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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 3918 OF 2019
In the matter of:
An application under Section 115(1) of the Code of Civil Procedure.
And
Md. Rashedul Hasan Mollah
... Petitioner
-Versus-
Md. Abul Bashar Molla and others
... Opposite parties
None appears
.... For the petitioner.
Mr. Khan Mohammad Morshed, Advocate
…. For the opposite party Nos.1-8 and 9(a)-9(c).
Heard and Judgment on 11.07.2023

The Rule was issued calling upon the opposite parties to show cause as to why the order dated 13.06.2019 passed by the learned Additional District Judge, Chuadanga in Title Appeal No.26 of 2017 rejecting the petition under Order 41 rule 27 of the code of Civil Procedure filed by the petitioner should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Short facts are that opposite parties as plaintiffs filed above suit for partition and the suit was decreed on contest on 30.03.2017 in preliminary form. Challenging the legality and propriety of above judgment and decree defendant Nos.1-3 preferred Title Appeal No.26

of 2017 to the District Judge, Chuadanga which was transferred to the First Court of Additional District Judge, Chuadanga. In above appeal appellant filed a petition on 16.05.2017 for examination of 3 witnesses for the defendant in order to prove proper execution of registered deed of wasiwatnama dated 12.04.2012. On consideration of the submission of the learned Advocate for the respective parties and materials on record the learned Judge rejected above petition vide impugned order dated 13.06.2019.

Being aggrieved by above judgment and order of the learned Additional District Judge the appellant as petitioner moved to this Court and obtained this Rule.

No one appears for the petitioner when the matter was taken up for hearing although this revision appeared in the list for hearing today.

Mr. Khan Mohammad Morshed, learned Advocate for the opposite party Nos.1-8 and 9(a)-9(c) submits that above deed of wasiwatnama was a forged and ineffective document which was allegedly executed on 12.04.2012 by Sahidullah Molla but registered on 24.07.2013 by Matiur Rahman who is the brother-in-law of the petitioner after his death of Sahidullah Molla. The learned Advocate further submits that Md. Shahidullah Mollah was lawfully entitled to transfer only $\frac{1}{3}$ of his property by the above deed of wasiwatnama but he transferred his whole property by above document which is not lawful at all.

The learned Advocate lastly submits that the petitioner did not go to the appropriate Court for probate of above wasiwatnama deed. As such the learned Additional District Judge has rightly rejected his petition for adducing additional evidence to prove above wasiwatnama deed which calls for no interference.

I have considered the submission of the learned Advocate for the opposite parties and carefully examined all materials on record.

In above suit for partition petitioner was defendant No.1 and he claimed total share of Md. Shahidullah Mollah who was his paternal uncle on the basis of a deed of wasiwatnama. In his written statement defendant No.1 claimed that Md. Shahidullah Mollah executed above wasiwatnama deed on 18.04.2012 and transferred possession of 1.1353 acres land to the defendant and from above date defendant is continuously and peacefully possessing above land.

On the other hand plaintiffs claimed that Md. Shahidullah Mollah did not transfer his property by above deed of wasiwatnama which was a forged document and plaintiffs also inherited the share of above Md. Shahidullah Mollah in the disputed jama.

At trial defendant produced above deed of wasiwatnama dated 18.04.2012 which was marked as Exhibit No.'Ka'. The learned Judge of the Trial Court did not accept above deed of wasiwatnama as an effective document due to non examination of any witness by the defendant at trial who was well acquainted as to the execution of above

document and transfer of the possession of the disputed property. In order to remove above deficiency in the evidence the defendant as appellant filed above appeal and submitted a petition before the learned Additional District Judge for adducing additional evidence by three witnesses who were well acquainted about the due execution of above deed of Wasiwatnama (Exhibit-'Ka').

It is well settled that a Court of appeal is a Court of facts and law and a civil appeal is a continuation of the original suit. As such the learned Additional District Judge should have allowed above petition for additional evidence and give the appellants an opportunity to prove due execution of above document and delivery of possession on the basis of the same which was found deficient by the learned Judge of the Trial Court.

It appears that the learned Additional District Judge has erroneously mixed up the question of proving due execution of a document and the legal status or legal value that document and erroneously rejected the petition of the appellant for adducing additional evidence which is not tenable in law.

I find substance in this revision and the Rule issued in this connection which deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned order dated 13.06.2019 passed by the learned Additional District Judge, Chuadanga in Title Appeal No.26 of 2017 is

hereby set aside and above petition of the appellant for adducing additional evidence is allowed.

The learned Additional District Judge, Chuadanga is directed to give the appellants an opportunity to adduce further evidence to prove due execution of the deed of wasiwatnama and then proceed to conclude the hearing of the appeal expeditiously within a period of 6(six) months from the date of receipt of this order.

However, there is not order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER