

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

CIVIL REVISION NO. 3476 OF 2018

In the matter of:

An application under Section 115(1) of the Code of Civil
Procedure.

AND

In the matter of:

Md. Mahtab Uddin Mallick and others

.... Petitioners

-Versus-

Divisional Forest Officer, Forest Department and others

....Opposite-parties

Mr. Ranjit Kumar Barman, Advocate

... For the petitioners

Mr. Abdur Razaque Khan, senior Advocate

....For the opposite party no. 77

Mr. Arobinda Kumar Roy, D.A.G

....For the opposite party no. 1

Heard on 25.04.2024 12.05.2024

and Judgment on 12.05.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the third parties to Title Suit No. 465 of 2018, this
rule was issued calling upon the opposite-party no. 1 to show cause as to

why the order dated 12.09.2018 passed by the learned Joint District Judge, Additional Court, Gazipur in the above Title Suit rejecting an application under Order 1 Rule 10(2) of the Code of Civil Procedure should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed all further proceedings of Title Suit No. 465 of 2018 for a period of 06(six) months which was subsequently extended from time and on 05.05.2019 the said order of stay was extended till disposal of the rule.

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

The present opposite party no. 1 as plaintiff filed the aforesaid suit (formerly Title Suit No. 61 of 2004) for declaration of title as well as for declaration that, the preparation of SA and RS record is wrong and not binding upon the plaintiff in respect of the suit property measuring a total area of 39.10 acres. When the suit was at the stage of argument hearing, the present petitioners filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure for impleading them as party to the suit contending that, their predecessor namely, Azizur Rahman got 27.23 acres of land by way of registered deed of exchange dated 20.12.2002 and therefore they are the necessary and proper party whose presence is required for effective disposal of the suit. The said application was taken up for hearing by the learned judge and vide impugned order dated 12.09.2018 rejected the same holding that, the application is vague and there has been no reason to allow the same. It is at that stage, the applicants as petitioners came before this court and obtained the instant rule and order of stay.

Mr. Ranjit Kumar Barman, the learned counsel appearing for the petitioners upon taking us to the revisional application in particular, the application filed under Order 1 Rule 10(2) of the Code of Civil Procedure at the very outset submits that, since the predecessor of the applicants-petitioners got the property from SA and RS recorded tenant so they are the necessary and proper party in the suit in whose presence the suit is required to be disposed of but the learned judge rejected the application without taking into consideration of the said vital aspect.

The learned counsel in his second leg of submission also contends that, if the petitioners do not get the opportunity to be implead in suit as defendants they will not make their defence in the suit for which they will be highly prejudiced.

The learned counsel further contends that, though these petitioners subsequently filed a suit being Title Suit No. 311 of 2018 impleading Partex as well as the government as defendants but that will not *ipsofacto* provide them to make effective defence in the suit and therefore the petitioners are required to be added as party to the suit.

The learned counsel lastly contends that, if a direction is made by this Hon'ble court for simultaneous hearing of the suit so filed by them with the suit filed by the government being Title Suit No. 465 of 2018 in that case none of the parties to the suit would be prejudiced. With such submission, the learned counsel finally prays for making the rule absolute by setting aside the impugned order

On the contrary, Mr. Abdur Razaque Khan, the learned senior counsel appearing for the opposite party no. 77 by taking us to the revisional application at the very outset submits that, since the petitioners

have already filed a suit being Title Suit No. 311 of 2018 impeading this opposite party, Partex as well as the government as defendants nos. 1 and 2 so there has been no necessity to add the petitioners party in the instant suit.

The learned counsel also contends that, if the application so filed by the petitioners is allowed in that case the suit will be reverted back to its initial stage which create great inconvenience to the parties in disposing of the suit in a shortest possible time since the suit was at the stage of argument hearing when the application was filed.

The learned senior counsel finally contends that, the learned judge of the trial court has rightly rejected the application which does not call for any interference by this Hon'ble court.

On the flipside, Mr. Arabinda Kumar Roy, the learned Deputy Attorney General has just adopted the submission so made by the learned senior counsel for the opposite party no. 77 though adds that, since there has been an order passed by the trial court for simultaneous hearing of both the suits so filed by the present plaintiff opposite party as well as the petitioners so there has been no necessity to allow the application for addition of party and finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioners and that of the learned senior counsel for the opposite party no. 77 and the learned Deputy Attorney General for the opposite party no. 1. There has been no gainsaying the fact that, the present petitioners are the descendants of Azizur Rahman who obtained some portion of the suit property by way of deed of exchange from the SA and RS recorded tenant on 20.11.1982 and got the possession thereof and out of

that property, the petitioners also sold out some portion of land. It is also admitted that, in the plaint in particular, at page no. 72 of the revisional application, the existence of the present petitioners have been asserted by the plaintiff yet since the present petitioners have already filed a suit being Title Suit No. 311 of 2018 and there has been an order of simultaneous hearing by the learned Judge of the trial court which we find from paragraph no. 3 to the revisional application and it has been admitted by the learned counsel for the petitioners that the suit so filed by them evidence has already been taken from the parties, which is now at the stage of final hearing. On the other hand, the suit filed by the present opposite party is also at the stage of argument hearing so we are of the view that, the learned judge of the trial court has rightly rejected the application for addition of party. Since both the petitioners as well as the plaintiff-opposite party has proceed with their respective suits and all the suits are at the fag-end of its disposal so it would be expedient to allow the suits to be proceeded at their own pace. However, the learned counsel for the petitioners finally submits that, if an order is passed by this Hon'ble court directing the trial court to dispose of the suits by giving a time frame then none of the parties will be prejudiced so we are of the view that, the title suit being Title Suit No. 465 of 2018, Title Suit No. 464 of 2018 as well as Title Suit No. 311 of 2018 should be heard and disposed of by the learned Joint District Judge, 1st court, Gazipur. In the above panorama, the learned Joint District Judge, 1st court, Gazipur is hereby directed to take up all the above three suits at its disposal and hold simultaneous hearing.

In any view of the matter, we don't find any illegality in the impugned judgment and order which is liable to be sustained.

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

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

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

Md. Bashir Ullah, J:

I agree.