

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**CIVIL REVISION NO. 3660 OF 2005**

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Syed Abdul Aziz @ Chunnu Miah, son of late Syed Nannu Miah of 101/2, Borobagh, Police Station-Mirpur, Dhaka.

.... Petitioner

-Versus-

Md. Ansurul Haoqe, son of late Moulovi Mojibul Hoque and others.

...Opposite parties

Mr. Garib Newaz, Senior Advocate with  
Ms. Maksuda Akhter, Advocate

... For the petitioner

Mr. Md. Oziullah, Senior Advocate with  
Ms. Afroza Sultana and  
Mr. Azim Uddin Patwary, Advocates

...For the opposite party nos. 2 and 3

**Heard on 10.02.2025 and 17.02.2025.**

**Judgment on 17.02.2025.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

At the instance of the defendant no. 1 in Title Suit No. 167 of 2003 leave was granted and rule was issued calling upon the opposite party nos. 1-3 to show cause as to why the order dated 13.07.2005 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Dhaka in Civil Revision No. 278 of 2004 dismissing the revision and thereby affirming the order dated 14.06.2004 passed by the learned Additional District Judge, Dhaka in Title Suit No. 167 of 2003 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of the said title suit was stayed till disposal of the rule.

The short facts leading to issuance of the instant rule are:

One named, Beloabibi as a plaintiff no. 1 and opposite party no. 4 namely, Selina Akter as plaintiff no. 2 originally filed a suit being Title Suit No. 270 of 1994 in the court of the then Subordinate Judge (now Joint District Judge) against the present petitioner and others for declaration that the judgment and decree passed in Title Suit No. 251 of 1981 is illegal and not binding upon the said plaintiffs. During pendency of the said suit, the present opposite party nos. 1-3 filed 2 separate applications one, by opposite party nos. 1 and 2 named, Md. Ansarul Haque and Layla Arjumand Banu on 14.01.2004 under order I, rule 10 of the Code of Civil Procedure for adding them as co-plaintiffs in the suit stating *inter alia* that they got 3.36 *kathas* of land from the plaintiff no. 1 vide sale deed dated 20.04.1992 which has been included in the said decree and since they acquired title and possession in the suit property

which is under challenge in the suit, so they should be made as co-plaintiffs in the suit.

On similar vein, the opposite party no. 3, Rina Akter also filed similar application under order I, rule 10 of the Code of Civil Procedure on 15.02.2004 stating *inter alia* that on 27.07.2002 by way of oral gift the plaintiff no. 1 transferred  $\frac{1}{2}$  of the share of her land duly notarized on 29.09.2002 issuing certificate on 27.07.2002 and therefore, she also acquired title and possession over the suit property which is the subject matter of the judgment and decree that is under challenge.

Against those two applications, the defendant no. 1 also filed 2(two) separate sets of written objection denying all the material averments so made in the application for addition of party mainly, contending *inter alia* that the applications so filed under order I, rule 10 of the Code of Civil Procedure cannot be entertained as those are barred by limitation and since the plaintiff no. 1 had already withdrawn her suit by filing application on 11.11.2003 and since the plaintiff no. 2 had possessed unsound mind so there has been no scope to file such kind of applications to become a co-plaintiffs by the opposite party nos. 1-3. It has further been stated that since the suit has been filed in year 1994 and the claim has been made in the year 1992 by way of purchase so in that score, the application is also barred. It has further been asserted that the application so filed for addition of party can neither come under order I, rule 10 or order 22, rule 3 and 10 of the Code of Civil Procedure and since Beloabibi, the plaintiff no. 1 had withdraw her suit having no scope to implead the applicants in her place as co-plaintiffs. However, those two

sets of applications was taken up for hearing and the learned Joint District Judge, Additional Court, Dhaka vide judgment and order dated 14.06.2004 allowed the applications holding that since the opposite party nos. 1 and 2 got the property from the plaintiff no. 1 so they are necessary and property party and added them as co-plaintiffs. On similar ground, the application so filed by the opposite party no. 3 was also allowed.

Being aggrieved by and dissatisfied with the said judgment and order, the defendant no. 1 as petitioner then invoked the jurisdiction of section 115(4) of the Code of Civil Procedure by filing a Civil Revision before the learned District Judge, Dhaka being Civil Revision No. 278 of 2004 which was on transfer heard by the learned Additional District Judge, 3<sup>rd</sup> Court, Dhaka and the learned Judge vide order dated 13.07.2005 dismissed the said revision affirming the judgment and order so passed by the learned Judge of the trial court holding the same view so taken by the trial court.

It is at that stage, the defendant no. 1 as petitioner came before this court and leave was granted, rule was issued and order of stay was obtained by the petitioner as stated hereinabove.

