

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No.1218 of 2020

Md. Ruhul Amin Khandokar and others
... Petitioners

-Versus-

Sarafat Ali being dead his legal heirs; 1(a)
Renuara Begum and others
...Opposite-Parties

Mr. Md. Saiful Islam with
Mr. Zahirul Islam, Advocates
...For the Petitioners
Mr. M.M. Shafiullah, Advocate
...For the Opposite-Party Nos. 1(a)-1(k).

Judgment on 8th December, 2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 12.08.2020 passed by the learned Joint District Judge, 2nd Court, Brahmanbaria in Title Appeal No.60 of 2017 allowing the appeal and thereby reversing the judgment and decree dated 05.03.2017 passed by the learned Assistant Judge, Akhaura, Brahmanbaria in Title Suit No.170 of 2014 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The predecessor of the opposite party Nos.1(a) to 1(ka), as plaintiff, filed Title Suit No.170 of 2014 in the court of learned Senior Assistant Judge, Akhaura, Brahmanbaria against the predecessor of the petitioners named Abdul Malek Khondoker and others impleading them as defendants praying for a decree of cancellation of partition deed mentioned in the 6th schedule of the plaint which was alleged to have been executed in respect of 3rd, 4th and 5th scheduled property mentioned in the plaint. The plaintiff claimed that he has become owner of the property mentioned in the 1st schedule by way of exchange with the property owned by him in India. To regularize the exchange the same was submitted for registration before the Deputy Commissioner, Cumilla and permission Case No.2312 of 1968-69 was started and at one stage Deputy Collector, Cumilla executed transfer Deed No.1326 dated 04.08.1994 for part of the 2nd schedule land. On the other hand, the plaintiff along with the defendant Nos.1-2 became an owner of the property mentioned in the 2nd schedule by way of exchange with their property situated in India. To regularize the exchange the

same was submitted for registration before the Deputy Commissioner, Cumilla and permission Case No.2322 of 1968-69 was started. The plaintiff and the defendants are owner in equal shares in the 2nd scheduled property. The plaintiff is in possession of 1st scheduled property and he is entitled to get $\frac{1}{3}$ rd share in the 2nd schedule property.

Further case of the plaintiff is that he is an illiterate person and cannot manage and take care of his property and he vested the duty upon his sons and among the sons, Md. Rowshon Ali came to know that the part of the property from 1st schedule was erroneously recorded in the name of the defendants. Plaintiff requested the defendants to correct the khatians mutually but they refused, rather they disclosed the fact that they are also owners in the 1st schedule property by way of registered partition deed mentioned in the 6th schedule of the plaint. The plaintiff became highly astounded, knowing the fact that he had executed a partition deed in respect of 1st schedule property with the defendants wherein the defendants have no share at all. The defendants said the plaintiff for refreshing his memory that he went to the sub registry office to

register the alleged deed. However, the plaintiff denied execution of the alleged partition deed and his case is that he went to the sub registry office with the defendant Nos.1-2 to become a witness in the deed of partition which was executed among the parties. The plaintiff's case is that the alleged deed was fraudulently created by the defendants without giving the plaintiff understand the contents of the deeds and the fact that the deed was executed in respect of partition of the suit property and hence, the present suit.

The defendants contested the suit filing written statements denying all the material allegations made in the plaint contending inter alia that the suit of the plaintiff is not maintainable in its present form and barred by limitation. The defendant's case differs from the case of the plaintiff in the way that the property mentioned in the 1st schedule was exchanged in the name of the plaintiff and they had share in that property and 2nd schedule property was exchanged in their joint name and it was agreed between the parties that the entire property i.e. 1st schedule and 2nd schedule property to the plaintiff will be partitioned among them equally and accordingly the Partition Deed No.8115 dated 06.12.1982 was willingly

executed by all the executors. On 06.12.1982, the plaintiff himself went to the sub registry office at Brahmanbaria and drafted a partition deed in respect of 1st and 2nd schedule property of the plaint. The suit is false and filed by the plaintiff to harass the defendants.

