

Present:

Mr. Justice Md. Khasruzzaman

Civil Revision No. 1116 / 2007

Amin Ahmed

.....Petitioner

Vs.

Umme Kulsum and others

.....Opposite parties

Mr. Probir Neogi, with

Mr. Suvra Chakravorty and

Ms. Salma Sultana, Advocates

.....For the petitioner

Mr. Abdus Salam Mondal, Advocate

.....For the opposite parties No. 2 and 4.

Judgment: on 20.05.2019

Md. Khasruzzaman, J:

On an application under section 115(4) of the Code of Civil Procedure, hereinafter referred to as 'the Code', leave was granted and a Rule was issued calling upon the opposite parties No. 1-8 to show cause as to why the impugned judgment and order dated 12.09.2006 passed by the learned Additional District Judge, 5th Court, Dhaka in Civil Revision No. 465 / 2004, so far it relates to affirming the judgment and order dated 04.07.2004 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 227 / 2003 rejecting the application for

amendment of the plaint should not be set aside and/or passed such other or further order or orders as to this court may seem fit and proper.

The predecessor of the petitioner and proforma opposite parties No. 11-17 as plaintiffs instituted Title Suit No. 393 / 1982 (subsequently renumbered as Title Suit No. 43 / 1989, 165 / 1991, 267 / 1991, 3165 / 1991 and finally, Title Suit No. 227 / 2003) for partition of the suit property described in the schedule to the plaint. .

On 04.07.2004 during pendency of the suit the plaintiffs filed an application under Order 6 rule 17 read with Order 1 rule 10 of the Code before the trial Court for amendment of the plaint by incorporating therein some materials of fact which were inadvertently left out, adding the Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Dhaka as defendant No. 12, correcting husband's name of defendant No. 1 and incorporating a further relief in the prayer portion as follows:

“ঘ(১) তফসিল বনিত নালিশী সম্পত্তি সংক্রান্ত ১২ নং বিবাদী গণপ্রজাতন্ত্রী বাংলাদেশ সরকার পক্ষে জেলা প্রশাসক, ঢাকা এর নামীয় আর, এস, খতিয়ান নং ১১০১, আর, এস, দাগ নং ১৫৮৫, ঢাকা সিটি RWC ডি. পি. খতিয়ান নং-১, ঢাকা সিটি RWC দাগ নং ৩৪১৬ এর জমির পরিমাণ .০১৩৪ অযুতাংশ সম্পত্তি সংক্রান্ত—আর, এস, ও ঢাকা সিটি জরীপের

রেকর্ড অবৈধ, বেআইনী, অশুদ্ধ ও ত্রুটিপূর্ণ মর্মে ঘোষনামূলক ডিক্রী
দিতে ”

On the same day the plaintiffs filed another application under Order 1 rule 10 of the Code for striking out of the name of the deceased defendant No. 5, Aysha Khatun, and noting that her heirs were already on record as defendants No. 2, 3 and 4.

On 04.04.2004 both the applications were heard together and rejected by the learned Joint District Judge, 2nd Court, Dhaka holding that the suit was filed in 1982 and, if the proposed amendment is allowed, there is a possibility to change the nature and character of the suit.

Being aggrieved and dissatisfied with the said order the plaintiffs preferred Civil Revision No. 465 / 2004 under section 115(2) of the Code before the learned District Judge, Dhaka and on transfer it was heard by the learned Additional District Judge, 5th Court, Dhaka, and after hearing the revision was allowed in part. Accordingly, the application under Order 1 rule 10 of the Code was allowed by setting aside the order of the learned Joint District Judge in respect of striking out of the name of deceased defendant No. 5 and also rejected the application under Order 6 rule 17 read with Order 1 rule 10 of the Code holding that such amendment would change the nature and character of the suit.

Being aggrieved by and dissatisfied with the said order one of the plaintiffs as petitioner filed an application under section 115(4) of the Code for an error of law of an important question of law resulted in erroneous decision and leave was granted and a Rule was issued.

