

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3570 of 2006

Nikunja Howlader being dead his legal
heirs 1(a) Madhab Howlader and others

.....Petitioners.

-Versus-

Hare Krishna Howlader and others

.....Opposite parties.

Mr. Tapash Biswas, Advocate

.....For the petitioners.

Mr. Mohammad Eunus, Advocate

.....For the opposite parties.

Heard and judgment on 21st March, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 04.04.2006 passed by the Additional District Judge, Patuakhali in Title Appeal No. 39 of 2003 affirming those dated 20.01.2003

passed by the Joint District Judge, Patuakhali in Title Suit No. 51 of 2000 dismissing the suit should not be set aside.

Petitioner as plaintiff filed the above suit for declaration of title against the opposite parties.

Plaint case in short, inter alia, that the property appertaining to C.S. khatian No. 334 of Mouza Muradia measuring 1.69 acres of land belonged to Prashanna Majhi and Haricharan Majhi in 5 annas and 6 ganda 2 kara 2 dranti in equal share and Sananda Majhi and Mohananda Mahi owned the rest of the property in equal share. Prashanna having died unmarried his property was inherited by Mohanta. Mohanta died leaving Mahandra. Haricharan by kabala dated 02.12.2004 transferred 1.36 acres of land in favour of mother of the plaintiff Purnalakhi. There was an exchange between Shananda and Mohananda with Purnalakkhi, and this Purnalakkhi became the owner of the entire land P.S. khatian No. 334. On her death she was inherited by four sons including the plaintiff No.1-3 and Gouranga Howlader. Gouranga Howlader died leaving behind petitioner No. 4-5. Plaintiffs are in possession of the suit property but the suit property was not

correctly tenanted as there was denial of title on the basis of wrong record the plaintiffs filed the suit.

Opposite party No.1 as defendant contested the suit by filing written statement denying the plaint case alleging, inter alia, that the land in C.S. khatian was owned and passed by Purnalakkhi and Harichan in 1/3rd share each. Mohanta Majhi, Shanda Majhi Prashanna Majhi died unmarried. Hari Charan Bhagaban Majhi inherited 2 annas 13 ganda and 5 kara and transferred .28 acre in favour of Zaigunna on 24.03.1941 and transferred .28 acre in favour of Iman Ali Howlader, Hricharan Kabala sold on 02.12.1941 and there was an application for pre-emption in the 4th Court of Munsif and there was a solenama. As per solenama, Purnalakhhi got .56 acre and the rest of the land was owned by Shananda Majhi, Mohananda Majhi, Iman Ali and Jaigun Bibi, Shananda. Mohananda Majhi sold khas land along with tenanted land to Jaigun Bibi. This Jaigun Bibi owned 1.17 acre and the khatian was prepared correctly. Plaintiff has no title and possession. Defendant No.1 and his brothers were in joint family and the said property was recorded in khatian No. 1114

correctly to the extent of .28 acres, on which they have got their homestead.

By the judgment and decree dated 20.01.2003, the Joint District Judge, Patuakhali dismissed the suit on contest.

Challenging the said judgment and decree, petitioner preferred Title Appeal No. 39 of 2003 before the Court of District Judge, Patuakhali, which was heard on transfer by the Additional District Judge, Patuakhali, who by the impugned judgment and decree dated 04.04.2006 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, plaintiff petitioner obtained the instant rule.

At the time of hearing of this rule plaintiff petitioner filed an application for amendment of the plaint with the contention that:

"2. That Purnalakhi Sundari, wife of Surendra Howlader by kabla dated 2.12.1941 purchased 1.56 acre of land of C.S. Khatian No. 334 and she also

purchased some land in the District of Bardawman in West Bengal.

3. That it is stated that after purchase Shananda and Mohananda co-sharer of the khatian filed Pre-emption Case No.87 of 1942 in the Court of Munsif, 4th Court, Patuakhali and the case was disposed on compromise and as per compromise and the Purnalakkhi predecessor of petitioners got .57 acre of land from C.S. Plot No. 174/175 which is homestead and it has been recorded in R.S. Khatian No.236 and S.A. Khatian No. 1114 plot No. 201, 202 and 203 and the said fact was not known to the petitioners at the time of filing of the suit and the learned advocate of the petitioners at the courts below did not appreciate that no adjudication about the land of Bardawman District cannot be decided in the suit and the claim beyond the compromise decree cannot sustained.

4. That it is also stated that as per solenama Shananda and Mohananda got land from C.S. plot

No. 95, 190, 193 and they sold the said land to Jaigunnesa by registered kabala filed in the Court.

