District: Lalmonirhat

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 277 of 2009

In the matter of :
Keshob Chandroy Roy Chowdhury
… Petitioner
-Versus-
Modhu Sudon Roy Chowdhury and others
…Opposite-parties

No one appears
...For the petitioner
Mr. Md. Bokhtiar Hossain, Advocate on behalf of
Mr. Md. Iqbal Hossain, Advocate
...For the opposite-party No. 1-5

Heard on: 26.05.2024, 27.05.2024 and 28.05.2024

Judgment on: 29.05.2024

The Rule was issued calling upon the opposite-party Nos. 1 to 5 to show cause as to why the judgment and order dated 09.09.2008 passed by the District Judge, Lalmonirhat in Civil Revision No. 13 of 2008 rejecting the revisional application summarily and affirming the order dated 09.07.2008 passed by the Assistant Judge, Hatibandha, Lalmonirhat in Other Class Suit No.

66 of 2007 rejecting the application for leave to deliver interrogatories purportedly under Order XI, rule 1 of the Code of Civil Procedure on behalf of the defendant No. 1 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 on 02.02.2009, all further proceeding of Other Class Suit No. 66 of 2007 has been stayed till disposal of the Rule.

The present opposite-party Nos. 1-5 as plaintiffs instituted Other Class Suit No. 66 of 2007 in the Court of Assistant Judge, Hatibandha, Lalmonirhat for a mandatory injunction compelling the defendant No. 1 to distribute the excess or rest of the usufruct of the ‘Ka’ schedule property among the successors of the Shebayet after meeting the expenditure of worshipping, offering to the deities, Sree Sree Modon Mohon Deb Bigroho and Sree Sree Bishwanath Sib Thakur and of other ritual formalities. It is stated that the ‘Ka’ schedule property is Debbottor property dedicated by one Volanath Roy Chowdhury through a registered deed of will being No. 4 executed on 07.12.2013 (registered on 03.01.2014) dedicating the ‘Ka’ scheduled land along with others to deities, Sree Sree Modon Mohon Deb and Sree Sree Bishwanath Sib Thakur. As per the registered deed of will the eldest son of the family is to be nominated as Shebayet to maintain the ritual

formalities and the debbottor property in question. Accordingly, Daroka Nath Chowdhury, the first son of executor Volanath Roy Chowdhury became the first Shebayet and after his death, Durga Mohon Roy Chowdhury became the second Shebayet and thereafter, Debendra Nath Roy Chowdhury, Saroda Mohon Roy Chowdhury, Promotho Bhushon Roy Chowdhury, Kunja Mohon Roy Chowdhury, Nogendra Nath Roy Chowdhury became the Shebayet, sequentially of the Debottor property in question. After the death of Nagendronath Roy Chowdhury, the father of defendant Nos. 1-4, the defendant No. 1 filed an application before the defendant No. 6 claiming to be appointed as Shebayet in place of his father. It has been mentioned in the plaint that the defendant No. 5, Narendra Nath Roy Chowdhury is the eldest male descendant after the death of Nagendra Nath Roy Chowdhury; but the defendant No. 1, keeping the said fact hidden, behind the back filed the aforesaid application before defendant No. 6 and the defendant No. 6 upon receiving the said application on 05.11.2006 by his order passed in Miscellaneous Case No. 1 of 2006-07 directed the successors of late Nagendra Nath Roy Chowdhury to settle the matter in civil court and during pendency of final order from competent civil court, appointed defendant No. 1 as Shebayet, with a direction to distribute rest of the usufruct among all the successors equally, after meeting all necessary

expenditure of Worshipping, offering to the deities and other ritual formalities. The defendant No. 1 upon getting appointment as Shebayet has taken over possession of the properties mentioned in the 'Ka' schedule but did not comply with the direction of defendant No. 6, so far it relates to distribute rest of the usufruct among the entitled successors. In such back drop, the plaintiffs filed the suit for mandatory injunction.

The defendant No. 1 made appearance in the said suit and on 30.04.2008 filed an application for a direction upon the plaintiff to answer the interrogatories specified in the application and the trial Court on the same date by his order No. 14 rejected the said application. On 09.07.2008, the defendant No. 1 filed another application for leave of the Court to deliver interrogatories with a direction upon the plaintiffs to answer the specified interrogatories. Learned Assistant Judge, Hatibandha, Lalmonirhat after hearing the parties by his order dated 09.07.2008 rejected the said application holding that the questions as framed does not bear any necessity or importance for disposal of the suit.

Having been aggrieved by the judgment and order dated 09.07.2008, the defendant No. 1 preferred Civil Revision No. 13 of 2008 before the District Judge, Lalmonirhat and learned District Judge after taking preliminary hearing by his judgment and order dated 09.09.2008 rejected the revision summarily.