Mr. Probir Neogi, the learned Advocate appearing on behalf of the petitioner, submits that the learned Joint District Judge as well as the learned Additional District Judge rejected the application for proposed amendment of the plaint without considering the contents of the same. He further submits that after knowing that some portions of the suit land have been recorded in the name of the government in City Jarip as well as R.S. Jarip for these reasons they filed the application for amendment of plaint to insert some material facts and for adding the government as a defendant in the suit which is necessary for the purpose of determining the real questions in controversy between the parties. He also submits that they filed the suit for partition of the suit property and thereafter they have filed an application for amendment of the plaint for declaration of title as some portions of the suit land have been recorded in the name of the government which no way change the nature and character of the suit, and in support of his submissions he referred two cases reported in 18 BLD (AD) 121 and 58 DLR 240.

On the other hand, Mr. Md. Abdus Salam Mondal, the learned Advocate for the opposite parties No. 2 and 4, submits that the suit for partition was instituted in 1982 and the application for proposed amendment of the plaint was filed after 22 years and as such the trial Court as well as the lower revisional Court rejected the application considering the contents of the application for amendment rightly which calls for no interference by this Court.

It appears from the plaint that the petitioner and others as plaintiffs instituted Title Suit No. 293 / 1982 in the 3rd Court of Subordinate Judge, Dhaka impleading the opposite parties No. 1-2 as defendants for partition of the suit land which has been described in the schedule to the plaint.

During pendency of the suit the plaintiff-petitioner and others filed an application under Order 6 rule 17 read with Order 1 rule 10 of the Code for amendment of the plaint stating *inter alia* that .0134 *Ajutangsha* land out of the suit land has been recorded wrongly in the name of the government in R.S. Khatian as well as Dhaka City Jarip Khatian. Accordingly, they filed the said application for amendment of plaint to insert the name of the Government of the People's Republic of Bangladesh represented by the Deputy Commissioner, Dhaka and also for declaration that .0134 *Ajutangsha* land out of suit land was recorded in R.S.

Khatian as well as Dhaka City Jarip in the name of the government is illegal, incorrect, and wrong.

The trial Court rejected the application considering that the suit was instituted in 1982 and there was possibility to change the nature and character of the suit if the application of proposed amendment was allowed. The lower revisional Court observed that if the amendment application was allowed, the nature and character of the suit would be changed.

In the present case the plaintiffs instituted a suit for partition. Thereafter, they filed an application for amendment of the plaint for further declaration that .0134 *Ajutangsha* land has been recorded in the name of the government is illegal as R.S. Khatian and City Jarip Khatian were recorder in the name of the government in respect of .0134 *Ajutangsha* land out of the suit land. These are the material facts which should be incorporated in the pleadings to determine the real questions in controversy between the parties.

In the case of Abdul Motaleb Vs. Md. Ershad Ali and others, 18 BLD (AD) 121, their lordships held that if the fundamental character of the suit would not be changed by the proposed amendment then the amendment may be allowed.

It is well settled that the amendment of the pleadings may be allowed at any stage of the proceedings for the purpose of

determining the real questions in controversy between the parties if it does not change the nature and character of the suit, or if the prayer for amendment does not become barred by elapse of time, or if it does not eliminate the right of the other party accrued by the admission of any party.

Considering the facts of the case, the submissions of the learned Advocate for the petitioner and the discussions made above, I find merit in the Rule.

In the result, the Rule is made absolute without any order as to costs.

The impugned judgment and order dated 12.09.2006 passed by the learned Additional District Judge, 4th Court, Dhaka in Civil Revision No. 465 / 2004, so far it relates to affirming the judgment and order dated 04.07.2004 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 227 / 2003 rejecting the application for amendment of the plaint are hereby set aside. The proposed amendment application dated 04.07.2004 is allowed. The order of stay granted at the time of issuance of the Rule is hereby re-called and vacated.

Communicate the order.