The trial court framed 4(four) issues for determination of the dispute. In course of hearing, the plaintiff examined 6(six) witnesses as P.Ws and the defendants also examined 4(four) witnesses as D.Ws. Both the parties submitted documents in support of their respective claim which were duly marked as exhibits on both the sides. The trial court after hearing by its judgment and decree dated 05.03.2017 dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff preferred Title Appeal No.60 of 2017 before the District Judge, Brahmanbaria. Eventually, the said appeal was transferred to the Court of learned Joint District Judge, 2nd Court, Brahmanbaria for hearing and disposal who after hearing by the impugned judgment and decree dated 12.08.2020 allowed the appeal and thereby reversed the judgment and decree

passed by the trial court. At this juncture, the petitioners, moved this Court by filing this revision and obtained the present Rule and order of status-quo.

During hearing of the instant revision the opposite parties filed an application for amendment of the plaint contending inter alia that the suit was not properly framed by the learned lawyer of the plaintiff in the trial court. Moreover, certain important facts that Jinnot Ali was one of the parties to the exchange deed and his name was not mentioned in the original plaint and that Jinnot Ali transferred his entire share vide Registered Deed No.851 dated 08.02.1966 to Abzor Ali who again transferred part of the suit property to the heirs of Sarafat Ali vide several registered deeds and that the exchangers did not get ownership and possession over the entire property mentioned in the 1st schedule and 2nd schedule of the plaint. Since the original owners transferred certain property before executing the exchange deed which is evident from the report of Tahshilder, all these facts are essential to resolve the dispute amongst the parties are required to be incorporated in the plaint by way of amendment.

Mr. Md. Saiful Islam with Mr. Zahirul Islam, learned Advocates appearing for the petitioners opposes the application for amendment of the plaint on the ground that by laps of time a right in favour of the petitioners has accrued. Moreover, the plaintiff in suit by filing amendment application unequivocally conceded that the plaint in suit has not been properly framed and the prayer on the basis of which the appellate court decreed the suit is not tenable in law. He argued that proposed amendment has been sought for bringing a totally new and inconsistent fact in the plaint which will affect the interest of the defendants in suit.

He finally argued that Title Suit No.170 of 2014 filed before the trial court on 30.04.2014. The trial court by judgment and decree dated 05.03.2017 dismissed the suit disbelieving claim of the plaintiff that he did not execute the partition deed under challenge. The appellate court allowed the appeal without adverting and controverting the findings of the trial court believing the case of the plaintiff that the deed of partition was not actually executed and registered by the plaintiff out of his free will and good understanding and decreed the suit. The plaintiff opposite party by

filing this application for amendment, in fact, shifting their stand bringing some new fact contrary to the statement made in the plaint and the interest of the defendant-petitioners, as such, at a much delay the amendment application is not entertainable in law. He submits that if the matter is decided without taking into consideration of the amendment application, the suit in its present form is not maintainable as rightly held by the trial court, as such, the Rule is liable to be made absolute and the application for amendment of plaint bringing new facts at a belated stage is liable to be rejected.

Mr. M.M. Shafiullah, learned Advocate appearing for the opposite party Nos.1(a) to 1(k) submits that Abdul Latif was not a party to any of the exchange deed by which the 1st schedule and 2nd schedule property was exchanged and inclusion of his name in the alleged partition deed making averment in the deed that he became an owner of the property by way of exchange deed is ex-facie illegal and void which rendered the partition deed void ab-initio. It is also submitted that the plaintiff-appellant is the sole owner of 1st schedule land, therefore, the same cannot be included in the suit

