

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice S.M. Masud Hossain Dolon

Civil Revision No. 1661 of 2015.

Anser Ali Hawlader and others.

..... Plaintiff-Petitioners

-Versus-

Altaf Mridha and others.

.... Defendants-opposite parties

Mrs. Helena Begum, Advocate.

..... for the petitioners.

Mr. Swapan Kumar Dutta, Advocate.

..... For the opposite parties.

Heard on: 14.05.2024&

Judgment on: 15.05.2024.

This Rule has been issued calling upon the opposite parties to show cause as to why the judgment and order dated 15.03.2015 passed by the learned Additional District Judge, 1st Court, Barisal in Civil Revision No. 69 of 2013 rejected the revisional application and affirmed the order dated 10.10.2013 passed by the learned Senior Assistant Judge, Sadar, Barisal in Title Suit No. 100 of 2008 should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of this Rule, are that the petitioners as plaintiffs filed Title Suit No. 100 of 2008 before the learned Senior Assistant Judge, Sadar, Barishal for declaration of title and partition. During pendency of the suit plaintiff filed an application under Order 6 Rule 17 read with section 151 of the Code of Civil Procedure for amendment of plaint.

The learned trial Court after scrutinized relevant papers lying with record had submitted by the parties in support of their respective claims rejected the application for amendment of plaint. Against this order plaintiffs filed Civil Revision No. 69 of 2013 before the learned District Judge, Barishal who transferred the same to the court of learned Additional District Judge, 1st Court, Barishal for disposal. The learned Additional District Judge after hearing the parties rejected the Civil Revision and affirmed the order had passed by the learned Senior Assistant Judge, Sadar, Barishal against which the plaintiff petitioners filed the instant Revisional application and obtained Rule.

Mrs. Helena Akhter, learned Advocate for the petitioners submit that the learned trial court as well as appellate court having been misconceived and non-consideration of materials and facts in

evidence, without issuing judicious mind passed their order and thus committed error of law resulting an error in the decision, occasioning failure of justice. She further submits that the court below did not go through the application properly and carefully as a result they failed to do the justice in declaring their order as because in the total order they did not discuss anything about the amendment of the plaint. She further submits that it is by now a well settled legal proposition that amendment of the plaint can be allowed at any stage of the proceedings provided (a) amendment, if allowed, would not change the nature and character of the suit or the plaint (b) amendment is necessary for the purpose of determining the real question in controversy between the parties and (c) amendment, if allowed, would in no way cause injustice to the adverse party. In this regard she referred Salahuddin Khan and others vs Md. Abdul Hai Bahar and others, reported in 8 ADC (AD) 869 and Pragati General Insurance Company Limited alias Pragati Insurance Ltd. and others vs Md. Siddique Ali Mondal, reported in 25 BCR (AD) 299.

Mr. Swapan Kumar Dutta, the learned Advocate for the opposite parties submit that the learned courts below upon proper consideration of the case are rightly rejected the application for

amendment application. He further submits that amendment can be allowed at any stage of the proceeding but after inordinate delay it will be inequitable to allow the prayer for amendment.

We have heard the learned Advocates for both the sides, perused the judgment and order of the courts below and all other relevant papers appended thereto. It appears that during the pendency of the partition suit, the plaintiff filed an application for amendment of the plaint.

It is evident from the record that the suit for partition has been in arguments stage. At this stage, the plaintiffs filed amendment application that they are enjoying and occupying the schedule land and they are mostly trying to prove how they are using the disputed land. The matters mentioned in the application have to be submitted at the time of filing the suit. If there is any change during the course of the case, the plaintiff can mention it by amend the pleading. Here, the case was filed in 2008 and the testimony of all the witnesses on both sides of the case has been completed and the witnesses have stated what is there or who is occupying the schedule property.

In the case of Md. Nurul Islam being dead his heirs Shamsul Islam and others vs Abdul Malek reported in 6 BLD (AD) 201 held that:

“Amendment of pleading-It is true that amendment can be allowed at any stage of the proceeding, but after as inordinate delay it will be inequitable to allow the prayer for amendment”

In the Case of Hosneara Begum and others vs AMM Ibrahim and others as reported in 19 ALR (HCD), 38 it is held that-

“the present suit is at the stage of final hearing and P.W. 1 was examined in part. In consideration of the fact and circumstances, the trial court rightly rejected the application for amendment of the plaint filed by the plaintiff petitioners.”

Here, in the present case the original suit was filed in 2008 and the deposition of the witnesses of both the sides have been completed and the case is in argument stage. In this situation it appears that the amendment application is only prolong the disposal

of the original suit. So at this stage there is no need to amend the application.

In the facts and circumstances of the case, I find no merit in this case.

In the result, the Rule is discharged. The Senior Assistant Judge, Sadar Barisal is hereby directed to conclude the trial being Title Suit No. 100 of 2008 within 3(three) months from the date of the receipt of this judgment.

The order of stay granted earlier by this court is hereby vacated.

Send a copy of this judgment to the court concerned at once for information and necessary steps.