

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 1288 OF 2021.

IN THE MATTER OF:

An application under Section 115(4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Khan Fatim Hasan and another.

....Defendat-petitioners.

-Versus –

Md. Nizamul Hoque and another.

....Plaintiff-opposite parties.

Mr. Md. Toufiq Zaman, Advocate, with

Mr. Md. Firoj Kabir, Advocate with

Mr. Md. Golam Rabbani, Advocate.

..... For the petitioners.

Mr. Md. Kamruzzaman, Advocate with

Mr. S.M. Shamim Hossain, Advocate

..... For opposite parties.

Heard on: 31.10.2023 and Judgment on 02.11.2023.

On an application of the petitioners Khan Fatim Hasan and another under section 115 (4) of the Code of Civil Procedure the leave was granted and the Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and order No. 2 dated 04.03.2021 passed by the learned District and Sessions Judge, Dhaka in Civil Revision Case No. 20 of 2021 summarily rejecting the revision and thereby affirming the order No. 37 dated 20.01.2021 passed by the Senior Assistant Judge, 6th Court, Dhaka in Title Suit No. 21 of 2015 granting permission to the plaintiff opposite parties for 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.

Facts necessary for disposal of the Rule, in short, is that the plaintiff opposite parties filed Title Suit No. 21 of 2015 against the defendants for declaration of title and for correction of the record of City Jorip. Subsequently the defendant No.1 Khan Saifur Rahman died and his legal heirs were substituted as defendant No. 1(a) to 1(c).

On 19.11.2019 the plaintiff opposite parties filed an application for amendment of the plaint with a prayer for partition since the record was prepared ejmali in the name of defendant Nos. 1-11 and claiming that by the proposed amendment the nature and character of the suit has not been changed. The said application was allowed by the trial court by its order No. 37 dated 20.01.2021.

Against the said order the defendant No. 1(a)-1(c) filed revisional application under Section 115(2) of the Code of Civil Procedure before the District Judge, Dhaka being Civil Revision No. 20 of 2021.

The learned District Judge, Dhaka after hearing the parties and considering the facts and circumstances of the case summarily rejected the revisional application by its order No. 2 dated 04.03.2021.

Being aggrieved by and dissatisfied with the impugned order dated 04.03.2021 the petitioners filed this revisional application under Section 115(4) of the Code of Civil Procedure accordingly the leave was granted and the Rule was issued.

Mr. Kamruzzaman, the learned Advocate along with Mr. S.M. Shamim Hossain, Advocate enter appeared on behalf of the plaintiff-opposite parties through vokalatnama to oppose the Rule.

Mr. Firoj Kabir for Md. Golam Rabbani, Advocate appearing on behalf of the defendant-petitioners submits that by the impugned order the nature and character of the pleadings has been changed and thus both the courts committed error in law resulting in an error in the decision occasioning failure of justice. He further submits that both the courts failed to understand that the plaintiffs purchased the land from the predecessor of the petitioners the defendant No.1 and also from one Abdul Bari and both the transferor purchased the suit land from the original S.A. recorded owner and both the transferor of the plaintiffs separated their portion through mutation and then the plaintiffs also mutated their names and resided separately in their respective portion of the land but inadvertently the City Jorip was wrongly prepared in the name of defendant Nos. 1-11 in such a case the declaration of title along with prayer for correction of record is the right prayer and if the prayer for partition is allowed then several multiplicity of the suit has been arisen and for ends of justice the said prayer should not be allowed. He prayed for making the Rule absolute.

Mr. Md. Kamruzzaman, the learned Advocate along with Mr. S.M. Shamim Hossain, Advocate appearing on behalf of the opposite parties submits that the plaintiffs purchased the land from the predecessor of the

petitioner Khan Saifur Rahman the defendant No.1 and one Abdul Bari and said two persons also purchased the land from the S.A. recorded owner and Khan Saifur and Abdul Bari after purchasing the land mutated their names and the plaintiffs also mutated their names and are in possession of their respective portion of the land by erecting dwelling hut but inadvertently the present City Jorip was prepared in the heirs of the original S.A. recorded owner and some portion of the land was still remaining in the ownership of the S.A. recorded owners and no partition among them by meets and bounds thus for avoiding multiplicity of the case it is better to amend the pleadings with a prayer for partition. He further submits that at the time of preparation of the C.T. Jorip the Math parcha was prepared in the name of the plaintiffs and for the rest portion of the land was prepared in the name of Khan Saifur Rahman but subsequently when the plaintiffs went to the Tahshil office for paying rent then the authority disclosed that the record was prepared in the name of heirs of the S.A. recorded owner thus they requested to their Bayah Khan Saifur Rahman to correct the record but he could not do the same thus the plaintiffs within the stipulated period filed this suit for declaration of title and for correction of the record. He further submits that the defendant Nos. 2-11 are the heirs of the S.A. recorded owner and they transferred the land to defendant No.1 and one Abdul Bari and from whom the plaintiffs purchased the land but some portion of land of the same khatian remained in the ownerships of the defendant No.2-11 but