On being aggrieved by and dissatisfied with the judgment and order dated 09.09.2008 passed by the District Judge, Lalmonirhat in Civil Revision No. 13 of 2008, the defendant No. 1 filed this revisional application under section 115(4) of the Code of Civil Procedure and upon granting leave the present Rule has been issued.

Although the instant revisional application has been appearing in the daily cause list of this Court on 21.05.2024, 26.05.2024, 27.05.2004 and 28.05.2024 but no one appeared on behalf of the petitioner to defend the Rule.

On the other hand, Mr. Md. Bokhtiar Hossain, learned Advocate appearing on behalf of Md. Iqbal Hossain, learned Advocate for the opposite-party Nos. 1-5 and submits that the interrogatories as have been made in the application of defendant No. 1 has no relevancy to the present suit; because the suit property in question has been specified in the schedule of the plaint and the interrogatories or question framed regarding the properties beyond the plaint having no relevancy at all for disposal of the instant suit. He next submits that the interrogatories as has been framed or delivered purportedly under the provision of Order XI, rule 1 of the Code of Civil Procedure with the leave of the Court and the Court in its discretion may grant or not to grant leave considering the facts and circumstances of the suit and if the

interrogatories do not relate to the dispute arising out of pleadings shall be deemed to be irrelevant and the Court shall not allow or grant leave to deliver such kind of interrogatories. He continues to submit that both the Courts below justly and legally rejected the application of defendant No. 1 purportedly filed under Order XI, rule 1 of the Code of Civil Procedure. In support of his submission he cited the case of Moon Garments Industries and others Vs. Janata Bank and others reported in 50 DLR(AD)72.

Heard learned Advocate for the opposite-party Nos. 1-5, perused the revisional application together with the annexures appended thereto and examined the relevant provisions of law.

It appears that the instant suit was filed with the following prayer:

> "(ক) নালিশী (ক) তপশীলে বর্ণিত সম্পত্তির আয় হইতে শ্রী শ্রী মদন মোহন দেব বিগ্রহ ও শ্রী শ্রী বিশ্বনাথ শিব ঠাকুরের পুজা অর্চনার ব্যায় বাদে বাকী ফসল বা বিক্রয় লব্ধ টাকা বাদীগন সহ অন্যান্য ওয়ারিশ গনের মধ্যে সমান অংশে ভাগ করিয়া দিতে ১নং বিবাদী বাধ্য মর্মে বাধ্যতামূলক নিষেধাজ্ঞার ডিক্রী দিতে,
>
> (খ) আদালতের যাবতীয় খরচার ডিক্রী দিতে,
>
> (গ) আদালতের ন্যায় বিচার বাদীগন অপর যে কোন প্রকার পরিবর্তীত পরিবর্ধিত ও সংশোধীত আকার প্রতিকার পাইতে পারেন তাহারও ডিক্রী দিতে হুজুর আদালতের মর্জি হয়।"

And under schedule ‘Ka’ a detail of properties having been discribed under several khatians and plots measuring in total an area of 11.79 acres. But in the application in question, the defendant No. 1 specified/referred the interrogatories in the following manner, which is beyond the plaint; for better understanding the same is reproduced in below:

> ১) উইল পত্র দলিল অনুয়ায়ী কালীগঞ্জ থানার অন্তর্গত মৌজা তালুক শাখাতি, দক্ষিন মুসরত মদাতি ও উত্তর মুসরত মদাতি অন্তর্গত কত পরিমান জমি উল্লিখ রহিয়াছি?
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> ২) আরজি বর্ণিত মত্র (ক) তপশীলি ১১.৭৯ একর জমি বাদি বাদীপক্ষের আর কোন দাবী রহিয়াছে কি না বা বাদী পক্ষ উক্ত ৩ মৌজার ৩৩.৮৪ জমি মধ্য ১১.৭৯ বাদি অবশিষ্ট ২২.০৫ একর জমিত্র তাহাদির কোন দাবী আছি কি না? দাবী থাকিলে সেইগুলি কোন কোন খতিয়ানের এবং কোন কোন দাগির?

Upon meticulous examination of the provision of Order XI, rule 1 of the Code of Civil Procedure, it appears that a proviso is appended in rule 1 providing that the interrogatories which do not relate to any matter in question in the suit shall be deemed to be irrelevant, notwithstanding that those might be admissible in the oral cross-examination of a witness. Meaning thereby, the interrogatories may not be relevant or beyond the relevancy of plaint within the scope of Order XI rule 1 of the Code of Civil Procedure, however, those questions may be brought into the oral cross-examination of a witness.

From the aforementioned provision, it appears to this Court that although the defendant has ample opportunity to raise those questions in the oral cross-examination of plaintiffs' witnesses but the same cannot be allowed to be delivered as written interrogatories under Order XI, rule 1 of the Code of Civil Procedure, 1908.

In the premise above, this Court does not find any merit in the Rule.

Accordingly, the Rule is discharged.

No order as to cost.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Obaidul Hasan/B.O.