

12 SCOB [2019] HCD

HIGH COURT DIVISION

Civil Revision No. 1783 of 2016.

Md. Hossen and others.
.....Petitioners.

-Vs-

Haji Shamsunnahar Begum and others.

.....Opposite Parties.
Mr. Abul Kalam Chowdhury, Advocate.
....For the petitioners.

Mr. Shafique Ahmed, Sr. Advocate with
Mr. Mahbub Shafique with
Mr. Mohammad Abdul Karim, Advocates.
....For the Opposite Party Nos.1.

Heard on 06.02.2019, 24.02.2019
and Judgment on 25.02.2019.

Present:

Mr. Justice Md. Rezaul Hasan.

Order 1 Rule 10 of the Code of Civil Procedure, Co-plaintiffs, interest , the Waqf Estate in the suit property;

The applicant Md. Hossen and others, who had filed the application under Order 1 Rule 10 of the Code of Civil Procedure, were not entitled to be added as plaintiffs as heirs of deceased plaintiff No. 2 Haji Badsha Miah. Because, the admitted position is that, the suit property has been claimed (in the plaint) as the property of Abdul Nabi Malum Waqf Estate, not personal property of Haji Badsha Miah. ... (Para 13)

As such, the added plaintiff-petitioners have denied the interest of the Waqf Estate in the suit property by asserting their personal right in the same. Hence, their interest in the suit property is in conflict with that of the (surviving) plaintiff who claims herself as the sole *Motwali* (Manager) of the Waqf Estate, since another *Motwali* (plaintiff No. 2) has died. ... (Para 14)

Therefore, the interest claimed by the petitioner being in clear conflict with that claimed by the plaintiff, these Md. Hossen and 4 other are not entitled to be added as co-plaintiffs. ... (Para 15)

JUDGMENT

Md. Rezaul Hasan, J.

1. This Rule has been issued calling upon the Opposite Party No. 1, to show cause as to why the impugned judgment and order dated 12.04.2016, passed by the Additional District Judge, 6th Court, Chattogram, in Civil Revision No.153 of 2015, allowing the revision and thereby setting aside the judgment and order dated 26.08.2015, passed by the learned Senior Assistant Judge, 3rd Court, Chattogram in Other Class Suit No. 129 of 1999, should not be set-aside and/or pass such other order or orders passed as to this Court may seem fit and proper.

2. Facts, relevant for disposal of the Rule, in short, are that one Haji Shamsunnahar Begum, the 1st wife of Haji Badsha Miah, has filed Other Class Suit No. 129 of 1999 on 26.09.1999, as plaintiff, before the court of 3rd Assistant Judge, Chattogram, seeking

following reliefs that “ (ক) ১নং বিবাদীর নামে পি.এস. ১২৩৫/২৭০৯ খতিয়ান এবং রি.এস. ৩৭৮নং খতিয়ান ও ২নং বিবাদীর নামে বি.এস. ৩১৯৯ নং খতিয়ানে লিপি ভুল, ভিত্তিহীন, তথ্যকতাপূর্ণ, যোগসাজশী, বাতিল অকার্যকর এবং তৎ দ্বারা বাদীগণ ও ওয়াকফ স্টেট বাধ্য নহে মর্মে ঘোষণামূলক ডিফ্রি প্রদানের মর্জি হয়।(খ) প্রোক্ত মতে ঘোষণা প্রচারান্তে নালিশী জমি আবদুল নবী মালুম ওয়াকফ স্টেটের পক্ষে মোতায়াল্লী সূত্রে বাদীগণের নাম রাজস্ব দপ্তরে লিপি করিয়া নিতে অধিকারী হওয়া মর্মে ঘোষণামূলক প্রতিকারের ডিফ্রি প্রদানের মর্জি হয়।”

3. The said suit was filed against Sahajadi Begum and 6 others as defendants.

4. It appears from an application filed by Md. Hossen and 4 others, son and daughter of Haji Badsha Miah, who died on 27.07.2013 because of ailment of old age, leaving his 1st wife Haji Shamsunnahar Begum (the plaintiff No. 1) and the children, who are the present applicants. Further case of the applicants Md. Hossen and 4 others, is that, the plaintiff No. 2, Haji Badsha Miah, had 2(two) wives, of whom Haji Shamsunnahar Begum, plaintiff No. 1, is his 1st wife, while these applicants (Md. Hossen and others are children of Haji Badsha Miah and his 2nd wife, Bagicha Khatun). In these backgrounds, the applicants had filed an application under Order 1 Rule 10 of the Code of Civil Procedure, before the trial court, to add them as co-plaintiffs with Haji Shamsunnahar Begum, as heirs of the plaintiff No. 2.

