

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2417 of 2020.

In the matter of:

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

And

Ahamad Hossen and others

...Petitioners

-Versus-

Hamid Ullah and others

...opposite parties

Mr. Muhammad Rejaul Husain, Advocate

...For the petitioners

No one appears

..For the opposite parties

Heard & Judgment on 29.10.2024.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 09.03.2020 passed by the learned District Judge, Paribesh Aladat, Chattogram in Other Appeal No.635 of 2018 rejecting an application for amendment of plaint should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title for 1.23 acres land alleging that he is in peaceful possession in 1.08 acres cultivable land

and 15 decimal homestead land by inheritance but the B.S khatian has been erroneously prepared in the name of the defendants.

The suit was contested by defendant No.1 who claimed that he acquired the disputed land by purchase and possessing the same by constructive dwelling house.

On consideration of evidence on record and hearing of arguments the learned Assistant Judge dismissed the suit.

Being aggrieved by above Judgment and decree of the trial court above plaintiffs as appellants preferred Other Appeal No.635 of 2008 to the District Judge, Chattogram which was transferred to the Environment Court for hearing and disposal.

On 12.02.2020 appellants filed a petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint alleging that during pendency of above suit the defendant Nos.1 and 2 have forcibly dispossessed the plaintiffs from 108 decimals cultivable land on 31.01.2020 and the plaintiffs sought a decree for recovery of possession for above land.

The learned Joint District Judge of the Environment Court rejected above petition vide impugned order dated 09.03.2020.

Being aggrieved by above judgment and order of the learned judge of the court of appeal below above appellants as petitioners moved to this court and obtained this rule.

Mr. Muhammad Rejaul Husain learned advocate for the petitioners submits that Title Suit No.01 of 2016 was dismissed on contest on 19.08.2018 and the plaintiffs preferred Other Appeal No.635 of 2018 within the statutory period of limitation. During pendency of above appeal the respondents forcibly dispossessed the appellants from disputed 1.08 decimals land on 31.01.2020. As such the appellant submitted above petition for amendment of the and paid advolaram court fees. The learned Joint District Judge committed serious illegality in rejecting above petition on the basis of the findings of the learned Judge of the trial court of the trial court which is not tenable of law.

No one appears on behalf of the opposite parties at the time of hearing of this revision.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on records.

It is well settled that an appeal from a judgment and decree of civil court is regarded as continuation of the original proceedings and a

court of appeal is also a court of facts. In appropriate cases an appellate court can allow amendment of the pleadings and record additional evidence and pronounce judgment on consideration of the same.

The appellant submitted a petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint alleging that the respondents have forcibly dispossessed the appellants on 31.01.2020 during pendency of the appeal from disputed 1.08 decimal land.

The truthfulness and correctness of above statement shall be determined at the time of hearing of the appeal on consideration of evidence. Above fact having allegedly taken place during pendency of the appeal the learned judge of the court of appeal below should have allowed above amendment of the plaint and provide the respondent an opportunity to submit an additional written statement, if any, against above amendment of the plaint.

The learned judge of the court below has rejected above petition on the basis on the findings of the learned judge of the trial court that the appellants were out of possession of above land. Above impugned judgment as well as above

findings of the trial court has been challenged by the appellants in this appeal and before hearing of the appeal on merit the learned judge of the court of appeal below cannot accept above findings of the trial court as justified and lawful nor pass an order for rejection of an application for amendment of the plaint.

In above view of the materials on record I find substance in this petition and the rule issued in this connection deserves to be made absolute.

In the result, the rule is made absolute.

The judgment and order dated 09.03.2020 passed by the learned Joint District Judge, Paribesh Aladat, Chattogram in Other Appeal No.635 of 2018 is set aside.

The petition filed by the appellant under order 6 rule 17 for amendment of plaint is allowed.

Respondents are directed to submit additional written statement if any within 30 days from the date of receipt of this order.

The learned Joint District Judge is directed to proceed with the disposal of above appeal in accordance with law expeditiously.