

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 2730 of 2018

Mahatab Howlader @ Md. Mahatab Hossain and
otehrs

...Petitioners

-Versus-

Md. Idris Hawlader and others

...Opposite Parties

Mr. Md. Mostafa, Advocate

...For the petitioners

None

...For the opposite parties

Heard and Judgment on: 11.11.2024

In the instant revisional application filed under Section 115(1) of the Code of Civil Procedure at the instance of the defendant-petitioners, this Court on 04.09.2018 issued a Rule calling upon the opposite party Nos. 1-13 to show cause as to why the impugned order dated 24.04.2018 passed by the learned Additional District Judge, Jhalakathi in Title Appeal No. 36 of 2014 allowing the application for amendment of the plaint filed by the plaintiff-respondents should not be set aside.

None of the opposite parties has entered appearance in the Rule.

The present opposite parties as plaintiff filed Title Suit No. 19 of 1999 in the Court of the then Sub-ordinate Judge, now Joint District Judge, Jhalakathi for partition of the suit land. The present petitioners are defendant in the said suit. The suit was dismissed on contest on 26.02.2009. The plaintiffs filed Title Appeal No. 35 of 2009. The learned Additional District Judge, Jhalakathi, vide judgment and decree dated 11.03.2012 allowed the appeal and sent the case on remand to the trial Court for fresh trial on the ground that all the suit lands were not brought on hotchpotch. When the case was sent to the trial Court on remand for fresh trial, the plaintiffs amended the plaint and filed fresh plaint. The suit was tried again and decreed in part on contest, vide judgment and decree dated 24.04.2014 in preliminary form. Challenging the same, the defendants filed Title Appeal No. 36 of 2014. While the title appeal was pending for disposal the plaintiff-respondents on 24.04.2018 filed an application under Order VI rule 17 read with Section 151 of the Code of Civil Procedure (CPC) for amendment of the plaint. The appellate Court below, by the impugned judgment and order dated 24.04.2018 allowed the application. Challenging the same, the defendant-appellants preferred the instant revision and obtained Rule.

I have heard Mr. Md. Mostafa, the learned Advocate appearing for the defendant-appellant-petitioners and perused the materials on record.

As already noted, the application for amendment of the plaint was filed in the year 2018 in the appeal. By the Code of Civil Procedure (Amendment) Act, 2012 two provisos have been inserted to rule 17 of Order VI. Rule 17, as it stands now after the amendment, is quoted below:

R.17 The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court is of opinion that in spite of due diligence, the party could not have raised the matter before the commencement of trial:

Provided further that if an application for amendment is made after the trial has commenced and the Court is of opinion that the application is made to delay the proceedings, the Court shall make an order for the payment to the objectors such cost by way of compensation as it thinks fit.

Under the first proviso, while allowing the application for amendment, the Court has to form an opinion that the party seeking the amendment could not raise the matter before commencement of trial in spite of due diligence. In the instant case, the appellate Court below allowed the application for amendment of the plaint without

assigning any reason whatsoever in respect of the requirement provided under the first proviso. The appellate Court below also did not discuss about the merit of the application. It simply assigned the reason that the proposed amendment would not change the nature and character of the suit. Therefore, failure to record the reason for allowing the application for amendment as required under the first proviso to rule 17 is sufficient enough to set aside the impugned order. Mr. Md. Mostafa, the learned Advocate points out that the plaintiffs obtained part decree. They were satisfied with the said decree and did not prefer any appeal. The appeal was preferred by the defendants against the part decree. Therefore, there is no necessity at all to file an application for amendment of plaint by the plaintiff-respondents. Mr. Md. Mostafa further submits that the application for amendment was filed to delay the disposal of the appeal. Considering the facts of the case discussed above I find substance in the submission. Hence, the Rule succeeds.

In the result, the Rule is made absolute. The impugned judgment and order dated 24.04.2018 passed in Title Appeal No. 24 of 2014 by the Additional District Judge, Jhalakathi allowing the application for amendment of the plaint by the plaintiff-respondents is set aside.