5. The trial court, after hearing the said application, allowed the prayer of the applicants Md. Hossen and 4 others, by its order dated 26.08.2015, passed in Other Class Suit No. 129 of 1999, and added them as co-plaintiff Nos. 2(Ka) to 2(Umo), in place of plaintiff No. 2, deceased Jahi Badsha Miah.

6. Against the said order dated 26.08.2015, of the trial court, Haji Shamsunnahar Begum preferred a revisional application, being No. 153 of 2015, before the learned District Judge, Chattogram, which was heard and disposed of by the learned Additional District Judge, 6th Court, Chattogram who, by his judgment and order dated 12.04.2016, has allowed the revision and thereby set aside the judgment and order of the trial court. Consequently, the said applicants have ceased to remain as co-plaintiffs number 2(Ka) to 2(Umo).

7. Being aggrieved by and dissatisfied with the said order dated 26.08.2015 of the lower revisional court, Md. Hossen and others filed this application under section 115(4) of the Code of Civil Procedure and obtained leave as well as the present Rule.

8. Mr. Abul Kalam Chowdhury, learned Advocate appeared for the petitioner. He submits that, the trial court has rightly passed the order dated 26.08.2015 making the applicants as co-plaintiffs Nos. 2(Ka) to 2(Umo) in the place of plaintiff No. 2 Haji Badsha Miah (died on 22.07.2013), as his heirs. But, the revisional court has failed to appreciate the factual and legal significance of the order dated 26.08.2015 and has committed error of law, in passing the impugned order, that has resulted in error in the impugned order thus passed, occasioned failure of justice and thereby prejudiced the interest of the applicants. He empathically submits that, since the petitioner are admitted heirs of deceased plaintiff No. 2 Haji Badsha Miah, therefore, they are legally entitled to be added as co-plaintiffs. As such, he concludes, the Rule bears merit and the same may kindly be made absolute.

9. Learned Senior Counsel Mr. Shafique Ahmed alongwith learned Advocates Mr. Mahbub Shafique and Mr. Mohammad Abdul Karim have appeared on behalf of the Opposite party No. 1. The main contention of the learned Counsel Mr. Shafique Ahmed is that, from a mere perusal of the plaint it will appear that, the suit has been filed by Haji Shamsunnahar Begum, as plaintiff No. 1, and her husband Haji Badsha Miah, as plaintiff No. 2, in which,

the children of Haji Badsha Miah (subsequently added as plaintiffs Nos. 2(Ka) to 2(Umo) were not plaintiffs, nor they were defendant in that suit. He further submits that, this is a suit relating to right and title of Waqf Estate, in the suit property, and the reliefs prayed for are (i) the correction of three khatins and records of right which ought to have prepared in the name of Waqf Estate and (ii) to record the name of the plaintiff Nos. 1 and 2, in the corrected khatins, as the *Motwali* of Abdul Nobi Malum Waqf Estate. Therefore, admittedly, the suit is concerning correction of the khatian or records of right in respect of the property of the Waqf Estate, not in respect of the personal property of Badsha Mia (deceased plaintiff No.2). He proceeds on that, the property as mentioned in the schedule of the plaint, since not claimed as the individual property of Haji Badsha Miah, rather it was claimed to be the property of Waqf Estate, therefore, the *Motwaliship* in respect of the suit property will be governed as per provisions of Waqf deed, not by way of inheritance, as claimed by the heirs of deceased Haji Badsha Miah. The learned Advocate further submits that, the trial court has committed error of law in as much as it has failed to appreciate that the property described in the schedule of the plaint belonged to Waqf Estate as distinct from individual property of the plaintiff No.2. Hence, the application for addition of parties filed by the heirs of deceased Haji Badsha Miah was totally misconceived and, in passing the impugned judgment and order dated 12.04.2016, by setting aside the order dated 26.08.2015 of the trial court, the lower revisional court has committed no error of law, nor the same has resulted in any error in the impugned decision, causing any prejudice to the interest of the applicants. He, therefore, submits that, the Rule has no merit and the same may be discharged.