the City Jarip was wrongly prepared only in the name of the defendant Nos. 1-11 in such a case for avoiding further multiplicity of the case the prayer for partition is required and by the proposed amendment the nature and character of the suit has not been changed and thus the court below did not commit any error in law resulting in an error in the decision occasioning failure of justice. He prayed for discharging the Rule.

I have heard the learned Advocate of both the sides, perused the impugned judgment and the order of the courts below and the papers and documents as available on the record.

The plaintiff opposite party Nos. 1 and 2 filed Title Suit No. 21 of 2015 against the defendant Nos. 1-11. The plaintiff's case is that they have purchased the land from C.S. Dag No. 5197, 5218 and 5191 and the Baya of plaintiffs the defendant No.1 and one Abdul Bari also purchased land from the aforesaid three plots and after purchased of the said land they mutated their names and also paying rents regularly to the Government Authorities and subsequently the plaintiffs purchased the land from defendant No.1 and said Abdul Bari Khan.

The plaintiffs purchased the suit land by separate two deeds being No. 5006 dated 21.06.1989 and deed No. 2757 dated 30.04.1991 and they are in possession of the said suit land by constructing dwelling hut with boundaries. The plaintiffs claimed that though in math porcha the entire 13.5 decimal of land was recorded in the name of the plaintiffs as plot No. 37126 but when the plaintiffs obtained the original printed record it was

revealed that the record was not prepared in the name of the plaintiffs but inadvertently which was recorded in the name of the defendant Nos.1-11. Thus the plaintiff filed the suit within the stipulated period of time with a prayer for declaration of title and for correction of the record.

It appears that the prayer as made by the plaintiffs is a correct prayer that for declaration of title and consequential relief for correction of record in such a case section 42 does not hit the instant case. But it appears from the statement made in the plaint that the plaintiffs purchased land from three plots and though the plaintiffs are in possession of the suit land and mutated their names in a single Khatian but some portion of the land has remained in the ownerships of the S.A. recorded owner and inadvertently the record was finally prepared in the name of defendant Nos. 1-11 in such circumstances of the facts the plaintiffs rightly filed the application for amendment of the plaint with a prayer for partition.

The trial court after consideration of the said facts opined that though the plaintiffs purchased the land from the defendants but inadvertently the City Jorip was prepared in the name of the heirs of the original S.A. recorded owner. The trial court also opined that it appears that nothing was mentioned that the entire C.S. or S.A. recorded land were separated by meets and bounds among the parties. The Revisional court also found that the defendant Nos. 1-11 are the owners of the

Ejmali property and in such a case the prayer for partition for the entire plots as mentioned in the deeds of the plaintiffs is required.

It is our view that the plaintiffs are in possession of a single plot but inadvertently the City Jorip was recorded in the name of the defendant Nos. 1-11. Though Mr. Khan Saifur Rahman and one Abdul Bari purchased the land from the original S.A. recorded owner and mutated their names and the plaintiffs also mutated their names after purchased of the land and are in possession of the said land by erected dwelling hut but since the record was prepared in the name of defendant Nos.1-11 in ejmali and the plaintiff purchased land from three S.R. plots and no evidence that the said land was separated by meets and bounds among the parties in such circumstances of the facts the revisional court rightly upheld the trial courts order maintaining the order of amendment of the pleading.

It is well settled principle that all the dispute should be resolved in partition suit even the correction of record in such a case the proposed amendment inserting the prayer for partition is a right prayer and by which the nature and character of the suit has not been changed.

Considering the facts and circumstances of the case it is my view that both the courts in disposal of the application did not commit any error of law resulting in an error in the decision occasioning failure of justice. Thus the revision consequently, failed and the Rule is liable to be discharged.

In the result the Rule is discharged.

The order of stay granted earlier by this court is hereby recalled and vacated.

Since this is long pending case and thus it is better to direct the trial court to dispose of the suit as early as possible preferably within 1 (one) year in accordance with law.

Communicated the order at once.

M.R.