deed of partition in the share of defendant-respondents. He submits that to regularize the exchange, the exchange deed was submitted for registration before the Deputy Commissioner, Cumilla and Permission Case No.2312 of 1968-69 was started and at one stage Deputy Collector of Cumilla executed transfer Deed No.1326 dated 04.08.1994 for part of the 1st scheduled land including 52 decimals land corresponding to S.A. Plot No.541, 13 decimals which fell in the saham of other parties by virtue of the alleged partition deed. Moreover, 380 decimals land from the 1st schedule which fell in the saham of 2nd party and 3rd party to the alleged partition deed and that property was recorded in the 1/1 khatian in the last B.S. record and was enlisted as 'Kha' schedule of the vested property list. Among the plaintiff, Liakot Ali mutated his name in respect of the said property vide mutation and separation of Jama Case No.3053 of 16-17 dated 21.01.2018.

In support of the amendment application, it is submitted that the proposed amendment would not change the fundamental character and nature of the suit and the settled principle is that amendment of pleadings may be allowed at any stage of the

proceedings for the purpose of determining the real controversy between the parties as was held by the Appellate Division in the case of *Abdul Motaleb Vs. Ershad Ali and others* reported in **18 BLD (AD) 121**. Since, important facts were left out inadvertently at the time of drafting the plaint, without bringing those facts by amendment of the plaint real controversy between the parties cannot be determined and settled effectively.

He argued that the Appellate Division in the case of *Managing Committee, N.M. C. Model High School and others Vs. Obaidur Rahman Chowdhury and others* reported in **31 DLR (AD) 133** observed that one of the fundamental principle governing the amendment of pleadings is that all the controversies between the parties as far as possible should be included and multiplicity of the proceedings be avoided. The fact that Jinnot Ali was one of the parties to the exchange deed and his name was not mentioned in the original plaint and the fact that Jinnot Ali transferred his entire share vide registered Deed No.851 dated 08.02.1966 to Abzor Ali who again transferred part of the suit property to the heirs of Sarafat Ali vide several registered deeds and the fact that the

exchangers did not get ownership and possession over the entire property mentioned in the 1st schedule and 2nd schedule of the plaint. Since the original owners transferred certain property before executing the exchange deed which is evident from report of Tahshilder and all these facts are essential to resolve the dispute among the parties are required to be included in the plaint by way of amendment. He argued that the Appellate Division in the case of *Akram Ali Pk. (Md) and others Vs. Yasin Ali (Md) and others* reported in *17 BLC (AD) 135* held that amendment is necessary to determine the real question of controversy between the parties, otherwise, there is likelihood of cropping up of multifarious litigations and conversely, if the proposed amendment is allowed, no one will be prejudiced.

Mr. Shafiullah finally argued that once the conditions of Section 115(1) of the Code of Civil Procedure are satisfied and the High Court's jurisdiction to interfere is established, the proceedings as a whole from starting to end can be scrutinized and any order necessary for doing justice may be passed. There is no limit to the area in which the revisional power is to be exercised by the High

Court Division in the facts and circumstances of each case which was observed by the Appellate Division in the case of *Md. Shahjahan Khan Vs. Additional Deputy Commissioner (Revenue), Munshiganj and others* reported in *11 BLT (AD) 60*, *Meher Banu and others Vs. Abdul Barek and Muslim Bepary* reported in *4 ADC 471* and *Md. Abdur Rashid Akand Vs. Md. Raisuddin and others* reported in *16 MLR (AD) 63*.

In the above facts and circumstances, he prays for allowing the application for amendment of plaint to resolve the entire dispute among the parties and to send back the suit to the trial court on remand for hearing and disposing the instant suit afresh.

Heard the learned Advocates of both the sides, have gone through the application under Section 115(1) of the Code of Civil Procedure, plaint, written statement, amendment application, evidence both oral and documentary available in lower court records and the impugned judgment and decree of both the courts below.