10. I have heard the learned Advocates appeared for the parties, perused the application for revision, as well as the counter affidavit filed by the plaintiff-opposite party No. 1, alongwith judgment and order of the Courts below and other materials in the record.

11. From a mere perusal of the plaint (Annexure-A), I find that, the suit has been filed by Haji Shamsunnahar Begum, Opposite Party No. 1 and her husband Haji Badsha Miah, respectively as the plaintiff Nos. 1 and 2, claiming right and title of the Waqf Estate, in the schedule property, and for correction of three khatians by recording name of the Waqf Estate as per prayer “Ka”. Further prayer (Kha) is that, the name of the *Motwali* i.e. plaintiffs shall be recorded in the corrected khatians as representative (*Motwali*) of Abdul Nabi Malum Waqf Estate.

12. It appears that, this is a case concerning right and title of the Waqf Estate that was clouded because of alleged wrong recording of name of the principal defendants in the khatian referred to in prayer “Ka”, with a further prayer (Kha) to record name of the *Motwali* of Waqf Estate in the corrected khatians, if the suit is proved before the court.

13. As such, the distinction is very much clear and the applicant Md. Hossen and others, who had filed the application under Order 1 Rule 10 of the Code of Civil Procedure, were not entitled to be added as plaintiffs as heirs of deceased plaintiff No. 2 Haji Badsha Miah. Because, the admitted position is that, the suit property has been claimed (in the plaint) as the property of Abdul Nabi Malum Waqf Estate, not personal property of Haji Badsha Miah. If the plaintiff seeks that, the record was wrong, then these disputed khatians should be corrected and name of *Motwali* should, as per procedure, be recorded in the corrected khatian to be prepared in the name of Waqf Estate (if and to the extent the plaintiff succeeds). Hence, I do not find anything wrong, nor any error in the impugned decision, passed by the first revisional court, in Civil Revision No. 153 of 2015.

14. Another very much important legal and factual aspect is that, the interest claimed by the applicants Md. Hossen and others, in the light of the facts and circumstances stated in the application filed by them under Order 1 Rule 10 of the Code of Civil Procedure vis-a-vis, the case stated in the plaint, is in clear conflict with the interest claimed by the plaintiffs in Other Class Suit No.129 of 1999. In this suit, the plaintiff claimed right and interest of the Abdul Nabi Malum Waqf Estate in the suit property and prayed for correction of the khatians, not as individual owners. On the contrary, the applicants Md. Hossen and others have claimed personal interest in the suit property, practically denying the right and title claimed by Waqf Estate in the suit property. As such, the added plaintiff-petitioners have denied the interest of the Waqf Estate in the suit property by asserting their personal right in the same. Hence, their interest in the suit property is in conflict with that of the (surviving) plaintiff who claims herself as the sole *Motwali* (Manager) of the Waqf Estate, since another *Motwali* (plaintiff No. 2) has died.

15. Therefore, the interest claimed by the petitioner being in clear conflict with that claimed by the plaintiff, these Md. Hossen and 4 other are not entitled to be added as co-plaintiffs.

16. Having further considered the application filed under Order 1 Rule 10 of the Code of Civil Procedure, I also find that, the applicants did not claim to add themselves as defendants, alleging that they are necessary parties. Therefore, this Court can neither pass any order to add them as defendants.

17. In view of the above, I find no merit in this Rule.

ORDER

18. In the result, the Rule is discharged.

19. The impugned judgment and order dated 12.04.2016, passed by the Additional District Judge, 6th Court, Chattogram, in Civil Revision No.153 of 2015, allowing the revision and thereby setting aside the judgment and order dated 26.08.2015, passed by the learned Senior Assistant Judge, 3rd Court, Chattogram, in Other Class Suit No. 129 of 1999, is hereby upheld.

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

21. No costs.

22. Let a copy of this judgment be sent to the concerned Courts at once.