

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

Civil Revision No. 1704 of 2020

IN THE MATTER OF

Dilip Chandra Ghosh and others

.....Defendants-Respondents-Petitioners

-Versus-

Ershad Miah

.....Plaintiff-Appellant-Opposite party

Mr. Probir Halder, Advocate

.....For the petitioners

No one appears

.....For the opposite party

Heard on 14.02.23, 15.02.23 and

judgment passed on 23.02.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

“Records need not be called for. Let a Rule be issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and order dated 02.09.2020 passed by the learned Joint District Judge, 2nd Court, Cumilla in Title Appeal No. 160 of 2019 arising out of the judgment

and decree dated 25.04.2019 passed by the learned Assistant Judge, Brahmanpara, Cumilla in Title Suit No. 23 2016 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 proceedings of Title Appeal No. 160 of 2019 were stayed for 4(four) months and lastly, it was extended on 19.09.2022 for 1(one) year from the date of expiry.

The present opposite party No. 1 as the plaintiff filed Title Suit No. 23 of 2016 before the Court of Learned Assistant Judge, Brahmanpara, Cumilla imp leading the present petitioners as the defendants for a declaration that the publication of the name of one Monindra Chandra Ghosh along with others in R.S Khatian No. 130 corresponding to C.S Khatian No. 170 of J.L. No. 400, Mouza-Brahmanpara under Police Station-Burichang, presently Brahmanpara, Cumilla was wrong.

Defendant Nos. 1-9 contested the suit by filing separate written statements denying the averments made in the plaint.

After the conclusion of the trial, the learned Trial Judge by judgment and decree dated 25.04.2019 dismissed the suit with cost on

the ground that the suit is barred by limitation and res-judicata. Against which the plaintiff as the appellant preferred Title Appeal No. 160 of 2019 before the learned District Judge, Cumilla. Thereafter, the same was transferred before the learned Joint District Judge, 2nd Court, Cumilla for hearing, and during the pendency of the appeal the plaintiff on 04.03.2020 filed an application before the Court for amendment of the plaint and after hearing the same the learned Judge by impugned judgment and order dated 02.09.2020 allowed the application for amendment of the plaint.

It has been stated that earlier the plaintiff, his mother, and sisters filed Title Suit No. 16 of 2005 claiming right and title on the western side of plot No. 47 of C.S. Khatian No. 386 which was dismissed against which Title Appeal No. 38 of 2010 was preferred which was also disallowed against which they again filed Civil Revision No. 3189 of 2011 before the High Court Division, which rejected the Rule issued in the revision by judgment and order dated 13.11.2014 in which it has been decided that the plaintiffs had no right and title in the western half side of plot No. 386, rather; 23 decimals of land out of 47 decimals from its eastern part has been recorded in the name of the plaintiffs in B.S. Khatian No. 659.

Being aggrieved by the said impugned judgment and order dated 02.09.2020 the defendants as the petitioners had preferred this civil revision before this Court and obtained the instant Rule.

Anyway, Mr. Probir Halder, the learned Advocate appearing for the defendants-petitioners submits that the only controversy between the parties is as to whether the plaintiff acquired right and title in 23 decimals of land out of 47 decimals of R.S. plot No. 386 appertaining to R.S. Khatian No. 130 from its 'eastern side' or 'western side'. The said issue has been well settled by the Hon'ble High Court Division in Civil Revision No. 3189 of 2011 by holding that the plaintiffs acquired right and title on the eastern side of plot No. 386. But the impugned order of amendment allowing the plaintiff-appellants to acquire right and title in the western side of the plot is very much uncalled for, and a violation of the provision of article 111 of the Constitution of the Peoples Republic of Bangladesh.

He further submits that in the original plaint i.e. before amendment, after the prayer in paragraph No. 7 the description given in the schedule "জিলা-কুমিল্লা, থানা-বুড়িচং, হালে-ব্রাহ্মণ পাড়া মৌজা ব্রাহ্মণ পাড়া জে এল নং- ৪০০ মধ্যে আর.এস খতিয়ান নং-১৩০ দাগ নং-৩৮৬ পরিমান ৪৭ শতক তদান্তরে পূর্বাংশে ২৩ শতক। যাহার উত্তরে-দিলীপ কান্তি ঘোষ, দক্ষিণে-অনু মিত্রা, পূর্বে-নুরুল ইসলাম, পশ্চিমে-দিলীপ

কুমার।” whereas, only prayer for inserting the words “সি.এস. ১৭০ খতিয়ান” in the second line of the schedule were made, but it appears from the amended plaint that in the schedule the word “পশ্চিমাংশে and পূর্বে বাদী” has been inserted by striking out the words “পূর্বাংশে and পূর্বে-নুরুল ইসলাম” vide order No. 12 dated 02.09.2020 which is a gigantic fraud upon the Court.

He next submits that the plaintiff has committed fraud upon the Court by inserting the words “পশ্চিমাংশে” in place of “পূর্বাংশে” and “পূর্বে বাদী” in place of “পূর্বে নুরুল ইসলাম” whereas in the application for amendment for the plaint no prayer for inserting the words “পশ্চিমাংশে” and “পূর্বে বাদী” were made and as such, the entire amendment of the plaint is liable to be set aside.

He lastly submits that it is apparent from the application for amendment of the plaint that the plaintiff did not pray for amending the schedule (present schedule No. 1) of the plaint for inserting the word “পশ্চিমাংশে” striking out the word “পূর্বাংশে” and for inserting the words “পূর্বে বাদী” striking out the words “পূর্বে নুরুল ইসলাম” but the plaintiff by practicing fraud upon the Court has inserted the words “পশ্চিমাংশে” and “পূর্বে বাদী” and as such, the impugned order is liable to be set aside.

However, no one appears for the opposite party to oppose the Rule.

On perusal of the materials on record, I find substance in the submissions made by the learned Advocate for the petitioners and merit in the Rule. In the premises, it appears that the learned Judge of the Appellate Court below on an erroneous view passed the impugned order allowing the application for amendment of the plaint which is liable to be set aside for the ends of justice.

As a result, the Rule is made absolute without cost.

Stay, if any, vacated.

The impugned judgment and order dated 02.09.2020 passed by the learned Joint District Judge, 2nd Court, Cumilla in Title Appeal No. 160 of 2019 arising out of the judgment and decree dated 25.04.2019 passed in Title Suit No. 23 of 2016 is hereby set aside.

Send a copy of this judgment to the Court concerned at once.