Submissions made by the learned Advocate for the petitioners regarding opposite parties right to file an application for amendment of plaint in the civil revision raising objection of delay, importation of new facts and acquisition of a right in favour of defendants is devoid of legal substance. It is fact that the plaintiff filed the suit for a simple declaration in the following term:

“(ক) নালিশী ৩য়, ৪র্থ ও ৫ম তফশীলোক্ত ভূমি বাবতে নালিশী ৬ষ্ঠ তফশীলোক্ত বন্টননামা দলিল বেআইনী, অকার্য্যকরী, যোগসাজশী, বা[ন]িয়াট, প্রতারণাপূর্ণ ভা[ব] সৃষ্ট বিধায় তাহা বাতিলের তরে ডিক্রী দিতে

(খ) নালিশী ৬ষ্ঠ তফশীলোক্ত দলিল বাতিল সংক্রান্ত ডিক্রীর নোট এস, আর অফিসের ভলিয়মে লিপির তরে রায় দি[ত]্র”

The trial court dismissed the suit and the appellate court allowed the appeal and decreed the suit in favour of the plaintiff by setting aside the judgment and decree of the trial court.

Learned Advocate for the opposite parties submits that at the time of preparing argument for hearing the Rule, it has come to the notice that one Jinnot Ali a party to the alleged partition deed under challenge disposed of his share by a Registered Deed No.851 dated 08.02.1966, but said fact has not been disclosed in the plaint either

by the plaintiff or by the contesting defendants and subsequently the share of Jinnot Ali transferred to different persons which is also not stated in the plaint. There have been some other facts which are necessary for proper adjudication of the matter in dispute. Unless those facts are brought on record by way of amendment of plaint. The defect in the plaint and judgment passed by both the courts below will give rise to further complication between the parties and multiplicity of judicial proceeding. To decide the matter in dispute, in a compact adjudication, all the facts whatever, stated in the application for amendment are required to be brought on record.

It is well settled that once the condition in Section 115(1) of the Code of Civil Procedure are satisfied the proceeding as a whole from starting to end can be scrutinized and any order necessary for doing justice may be passed by this court in revisional jurisdiction as observed by the Appellate Division in the case of *Md. Shahjahan Khan Vs. Additional Deputy Commissioner (Revenue), Munshiganj and others* reported in *11 BLT (AD) 60*, *Meher Banu and others Vs. Abdul Barek and Muslim Bepary*

reported in *4 ADC 471* and *Md. Abdur Rashid Akand Vs. Md. Raisuddin and others* reported in *16 MLR (AD) 63*.

From perusal of judgment and decree of the appellate court though it is found that the appellate court believing the evidence both oral and documentary led and submitted by the plaintiff in suit allowed the appeal and decreed the suit, but for lack of sufficient statement in the plaint and proper prayer the judgment of both the courts below are liable to be set aside.

Since the plaintiff by an amendment brought some fact and issues to be decided afresh, I think that for proper adjudication of the dispute and to remove real controversy between both the parties, application for amendment deserves consideration, hence, the application for amendment of plaint is allowed with a costs of Tk.10,000/- (Taka ten thousand) to be paid to the defendants within 1(one) month from the date of arrival of the record in the lower court.

Because of amendment of plaint and addition of some fact, I think that those facts necessitates a fresh trial of the suit by

recording further evidence by the trial court and the purpose of the parties will be served and justice will be met if the suit is sent back on remand to the trial court by setting aside the judgment and decree of both the courts below.

Accordingly, I find substances in the submissions of both the learned Advocates for the parties and merit in the Rule.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and decree passed by both the courts below are hereby *set aside*.

The suit is hereby sent back on remand to the trial court for fresh trial, after recording the amendment sought for by the plaintiff and allowed by this Court. The trial court is hereby directed to amend the plaint and hear and dispose of the suit within shortest possible time preferably within 06(six) months from the date of receipt of this judgment and order affording sufficient opportunity to the parties to adduce further evidence and to file additional written statement by the defendants.

Order of status-quo stands vacated.

Communicate a copy of the judgment to the Court concerned
and send down the lower court records at once.

Helal/ABO