

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5748 OF 2024

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Most. Kodvanu Bewa and others

.... Petitioners

-Versus-

Most. Nadira Begum and others

.... Opposite parties

None appears

.... For the petitioners.

Mr. Md. Aktaruzzaman, Advocate

.... For the opposite party

Nos.40 and 41.

Heard on 05.03.2025 and 06.03.2025.

Judgment on 09.03.2025.

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.40-41 to show cause as to why the impugned judgment and order dated 07.03.2024 passed by the learned Senior District Judge, Rajshahi in Civil Revision No.14 of 2023 rejecting the revisional application and upheld the order dated 22.03.2023 passed by the learned Senior Assistant Judge, Durgapur Court, Rajshahi for rejecting the application for the opinion of handwriting expert should not be set aside and or/pass such

other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for partition and for declaration that registered Deed of Exchange No.271 dated 18.07.1989 and registered Deed of Exchange No.4048 dated 19.09.1998 allegedly executed by Momtaz Ali Chowdhury predecessor of the plaintiff were forged, collusive and ineffective and not binding upon the plaintiffs.

Above suit was fixed for argument hearing and the plaintiffs filed a petition for comparing the Left Thumb of Impression of Momtaz Ail Chowdhury in above two deeds of exchange with registered kabla deed No.9310 dated 12.10.1981 and registered kabla deed No.13583 dated 22.11.1983.

Defendant Nos.40 and 41 raised objection against obtaining expert opinion on the LTIS of Momtaz Uddin Chowdhury alleging that above mentioned kabla deed dated 12.10.1981 and 22.11.1982 are outside of the pleadings and the defendants do not admit that those documents bear genuine LTI of Momtaz Uddin Chowdhury.

The learned Senior Assistant Judge on consideration of submissions of the learned Advocate for respective parties rejected above petition vide order dated 22.02.2023.

Being aggrieved by above judgment and order of the trail Court above plaintiffs preferred Civil Revision No.14 of 2023 to the District Judge Rajshahi who on consideration of submissions of the learned

Advocate for respective parties and materials on record rejected above Civil Revision and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied above judgment and order of the Court of revision below above petitioners as petitioners moved to this Court with this Civil Revisional application under Section 115(4) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although the matter appeared in the list for hearing on several dates.

Mr. Md. Aktaruzzaman, learned Advocate for the opposite party Nos.40-41 submits that above suit was fixed for argument hearing after recording of evidence for both sides. The plaintiffs did not mention anything above mentioned kabla deeds dated 12.10.1981 and 22.11.1982 in the plaint nor any claim was made that above documents were executed by Momtaz Ali Chowdhury. The defendants do not have any knowledge that above two documents were in fact executed by the Momtaz Ali Chowdhury and they do not admit the authenticity and legitimacy of above two documents. The plaintiffs could not produce any other admitted documents containing Left Thumb Impression (LTI) of Momtaz Ali Chowdhury for comparison and examination with the LTI of above Momotaz Uddin Chowdhury in the disputed two deeds of exchange. On consideration of above materials on records the learned judge of the Court of Revision below has rightly rejected above petition of the petitioners which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party Nos.40-41 and carefully examined all materials on record.

As mentioned above in above suit which was filed in 2012 plaintiffs have challenged the genuinity and effectiveness of two registered deeds of exchange dated 17.07.1989 and 19.09.1988 executed by their predecessor Momtaz Uddin Chowdhury. Evidence for both sides were closed and above suit was fixed for argument hearing and the plaintiffs filed above petition for obtaining expert opinion on the Left Thumb Impression of Momtaz Ali Chowdhury on above two registered deed of exchange on comparison with the LTI of above Momtaz Ali Chowdhury on two registered kabla deed dated 12.10.1981 and 22.11.1982.

As mentioned above two documents of Momtaz Ali Chowdhury dated 12.10.1981 and 22.11.1982 are out of pleadings. Nothing was mentioned about above two documents in plaint and defendant Nos.40 and 41 do not admit that above two documents bear true LTI of Momotaz Ali Chowdhury. There cannot be any comparison of signatures or LTI unless there are admitted documents containing carrying the disputed LTI and signatures.

Moreover, a deed of exchange becomes effective only when the lands of both the parties to the documents are mutually transferred and possessions are delivered. A registered deed of exchange found to be duly executed and registered would be declared ineffective unless

possession of the properties of the parties of the deed of exchange was not delivered on the basis of above exchange.

Since the defendants Nos.40 and 41 do not admit the authenticity and genuinity of registered deed dated 12.10.1981 and 22.11.1982 the learned District Judge rightly rejected above revision and affirmed the judgment and order of the trial Court which calls for on interference.

In above view of the materials on record I am unable to find any substance in this Civil Revisional application under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is hereby vacated.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER