

Present:

Mr. Justice Faruque Ahmed
and
Mr. Justice Md. Ruhul Quddus

Civil Revision No.3922 of 2010

Md. Hanif Talukder and others

... Petitioners

-Versus-

Paschim Kawniya Khan Bari Jame Masjid and
others

.... Opposite Parties

Mr. Tushar Kanti Roy, Advocate

...for the petitioners

Mr. Md. Mubarak Hossain, Advocate

... for opposite party No.17

Judgment on 29.11.2011

Md. Ruhul Quddus, J:

This Rule, at the instance of third party-petitioners, was issued to examine the legality of order dated 22.9.2010 passed by the Joint District Judge, First Court, Barisal in Title Suit No.33 of 2008 rejecting their application for addition of parties under Order I rule 10 of the Code of Civil Procedure.

Facts relevant for disposal of the Rule, in brief, are that opposite party Nos.1-16 instituted Title Suit No.33 of 2008 before the Joint District Judge, First Court, Barisal for declaration of title and partition of the land as described in schedule -Kaø of the plaint. Opposite party Nos.17-24 were made defendants therein. Some of the defendants were contesting the suit by filling written statements. After conclusion of trial,

the Court fixed 22.9.2010 for delivery of judgment. At that stage, the present petitioners approached the trial Court with an application for addition of parties with a prayer for separate *saham* in their names stating that during pendency of the suit they purchased a portion of the scheduled land from defendant Nos.9-10 and were inducted into possession thereof. Learned Joint District Judge heard the application and rejected the same by his order dated 22.9.2010 on the reason that the suit was fixed for delivery of judgment. Challenging the said order of rejection, the petitioners moved in this Court with the instant Civil Revision, obtained the Rule and an ad-interim order staying all further proceedings in the suit.

Mr. Tushar Kanti Roy, learned Advocate appearing for the petitioners at the very outset submits that although there were some mistakes in drafting the application for addition of party, the petitioners being co-sharers by purchase are entitled to get their *saham* separately and as such they are necessary parties in the partition suit. He further submits that neither defendant Nos.9-10 nor the petitioners knew anything about pendency of the suit and as such they (petitioners) could not turn up to the Court immediately after purchase of the land. Defendant Nos.9 and 10 by selling their land to the petitioners and others extinguished their right and interest in the suit land and therefore, they may not be interested to contest the suit.

On the other hand, Mr. Md. Mubarak Hossain, learned Advocate appearing for opposite party No.17 submits that the plaintiffs themselves have set up the petitioners to act as an instrumental to drag the suit. They

did not explain anything in their application as to whether their vendors namely, defendant Nos.9 and 10 were aware of the suit and as to why they did not turn up before the Court immediately after purchase of the land. Since their vendors are made parties and they have purchased the land during pendency of the suit, they would rise and fall with their vendors and their right and interest whatsoever in the suit land would be governed by the principle of *lis pendens*. It is apparent in the records that the petitioners filed the application with an ill motive to drag the suit and therefore the Rule is liable to be discharged, he concludes.

We have considered the submissions of the learned Advocates of both the sides and have gone through the impugned order. It appears that the learned Joint District Judge observed that the petitioners had filed papers and documents by way of *fristhi* and prayed for separate *saham*, but still the learned Judge did not make any comment on the documents submitted or consider whether they were necessary parties in the present suit for partition and flatly rejected their application only on the ground that the suit was fixed for delivery of judgment.

It is a settled principle of law that a party may be added at any stage of a suit or proceedings even at appellate or revisional stage if he/she is a necessary party. In the present case admittedly the petitioners are co-sharers by purchase and have subsisting interest in the suit land, and therefore, definitely they are necessary parties in the suit. If defendant Nos.9 and 10 have already extinguished their right and interest in the suit land, they may not be interested to contest the suit, but for that reason the interest of the third party-petitioners, who purchased a portion

of the suit land during pendency of the suit, cannot be affected only on the ground that they had come at a belated stage.

Considering the facts and circumstances of the present case, we think it would be just and proper, if the application for addition of party is allowed with cost and necessary direction for expeditious disposal of the suit is passed.

Accordingly, the Rule is made absolute. The impugned order dated 22.9.2010 passed by the Joint District Judge, First Court, Barisal in Title Suit No.33 of 2008 is hereby set aside. The application for addition of parties is allowed with a cost of Taka 3000/- (three thousand) only to be paid by the petitioners to opposite party No.17 (Md. Alamgir Khan) and the petitioners are added as defendants in the suit. Let the cause title of the plaint be amended incorporating the names of the added defendants.

The learned Joint District Judge (the trial Court) is directed to dispose of the suit as expeditiously as possible preferably within six months from receipt of the judgment. No further adjournment shall be allowed at the instance of the added-defendants.

Faruque Ahmed, J:

I agree.