Mr. Garib Newaz, the learned senior counsel appearing for the petitioner upon taking us to the revisional application in particular, the impugned judgment and order at the very outset submits that since Beloabibi who was the plaintiff no. 1 has ultimately withdrawn her suit under order XXIII, rule 1 of the Code of Civil Procedure so the opposite parties who were made co-plaintiff nos. 1-3 had no scope to be added as co-plaintiffs in the suit.

The learned counsel further contends that since the plaintiff no. 1 has filed the application under rule (1) of order XXIII of the Code of Civil Procedure for withdrawing her suit so there was no reason to pass any formal order by the trial court allowing that application as moment the application is filed by the plaintiff to the suit it will be treated, the suit has been withdrawn having no necessity to pass any formal order by the court. In support of his such submission, the learned counsel then placed his reliance to the decision so have been reported in AIR 2003 Bombay 238 and takes us through paragraph no. 4 thereof.

The learned counsel further contends that moment the trial court grants permission to withdraw the suit, the court would become *functus officio* having no reason to grant further relief in the suit following withdrawing the suit so the application for addition of party filed by the opposite party nos. 1-3 to become a co-plaintiffs was not entertainable by the learned Judge of the trial court but that very legal point has clearly been sidetracked by both the courts below and finally prays for making the rule absolute.

On the contrary, Mr. Md. Oziullah, the learned senior counsel appearing for the opposite party nos. 2 and 3 very robustly opposes the contention taken by the learned senior counsel for the petitioner and submits that the opposite party nos. 1-3 are necessary and property party whose presence the suit is required to be disposed of on contest and on merit since they purchased the respective quantum of suit land which is the subject matter of the decree under challenge in the suit and they

acquired indefeasible title and possession over the said property so if the applicants are not made party they will become defenceless.

The learned counsel next contends that the defendant no. 1 has nothing to be prejudiced if the applicants made as co-plaintiffs in the suit because if they are not made party to the suit it will become infructuous upon withdrawal the suit and their title will go and thus for the sake of protecting their right, title in their purchased land they are required to be added as parties and the learned Judge of the trial court has rightly impleaded the present opposite parties as co-plaintiffs in the suit since they got the property from the plaintiff no. 1 and on those legal scores, the learned counsel finally prays for discharging the rule by upholding the judgment and order passed by the courts below.

However, we have considered the submission so advanced by the learned senior counsels for the petitioner and that of the opposite party nos. 2 and 3 at length. We have also very meticulously gone through the impugned judgment and order passed by the learned Judges of the courts below and that of the application filed under order I, rule 10 of the Code of Civil Procedure and the written objection filed thereagainst.

It is true that the predecessor of the present petitioner, Nannu Mia earlier filed a suit being Title Suit No. 251 of 1981 and on compromise, the suit was decreed with the plaintiff no. 1 and other defendants and since there has been some anomaly found in the said decree, the plaintiff no. 1 and the plaintiff no. 2 have challenged the said judgment and decree but during pendency of the suit, the present opposite party nos. 1-3 got the information about pendency of the suit and since they obtained some

property from the plaintiff no. 1 vide deed of sale as well as oral gift so they got vested interest in the suit and certainly to protect their said interest, they filed the application for adding them as co-plaintiffs. The provision of order I, rule 10 of the Code of Civil Procedure clearly speaks to be added as plaintiff or defendant if the court ever finds the said party has got interest and whose presence the suit is required to be disposed of. Certainly, whether the opposite party nos. 1-3 had legally acquired the property from the plaintiff no. 1 or not it can only be decided upon taking evidence of the contending parties while adjudicating the suit. But mere withdrawal of the suit by only the plaintiff no. 1 from whom these opposite parties claimed to have the land, the suit has not come to an end. So we are of the view that the decision so have been referred by the learned senior counsel for the petitioner reported in AIR 2003 Bomby 238 has got no manner of application in adjudicating the instant revisional application. Because mere withdrawal of the suit by a co-plaintiff, the right, title and interest of the property she transferred in favour of persons will not go.

Furthermore, whether any formal order is required to be passed on an application filed under order XXIII, rule 1 of the Code of Civil Procedure is not so material in adjudicating an application for addition of party even if the suit is found to have rightly withdrawn by the plaintiff no. 1, the right, title and interest of the opposite party nos. 1-3 will not extinguished because there have been two plaintiffs in the suit and the suit has still been existing in view of having another plaintiff that is, plaintiff no. 2.

Regard being had to the above facts and circumstances, we are of the view that the learned Judges of the courts below have rightly passed the impugned order which warrants no interference by this court.

Accordingly, the rule is discharged however without any order as to costs.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

The learned Judge of the trial court is hereby directed to dispose of the suit as expeditiously as possible preferably within a period of 6(six) months from the date of receipt of the copy of this order.

Let a copy of this judgment be communicated to the court concerned forthwith.

**Md. Bashir Ullah, J:**

I agree.