

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

CIVIL REVISION NO. 3131 OF 2019

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Md. Lutfur Rahman being dead his heirs: 1(a) Numuna Khatun, wife of late Md. Safiuddin and others.

.... Petitioners

-Versus-

Lieutenant Colonel (Ret.) Nur Mohammad being dead his heirs: 1(a) Rabeya Mumtaz alias Most. Rabeya Mumtaz, wife of late Lieutenant Colonel (Ret.) Nur Mohammad and others.

....Opposite-parties

Mr. Zulfiqur Ahmed with

Mr. Shahnoor Ahmed, Advocates

... For the petitioner nos. 1(a)-1(e)

Mr. Khandaker Aminul Haque with

Mr. Abdus Sattar, Advocates

...For the opposite-party nos. 1(a)-1(e)

Heard 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 defendant no. 1, Md. Lutfor Rahman in Title Suit No. 23 of 2018, this rule was issued calling upon the opposite-parties to show cause as to why the order no. 79 dated 05.09.2019 passed by the learned Joint District Judge, 7th Court, Dhaka in the said suit allowing amendment of the plaint should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, all further proceeding of the said suit was stayed for a period of 6(six) months which was lastly extended on 25.08.2022 till disposal of the rule.

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

The predecessor of the present opposite-party nos. 1(a)-1(e), namely, Lieutenant Colonel (Ret.) Nur Mohammad originally filed a suit being Title Suit No. 90 of 2009 which was subsequently renumbered as Title Suit No. 270 of 2010 and then, Title Suit No. 23 of 2018 for declaration to the effect that, the judgment and decree passed in Title Suit No. 5082 of 2008 so filed by the defendant no. 1 against the defendant nos. 2 and 3 which ended in compromise is collusive, illegal and not binding upon the plaintiff. In the said suit, the present defendant no. 1-petitioner entered appearance and filed written statement denying all the materials averments so made in the plaint and prayed for dismissing the suit. When the suit was at the stage of peremptory hearing, the plaintiff on 27.07.2019 filed an application for amendment of the plaint amongst others, inserting a prayer claiming to be 16 annas owner and possessor in the suit property. That application was resisted by the present petitioner who is the defendant no. 1 by filing written objection contending that,

since the plaintiff was not any party to the Title Suit No. 5082 of 2008 and that very suit was only filed for recovery of khas possession under section 9 of the Specific Relief Act so the plaintiff of the said suit acquired no right, title over the suit property and the said amendment cannot be entertained. The said application however was taken up for hearing by the learned Judge of the trial court and vide impugned order dated 05.09.2019 allowed the same.

It is at that stage, the predecessor of the present petitioners filed the instant revisional application and obtained the rule and order of stay.

Mr. Zulfiquar Ahmed, the learned counsel appearing for the petitioners upon taking us to the revisional application at the very outset submits that, since the opposite-party did not acquire any title and possession on the basis of the compromise decree passed in Title Suit No. 5082 of 2008 so no title can be claimed by the plaintiff by way of amendment in the said suit.

The learned counsel further contends that, since by way of the compromise decree passed in the suit, the defendant-petitioner got the suit land so the amendment so far as it relates to claiming declaration by the plaintiff in the suit property will become a redundant one and yield no fruitful result if the suit is ultimately decreed.

The learned counsel lastly contends that, apart from the suit for declaration, the plaintiff also filed another suit for declaration of title and recovery of khas possession in spite of the fact that the possession of suit property is now lying with the present defendant-petitioner so the impugned order allowing the application for amendment has got no

substance in the eye of law and therefore, the learned Judge failed to consider those very two legal aspects and very misconceivedly allowed the application which cannot sustain in law.

On the contrary, Mr. Khandaker Aminul Haque, the learned counsel appearing for the plaintiff-opposite-party nos. 1(a)-1(e) vehemently opposes the contention so taken by the learned counsel for the petitioners and submits that, in the written objection so filed by the defendant-petitioner against the application for amendment since he admitted to have purchased the suit property from the plaintiff-opposite-party so the plaintiff-opposite-party has rightly filed the application for amendment for inserting the prayer claiming to be 16 annas owner over the suit property.

The learned counsel further contends that, in the original suit, the plaintiff prayed that the judgment and decree passed in compromise in Title Suit No. 5082 of 2008 is collusive, fraudulent, illegal and not binding upon the plaintiff because the plaintiff is the owner of the suit property and by that decree, it cast cloud over the title of the plaintiff in the suit property and therefore, there has been no reason to feel aggrieved by the defendant for allowing the application for amendment.

The learned counsel wrapped up his submission contending that, allowing or rejecting an application for amendment, it is the *sine qua non* to see whether by the amendment, the nature and character of the suit is likely to be changed but by the amendment, the nature and character of the suit has not been changed and therefore, the learned Judge has rightly passed the impugned order which is liable to be sustained.

We have considered the submission so advanced by the learned counsel for the petitioners and that of the opposite-parties at length. We have also gone through the application for amendment of the plaint and the written objection filed thereagainst.

It is admitted fact that, the suit property originally belonged to the plaintiffs and it was proposed to transfer in favour of the defendant but due to having some official formalities as the property is located in the cantonment area, the said sale has not been materialized so the plaintiff is still the owner of the suit property until and unless, the property is finally sold out to the defendant. For that obvious reason, the plaintiff filed a suit making two different prayers one, for declaration of title over the suit property and another, for declaration that the decree passed in compromise in Title Suit No. 5082 of 2008 in favour of the defendant no. 1 is collusive. For that obvious reason, the amendment was made claiming that the plaintiff is 16 annas owner in the suit property and other some amendments which appears to us to be flimsy one. Since the suit has been filed under section 42 of the Specific Relief Act in a declaratory form and the defendant has already entered appearance to contest the suit by filing written statement so if the amendment is allowed, the defendant has nothing to be prejudiced because by that amendment, the nature and character of the suit has not been changed.

Furthermore, the defendant can now file better statement in the event of allowing application for amendment of the plaint.

Given the above facts and circumstances, we don't find any iota of illegality in the impugned order which is liable to be sustained.

In the result, the rule is discharged however without any order as to costs.

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

Let a copy of this judgment be communicated to the learned Joint District Judge, 7th Court, Dhaka forthwith.

Md. Bashir Ullah, J:

I agree.