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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 1754 of 2020

In the matter of:

Md. Bozlur Rahman

Plaintiff-appellant-petitioner

-Versus-

Nurjahan Begum and others

Defendant-respondent-opposite parties

None

...For the petitioner

None

... For the opposite parties

Heard on: 14.01.2026
Judgment on: 15.01.2026

The petitioner has filed this revisional application under Section 115 of the Code of Civil Procedure (CPC) challenging the judgment and decree dated 22.01.2020 (decree signed on 27.01.2020) passed by the learned District Judge, Bhola in Civil Appeal No. 52 of 2019 dismissing the appeal and affirming the judgment and decree dated 09.07.2019 (decree signed on 11.07.2019) passed by the Senior Assistant Judge, Lalmohon, Bhola in Title Suit No. 108 of 2015 dismissing the suit.

The present petitioner as sole plaintiff filed the instant suit for eviction of the defendants from the suit property as tenants and for khas possession.

Plaintiff's case is that his father Md. Bozlur Rahman was the owner of the suit land who verbally rented out the house built on the suit land in favour of the defendants as monthly tenants. The plaintiff's father, thereafter, went to Malaysia and since then he had been staying there. He, time to time, used to come to Bangladesh. In 2015, he came to Bangladesh and asked the defendants to vacate the house but the defendants did not vacate the same. Before leaving Bangladesh for Malaysia, the plaintiff's father on 04.08.2015 executed a special power of attorney and appointed his son plaintiff Md. Monju as attorney authorising him to take all legal actions relating to the suit land and the property. The plaintiff on 06.08.2015 and 09.09.2015 respectively sent two notices to the defendants to vacate the property. The defendants replied to the said notices stating that their father Abdul Malek (since deceased) is the owner of the property by dint of an unregistered sale deed dated 15.06.2011.

The case of the defendant Nos. 1-3 is that Arju Begum, wife of Md. Bozlur Rahman sold the suit land and the property to the father of the defendants by executing a notarized sale deed on 15.06.2010. Their further case is that the son-in-law and daughter of Md. Bozlur Rahman also executed an agreement on 05.11.2011 to the effect that

after return of Md. Bozlur Rahman from Malaysia, he would execute a registered deed in favour of the father of the defendants. In late 2014, Md. Bozlur Rahman returned to Bangladesh but did not execute the registered deed.

The trial Court dismissed the suit. The appellate Court below dismissed the appeal and observed that the plaintiff failed to prove that the defendants were tenants in the suit property. The appellate Court below further held that the sale agreement dated 15.06.2011 and the agreement dated 05.11.2011 proved that the plaintiff had sold the suit land and the property to the defendants and handed over the possession of those to them. As such, the plaintiff had no right, title, interest and possession in the suit land.

D.W.1 (defendant No. 3) stated in cross-examination that the sale agreement dated 05.11.2011 was unregistered. It is admitted by the parties that Md. Bozlur Rahman was the owner of the suit land and the property. Therefore, the subsequent agreement dated 05.11.2011 executed by the son-in-law and daughter of Md. Bozlur Rahman regarding sale of the suit property is a void agreement. Moreover, the earlier unregistered sale agreement dated 15.06.2010 executed by the wife of Md. Bozlur Rahman is also a void document for the reason that she was not the owner of the property. The defendants did not file any suit based on those so-called unregistered agreements. Therefore,

the finding of the appellate Court below *i.e.* the plaintiff had sold the suit property to the defendants is perverse and opposed to the law.

The trial Court dismissed the suit holding that the plaintiff Md. Monju who is the son of Md. Bozlur Rahman filed the suit by dint of a power of attorney (exhibit-2). The trial Court further observed that the suit should have been filed in the name of Md. Bozlur Rahman who was the owner of the property. The plaintiff had no title and ownership in the property. On this ground, the trial Court dismissed the suit.

Admittedly, the suit was filed in the name of the wrong person. Md. Bozlur Rahman should have been the plaintiff of the suit. Md. Monju should have been the authorised person to conduct the suit on behalf of Md. Bozlur Rahman. Therefore, I have no hesitation to hold that the suit was filed in the name of the wrong person and the plaint was not duly signed, verified and subscribed.

The defects mentioned in the preceding paragraph are mere irregularities and can be remedied at any stage of the proceedings. Where a suit is instituted in the name of the wrong person as plaintiff, the Court may, at any stage of the proceedings, order any other person to be substituted or added as plaintiff or order that the name of the wrong plaintiff, who is improperly joined, be struck out and the name

of any person who ought to have been joined as plaintiff be added [Order I, rules 10(1) and 10(2) of CPC].

The words "in the name of wrong person as plaintiff" mentioned in Order I, rule 1(1) include suits instituted by persons who had no right to do so (***Laxmikumar vs. Krishnaram***, A 1954 MB 156). Necessary party has to be brought on record. A necessary party is one who is bound by the result of the action and in whose absence the question cannot be effectually and completely settled unless he is a party [1992 (2) SCR 1]. Thus, the general rule that the suit cannot be dismissed on the ground of non-joinder of proper parties does not apply in the case of non-joinder of necessary parties. In ***Abbas Khaleeli & ors. vs. Saifuddin Valika and ors.***, PLD 1969 kar. 692 the High Court of the then West Pakistan observed, *inter alia*, that the description of the plaintiffs was totally erroneous. No evidence had yet been recorded in the suit. It was held that the relevant provisions of the CPC are of an ameliorative nature, and not of a penal nature. Therefore, the plaintiff should be allowed an opportunity to cure the defects and the suit should not be dismissed. The Court further held that when the plaintiff is given an opportunity in the trial Court to cure the defects in the plaint, but he fails to do so the suit will have to be dismissed.

In the instant case, the plaintiff should have been given an opportunity to cure the defect but he was not given any such

opportunity. In that view of that matter and for the sake of justice and fairness, the suit should be sent back to the trial Court for giving the plaintiff an opportunity to cure the defects mentioned above.

Accordingly, the judgment and decree passed by the appellate Court and trial Court are set aside. The suit is sent back to the trial Court who shall notify the parties and shall give an opportunity to the plaintiff to cure the defects within a period of 6(six) months from the date of receipt of the judgment and order and the L.C.R., failing which the suit shall be dismissed. The parties are at liberty to amend the respective pleadings and adduce additional/further evidence, if so required, and if so advised.

With the above observations and directions, the Rule is disposed of.

Send down the L.C.R.