

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 620 of 2020

Kabir Ahmed Bhuya and others

..... Petitioners

-Versus-

Sonali Bank Ltd. and others

.... Opposite parties

Mr. Md. Zakir Hossain, Advocate

..... For petitioners

Mr. Md. Khaled Hamid, Senior Advocate with

Mr. Md. Moinul Hossain, Advocate

.... For opposite party No. 5

Heard on: 21.10.2024 and 27.10.2024

Judgment on: 04.11.2024

In the instant civil revisional application, this Court on 23.02.2020 issued a Rule calling upon the opposite parties to show cause as to why the order dated 13.10.2019 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 182 of 2007 rejecting the application under Order VI, rule 17 read with Section 151 of the Code of Civil Procedure (CPC) for amendment of plaint should not be set aside.

The defendant opposite party No. 5, who is the 3rd party purchaser of the suit land, contested the Rule.

The present petitioner as plaintiffs filed the title suit for declaration that mortgage deed No. 15236 and power of attorney No. 15237 both dated 30.07.1984 executed by defendant No. 3 (M/S. Alam Enterprise, proprietor being defendant No. 4) in favour of defendant No. 2 Manager, Sonali Bank, equitable mortgage deed dated 29.07.1984 and affidavit No. 171 dated 30.07.1984 are forged, fabricated and ineffective. The plaintiffs further prayed for a decree that the *ex parte* preliminary decree dated 26.01.1989 and final decree dated 04.07.1989 passed in Title Suit No. 76 of 1988 by the Sub-Judge, Commercial Court No. 1, Dhaka and sale certificate issued by the executing Court in favour of the auction purchasers (defendant-opposite party Nos. 5-12) in Execution Case No. 49 of 1989 arising out of the said decree are ineffective, nullity and not binding upon the plaintiffs. Finally, the plaintiffs prayed for a decree for recovery of khas possession of suit land.

It is stated in the plaint that the plaintiffs are the owner of the suit land. They kept the suit land in mortgage with Dhaka Bank and obtained loan facilities. Land related documents are kept with Dhaka Bank. While the plaintiffs were in possession of the suit land, the defendant Nos. 5-12 along with police force dispossessed the plaintiffs from the suit land on 18.03.2007 and took possession of the same. They told the plaintiffs that they had obtained sale certificate by the Court in Money Execution Case No. 49 of 1989 arising out of

Title Suit No. 76 of 1988 and that they are auction purchaser of the suit land. On query, the plaintiffs learnt that the defendant No. 4 created forged documents as mentioned in the prayer portion of the plaint and kept the suit land in mortgage with the Sonali Bank showing the R.S. recorded owner Juran Mia as 3rd party guarantor and obtained loan of Tk. 5 lacs. Juran Mia had already passed away on 12.02.1979 before execution of the document. The borrower defaulted in repaying the loan and Sonali Bank as plaintiff filed Title Suit No. 76 of 1988 and obtained *ex parte* decree. Decree was put into execution in Execution Case No. 49 of 1989 and eventually, defendant Nos. 5-12 auction purchased the suit land. Thereafter, the plaintiffs filed the instant suit on 14.05.2007.

During the trial of the suit, the plaintiffs on 15.09.2019 filed an application to add Janata Bank Head Office as defendant No. 13 and Manager of Janata Bank, Mokim Katara Branch, Lalbagh, Dhaka as defendant No. 14 and also for amendment of the plaint. The said application was filed under order I rule 10 and order VI rule 17 read with Section 151 of the CPC. The trial Court, vide the impugned order dated 13.10.2019 rejected the application on three grounds, namely the plaintiffs filed a single application praying for additional party and amendment of plaint which is not maintainable in law, the plaintiffs filed the application after 12 years of the filing the suit without

showing sufficient reason for delay which is not maintainable and the instant suit is barred by Section 20 of the Artha Rin Adalat Ain, 2003.

First of all, there is no bar in the CPC to make a prayer for addition of party and amendment of pleadings in a single application. It is settled principle of law that necessary and proper party can be added to the suit at any stage in the proceedings. The said principle applies to amendment of pleadings. In the instant application for addition of party and amendment of plaint, the plaintiffs have shown sufficient reasons for delay in filing the application. The suit is not hit by Section 20 of the Artha Rin Adalat Ain. Authority for this proposition of law is a case of *Md. Sekandar and another vs. Janata Bank Ltd. and others*, 38 BLD (AD) 129. Moreover, earlier the defendant Nos. 5-12 filed an application for rejection of the plaint on ground of maintainability as being barred by the Artha Rin Adalat Ain which was rejected by order dated 21.04.2008. Therefore, the issue cannot be raised again.

The trial Court did not discuss about the merit of the application. I have gone through the application. It is categorically stated in the application that the present defendant No. 4 kept the suit land in mortgage with Janata Bank showing Juran Mia as 3rd party guarantor and obtained loan facilities. Janata Bank filed Money Suit No. 23 of 1991 and obtained *ex parte* decree on 19.01.1992. Thereafter, Janata Bank filed Money Execution Case No. 7 of 1993 in

Artha Rin Adalat No. 1, Dhaka and auction notice was published under Section 33 of the Artha Rin Adalat Ain, 2003 on 08.10.2003. In the said application for addition of party and amendment of plaint, the details of the documents with reference to their deed number and date were given. The plaintiffs also sought similar relief against the Janata Bank which is sought against the principal defendant Sonali Bank in the instant suit. In my view, the proposed amendment does not change the nature and character of the suit. Hence, I find merit in the Rule.

In the result, the Rule is made absolute. The order dated 13.10.2019 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 182 of 2007 is set aside. The application for addition of party and amendment of plaint is allowed.