Attorney namely Narayan Chandra Debnath for the plaintiff Nos. 06-09 died.

On 28.10.2021 the defendants-petitioners Nos. 1 and 2 filed an application under Order V rule-XXV read with Section 151 of the Code of Civil Procedure, 1908 to serve trans-border summons upon the plaintiffs-opposite-party Nos. 06 to 09. After hearing both the parties the learned District Judge, Munshigonj rejected the application under Order V rule XXV read with Section 151 of the Code of Civil Procedure, 1908 filed by the defendants-petitioners

to serve summons upon the plaintiffs-opposite parties No. 06-09 on 15.11.2021.

Being aggrieved by and dissatisfied with the impugned judgment and order the defendants-petitioners moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Khandaker Mohammad Musfiqul Huda, learned Advocate for the defendants- petitioners, submits that on 13.10.2021 on receipt of the report from the Process Server that the Attorney Narayan Chandra Debnath for the plaintiff Nos. 06 to 09 is dead, the learned District Judge, Munshigonj passed an order on the same date to take necessary steps to inform the plaintiffs-opposite party Nos. 06 to 09 and pursuant to the said order, the defendants-petitioners filed an application on 28.10.2021 under Order V rule XXV of the Code of Civil Procedure, 1908 along with necessary requisite and process, the aforesaid Order is in force for the time being but the learned District Judge, Munshigonj rejected the application under Order V rule XXV of the Code of the Civil Procedure, 1908 against his own order passed on 13.10.2021 causing grave prejudice to the defendants-petitioners. He further submits that the learned District Judge, Munshugonj failed appreciating the law that since the application of Biswajit

son of Attorney late Narayan Chandra Debnath for addition of party under Order-I rule-10(2) of the Code of Civil Procedure, 1908 was rightly rejected, the learned District Judge, Munshigonj ought to have allowed the application for service of summons under Order-V rule-XXV of the Code of Civil Procedure, 1908, so as to allow the plaintiffs-opposite party Nos. 06 to 09 could come and assert as to whether they desire contesting the case anymore. He then submits that pursuant to Order V rule XXV of the Code of Civil Procedure, 1908, where a party suffers from lack of representative for the propose of service of summon due to trans-border location or foreign residents and lack of no agent, the Court can issue summons to the foreign territory so as to ensure his or her presence for the ends of justice.

Mr. Bivash Chandra Biswas, learned Advocate for the plaintiffs opposite parties opposes the Rule and submits that the plaintiff No. 2 Suvasiny Deby and plaintiff No. 3 Kalpana Debnath, plaintiff No. 4 Nirmala Debnath and plaintiff No. 5 Alpana Debnath who are all the principals along with Chaitannya Debnath executed a power of attorney and said Suvasiny, Kalpona, Nirmala and Alpana are plaintiff Nos. 6-9 and as they have been represented by Shambhu Debnath then the notice under Order V rule XXV of the Code of Civil Procedure, 1908 is not necessary

and only for prolonging the suit Dilip Kumar Nath and Dipok Kumar Nath filed the aforesaid application before the learned District Judge for prolonging suit and for harassment.

Heard the learned Advocates for the parties and perused the record.

From the record, it appears that plaintiff No. 2 Suvasiny Deby, plaintiff No. 3 Kalpana Debnath, plaintiff No. 4 Nirmala Debnath and plaintiff No. 5 Alpana Debnath who are all the principals along with Chaitannya Debnath executed a power of attorney and subsequently Chaitannya Debnath died. On the other hand the said Suvasiny, Kalpana, Nirmala and Alpana are plaintiff Nos. 6-9 have been represented by Shambhu Debnath then Notice under Order V rule XXV of Code of Civil Procedure is not required.

Considering the facts and circumstances of the Case, I find no substance in this Rule rather I find substance in the submissions of the learned Advocate for the plaintiffs-opposite parties.

Accordingly, the Rule is discharged without any order as to costs.

The impugned judgment and order dated 15.11.2021 passed by the learned District Judge, Munshigonj in Civil Revision No. 12

of 2021 arising out of order dated 01.4.2021 passed by the learned Senior Assistant Judge, Sirajdikhan, Munshigonj in Title Suit No. 50 of 2004 rejecting an application under Order V rule 25 of the Code of Civil Procedure, 1908 is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Communicate the Judgment to the Courts below at once.