

Present:

Mr. Justice Md. Abdur Rezzaque.

Civil Revision No. 4301 of 1998.

1. A. Rahman Lasker and other.....Petitioners.

-Vs-

Abul Kalam and otherOpposite Parties.

Mr. Ranjan Chakborty, Adv.

.....for the petitioner.

No one appears

.....for the opposite parties.

The Judgment on: 25th . May, 2011.

This Rule at the instance of plaintiff petitioner was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned order no. 57 dated 08.10.1998 passed by the learned Senior Assistant Judge, Sadar Court, Faridpur in Title Suit No. 30 of 1995 should not be set aside and or such other or further order or orders passed as to this Court may seem fit and proper.

Facts of the case for disposal of the rule is that the petitioner as plaintiff filed title suit no. 30 of 1995 in the Court of learned Senior Assistant Judge, Sadar Faridpur against the defendants praying for decree of declaration of title. Further case of the plaintiff as disclosed that the suit land

originally recorded in S.A. Khatian no.1 as Governments khas land. The previous original owners of suit plot no. 1020 settled 10.00 acres of land by way of settlement dakhilas in favour of the plaintiffs and since then the plaintiffs have been possessing the same and the said plot was recorded in the name of Government, the plaintiffs for avoiding future litigation prayed for taking settlement from the government Sheresta and according to their prayer “ Charcha Map” was prepared in respect of 10.00 acres of land of plot No. 1020 and settled the same in favour of plaintiffs by way of settlement cases and paid rents to the Government Sheresta. The plaintiff have been possessing the suit land by cultivating crops in some portion and some portion plaintiff nos. 3 and 5 have been living with their families. The defendants had no right, title, interest and possession. On 08.02.1995 the defendant No.1 denied the title of the plaintiffs and claimed title of Charcha plot no. 1020/15. The suit land and the claiming land of defendant are not same. The plaintiffs land stands in the eastern part of the defendants claiming land. The defendant nos. 5-7 also admitted the plaintiffs as tenants and delivered possession thereon. But defendants denied the title of the plaintiffs and hence the suit.

Opposite party Nos. 1-3 as defendant Nos. 1-3 filed written statement denying all the material allegation made in the plant and stating interalia that

the suit land along with all other land of Sajapur Mouza was purchased by Mohiuddin Alamgir and while he was owing and possessing the suit plot no.1020 settled 120 bighas land to some of the defendants and others. For arrear of rents, the original owner Mohiuddin filed rent suit no. 47 of 1965 in the Court of Sadar Assistant Judge and obtained decree and collected rents from the tenants. Thereafter 38 bighas of land of suit plot no. 1020 also settled to Sorman sikder and others by way of amalnama and dakhilas and also for the above way of predecessor of the defendant Nos. 1-4 and others also took pattan 140 bighas of land in suit plot no. 1020 by way of Amalnama dated 04.12.1358 and since then the defendants 1-3 had been possessing 45 bighas of land, but unfortunately the said land diluviated into the river of Padma before S.A. operation and after alluvial the said land became khas land as re-settlement these defendants. The plaintiffs did not get any settlement from suit plot no. 1020 and did not possess the same in any material time.

While the said suit was ready for further hearing on 08.10.1998, after competition of the evidence of P.W.2, the petitioners herein filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the plaint.

The learned Senior Assistant Judge Sadar hearing of the both parties rejected the application for amendment of plaint by the impugned order dated 08.10.1998 in the following:

Bangla

Being aggrieved by dissatisfied with the impugned order the plaintiff petitioner preferred this Revisional application on various ground and obtained the present Rule.

Mr. Ranjan Chakborty, the learned Advocate appearing on behalf of the plaintiffs petitioner submits that nature and character of the suit will not change if the proposed amendment is allowed. He further submits that amendment cannot be allowed at any stage of the suit. He further submits that mere change in the relief claim and proposed amendment will not change the nature and character of the suit and no question of fresh cause of action will arise.

No one to oppose the Rule.

As for myself I have gone through the record and also perused the Revisional application. Admittedly, the suit land is a government Khas land and it is asserted that it has been given to the plaintiff vide different misc case by preparing Charcha Khatian and plaintiffs have been paying rents to

the Govt. Sheresta as like tenant and it has also been asserted that there the plaintiffs are in possession in the suit land by making cultivation of crops by constrictive hut. It further appears from the copy of the plaint Annexure with the revisional application in Para-4 it has been prayed amongst 4(ka):

In the amendment petition it has been proposed to insert in para-4(ka) in the following:

Bangla

It thus reveals that the suit for declaration of title such change of prayer in the prayer portion of the plaint by way of amendment will not change the nature and character of the suit land is Khas land.

In this regard in the case of Nuruddin Ahmed Versus Zafarullah Siddique and others reported in 42 DLR page-246 where it has been held:

“ It is now well settled that the amendment of the pleadings could be allowed at any stage of the proceedings for the purpose of determining the real question of controversy between the parties, but it could not be allowed if it changed the nature and

character of the suit, or if the prayer for amendment had become barred by lapse of time and a right had accrued to the other side. But the latter principle can be departed from if there are circumstances which outweigh the hardship and cause a prejudice to the applicant.

It is again well-settled to remember that in *Md. Zahoor Ali Khan*, 11 MIA 468 (PC), the Privy Council's observation is that the Mufussil Courts pleadings are to be construed liberally and for the confused pleadings the party should not suffer. A glance at the plaint originally framed reveals that though apparently it was for the relief against obstruction by the defendants from interfering with the right of the plaintiff to ancient light and air, but in the plaint all facts that were subsequently sought to be included by way of amendment were made. There was clear allegation of violation by the defendants of the proprietary right of the plaintiff. The defendants' construction of the buildings was

challenged as an act of trespass into his land and they found place in the plain. But in framing the plaint it was so done as a suit for injunction. The amendment is more a re-arrangement of the facts in their proper perspective and making a prayer for appropriate relief.

It is to be observed that one of the fundamental principles governing the amendment of the pleadings is that the controversies between the parties as far as possible should be included and multiplicity of the proceedings avoided.”

It will settle that mere relief does not change the nature and character of the suit.”

The principle amendment as elicited in the above case as reported in 42 DLR at page-246 as applied in the instant case where appear that the learned trial Judge will get a opportunity to come to a proper decision after obtaining oral and documentary evidence as proposed amendment is allowed. In the fact and circumstances amendment by way of insertion in paragraph No.1 of the plaint as proposed in the amendment petition the controversy between the parties would be adjust judiciously and properly.

The learned Senior Assistant Judge appears to have passed the impugned order ignoring the basic amendment of the plaint. So the impugned order is liable to be set aside and the proposed amendment of plaint is liable to be allowed.

In the result, the Rule is made absolute. The learned Senior Assistant Judge is directed to disposed of the suit as early as possible within 3(three) months from the received of the order.

The order of stay granted at the time of issuance of Rule is hereby vacated.

Send down a copy of this order to the Court below at-once for information and necessary action.

F.Hoque.