

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

CIVIL REVISION NO. 1716 OF 2019

In the matter of:

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

AND

In the matter of:

Nahid Niazi alias Nahid

.... Petitioner

-Versus-

Nilufa Islam and another

....Opposite-parties

Mr. Aneek-R-Hoque, Advocate with
Mr. A.M. Jamiul Hoque, Advocate

... For the petitioner

None appears

....For the opposite parties

Heard and Judgment on 27.05.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the 3rd party namely, Nahid Niazi alias Nahid, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the order no. 80 dated 09.04.2019 passed by the learned Joint District Judge, 5th court, Dhaka rejecting an application praying for addition of party filed under Order 1 Rule 10(2) of the Code of Civil Procedure in Title

Suit No. 218 of 2018 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, all further proceedings of Title Suit No. 218 of 2018 was initially stayed for a period of 06 (six) months which was lastly extended on 19.01.2020 for another 06(six) months but record shows no further extension was taken by the petitioner.

Facts relevant of the disposal of the instant rule are:

The present opposite party no. 1 as plaintiff originally filed a suit being Title Suit No. 451 of 2009 before the court of 1st Assistant Judge, Dhaka which on transfer to the court of learned Joint District Judge, 5th Court, Dhaka was renumbered as Title Suit No. 218 of 2018. In the said suit following reliefs were claimed which runs as follows:

(ক) বিবাদী যাহাতে কোনক্রমেই অন্যায়া ও বেআইনীভাবে পেশী শক্তির জোড়ে নালিশী সম্পত্তি হইতে বাদিনীগক্ষকে উচ্ছেদ/বেদখল করি-ত পারে, তথায় কোন নির্মাণ কাজ করিতে পারে কিংবা নালিশী সম্পত্তিতে বাদিনীর শান্তিপূর্ণপূর্ণ ভোগ দখ-ল কোনরূপ বিঘ্ন ঘটাই-ত না পা-র তৎম-র্ম বিবাদীকে বারিত করিয়া বিবাদীর বিরুদ্ধে এক চিরস্থায়ী নিষেধাজ্ঞার ডিক্রী প্রচার করি-ত;

ক (ক) বাদিনী প-ক্ষর অনুকূ-ল এবং বিবাদীপ-ক্ষর প্রতিকূ-ল খ-তফসিল বর্ণিত সম্পত্তির সমস্ব বাধা বিঘ্ন আদালতের করিয়া খ্যস দখলের ডিক্রী দিতে ।

(খ) মোকদ্দমার যাবতীয় খরচ বাদিনীপক্ষের অনুকূলে এবং বিবাদীপক্ষের প্রতিকূলে ডিক্রী প্রচার করিতে;

(গ) বাদিনীপক্ষ আইনতঃ ও ন্যায়তঃ আর যে সকল প্রতিকার পাই-ত পারে, তৎমর্মে ডিক্রী প্রচার করিতে বিজ্ঞ আদালতের মর্জি হয় ।

In the suit defendant no. 1 who happens to be the full brother of the plaintiff has been contesting the same by filing written statement. When the suit was being proceeded, the present petitioner on 05.05.2019 filed an application under Order 1 Rule 10(2) read with section 151 of the Code of Civil Procedure for adding her as party to the suit contending inter alia that, their father had gifted the suit property to both the plaintiff and the petitioner mentioned in the schedule and handed over possession thereof demarcating the same among them (two sisters). Since the petitioner as well as her sister, plaintiff could not look after the property they then appointed their full brother, defendant no. 1 as attorney to look after the said property. But ultimately since the defendant no. 1 failed to look after the property, and tried to grab the same the said power of attorney was ultimately cancelled and the plaintiff filed the suit against the defendant no. 1, for permanent injunction as well as recovery of khas possession in respect of 'ka' schedule of land. At that, the petitioner as third party filed the application for adding her as party since the plaintiff also claimed 'kha' schedule land that belongs to the petitioner and she (the petitioner) also filed a suit claiming the schedule land before the Land Survey Tribunal being suit no. 844 of 2011 where plot no. 53924 has also been mentioned. It has also been stated in the application that, if the plaintiff gets a decree in the suit property she would be highly prejudiced and hence she is a necessary and proper party whose presence the suit is required to be disposed of. Though no written objection was filed against the application for addition of party either by the plaintiff or the defendant no. 1 yet the learned judge of the trial court vide impugned order rejected the application holding that, since the suit was not filed for declaration and if the decree is

passed in regard to permanent injunction as well as recovery of khas possession that decree will not affect the interest of the petitioner rather the parties to the suit.

It is at that stage the said 3rd party as petitioner came before this court and obtained the instant rule and order of stay.

Mr. Aneek-R-Hoque along with Mr. A.M. Jamiul Hoque, the learned counsels appearing for the petitioner upon taking us to the application in particular, the scheduled so appended in the plaint of Title Suit No. 218 of 2018 and that of the plaint of Land Survey Tribunal Case No. 844 of 2011 at the very outset submits that, since the property which has been described in the schedule of the Title Suit No. 218 of 2018 has also been claimed by the present petitioner in her Land Survey Tribunal case so the present petitioner is a necessary and proper party in the suit filed by the plaintiff opposite party no. 1 but the learned judge under misconception of law and facts passed the impugned order which cannot be sustained in law.

The learned counsel further contends that, if the suit is decreed, the present petitioner will be highly prejudiced if she is not given an opportunity to make her defence in the said suit and on that two scores, the learned counsel finally prays for making the rule absolute by adding the present petitioner as defendant no. 2 in the suit.

Record shows that, one Mr. Sharder Abul Hossain appeared for the opposite party No. 1 but at the time of hearing of the rule in the morning, the learned counsel was found absent which is why, we deferred the hearing till 2pm yet the learned counsel for the opposite party did not turn up to oppose the same.

However, we have considered the submission so advanced by the learned counsel for the petitioner and perused the impugned judgment and order and all other document so appended with the revisional application. On careful perusal of the plaint of Title Suit No. 218 of 2018 filed by the plaintiff, full sister of the present petitioner and that of the plaint so filed by the present petitioner as plaintiff in Land Survey Tribunal case No. 844 of 2011 we find both the suit plot no. 53924 has been there where present petitioner claimed $\frac{1}{2}$ of the land of that very plot so if the Title Suit No. 218 of 2018 is disposed of without adding the present petitioner as party she will be highly prejudiced even though she is a necessary and proper party but the learned judge of the trial court has not taken into consideration of that very legal aspect. It is totally incomprehensible to us how the learned judge came to a conclusion that, since the suit is not for declaration of title there is no necessity to make any person a party to the suit when there has been no straight jacket rules in Order 10 Rule 10(2) of the Code of Civil Procedure in which particular suit a person can be added as a party. Since the interest of the present petitioner is there in the title suit and that very assertion has clearly been described in the application for addition of party for that obvious reason we don't find any other scope but to allow the application.

Overall, we don't find any reason to sustain the impugned order which is liable to be set aside.

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

The impugned order no.80 dated 09.04.2019 passed by the learned Joint District Judge, 5th court, Dhaka is hereby set aside.

The learned judge of the trial court is hereby directed to add the petitioner as defendant no. 2 to the Title Suit No. 218 of 2018 and proceed with and dispose of the same as expeditiously as possible preferably within a period of 03(three) months from the date of receipt of the copy of this order.

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

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

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O