5. That petitioners in the circumstances beg abandon their claim of land beyond .57 acre recorded in R.S. Khatian 236 and S.A. Khatian 1114 and in the circumstances the plaintiff petitioners begs to file an amendment petition by abandoning their claim over all other land except the .57 acres of land and thus the plaint is prayed to be amended as follows:

১। আজীর শিরোভাগে "মোকদ্দমা আজীর 'ক' তপসিল বর্ণিত ২৮ শতাংশ ভূমিতে স্বয়ং ঘোষণা আবেদনপত্র লিখিত হইবে।" বর্তমান শিরোনাম কর্তন হইবে।

২। আজীর ৬ দফা কর্তন হইবে আজীর ৭ দফার 'গাছ লাগাইয়াছেন' এবং তৎপরবর্তী অংশ কর্তন হইবে।

৩। আজীর ৯নং দফার "প্রথম হইতে ৯৮২ সৈয়দ রক্তন আলীর নামে পর্যন্ত কর্তন হইবে এবং ১০ দফায় আরম্ভ হইতে ২-৩ বিবাদীদ্বয় পর্যন্ত" কর্তন হইবে এবং ঐ দফায় বক্রী অংশ কর্তন হইবে। উক্ত দফার শেষে নিম্নলিখিত কথাগুলি মুক্ত হইবে।

"প্রকাশ থাকে পূর্ণ লক্ষীর কবলার বিরুদ্ধে মহানন্দ এবং স্বানন্দ পটুয়াখালী ৪র্থ মুন্সেফী আদালতে ৮৭/৪২নং অগ্রখরিদের প্রার্থনায় মোকদ্দমা আনয়ন করেন তাহাতে বিগত ২১/৮/৪২ইং তাং ছোলে সূত্রে ডিক্রী হয়, ছোলে অনুসারে ১৭৪/১৭৫ দাগের ৫৭ শতাংশ জমি পূর্ণলক্ষী ভূমি প্রাপ্ত হয় এবং ৯৫/১৯০/১৯৩ দাগের জমি সানন্দ এবং মহানন্দ প্রাপ্ত হয় এবং সানন্দ মহানন্দ ঐ সম্পত্তি ১১/৯/১৯৪২ইং তাং জয়গুননেছা বিবির নিকট বিক্রয় করে এবং জয়গুননেছার মৃত্যুতে

জয়নদ্দীন হাওলাদার, মমতাজ উদ্দিন হাওলাদার ও আজিজ উদ্দিন হাওলাদার প্রাপ্ত হন, সানন্দ মহানন্দ কবলামূলে ইমান আলী বরাবরে হস্তান্তর করে এবং ঐ সম্পত্তি জয়নদ্দীন গং পত্তন করে। উক্ত ছোলেনামা অনুসারে ১১১৪ খতিয়ান পূর্নলক্ষী এবং তাহার মৃত্যুতে বাদীগন সম্পত্তি প্রাপ্ত হইয়াছে তৎপর বাদী পক্ষ সদা সর্বদা খাজনা দিয়া আসিয়াছে। পূর্নলক্ষী কবলার জমি ২৮ শতাংশ বাদীগনের নামে রেকর্ড হইয়াছে।

৪। আজীর তপসিলে ২নং তপসিল সম্পূর্ণ কর্তন হইবে। আজীর ১নং তপসিলে .২৮ শতাংশ লিখিত হইবে। এবং অত্র মোকদ্দমায় .২৮ শতাংশ ভূমিই বিরোধীয় লিখিত হইবে।"

Mr. Tapash Biswas, the learned advocate appearing for the petitioner drawing my attention to the application for amendment of the plaint submits that petitioner although filed the suit for declaration of title in respect of 1.69 acres of land but now he claim by way of amendment for his title only on .28 decimals of land and since by way of amendment the nature and character would not be changed and for proper adjudication of this matter, the amendment is very much essential, it may be allowed and suit may be sent back on remand to the trial court for deciding the matter afresh in the light of amendment of plaint.

Mr. Mohammad Eunus, the learned advocate appearing for the opposite party although opposes the rule but considering the circumstances as been laid in the application for amendment of plaint found it difficult to oppose the rule and prayed to proceed

the suit in accordance with law, upon framing a time limit to disposed of the suit expeditiously as early as possible.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

Since the plaintiffs has relinquished his title over the rest land and now prays for title only for .28 decimals of land by way of amendment of the plaint and it has not been opposed by the opposite party, it would be wise and convenient to send back the suit on remand to the trial court for proper adjudication on the amendment of the plaint as been narrated therein.

I find merits in this rule.

In the result, the rule is made absolute. The judgment and decree passed by the court below is hereby set aside and the suit is sent back on remand to the trial court for proper adjudication.

Trial court is hereby directed to allow the amendment of the plaint and give opportunity to amend their respective pleadings of both the parties and to adduce further evidences if so desire. The trial court is further directed to dispose of the suit expeditiously as

early as possible preferably within a period of 6(six) months after receiving of the judgment.

Send down the L.C.R along with the judgment at once.