

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz
Civil Revision No. 3514 of 2022

Chemon Ara Begum
Defendant No. 6-Respondent- Petitioner

Versus

Shafiqul Alam and others
Plaintiffs-Appellants-Opposite Parties

Nurjahan Begum and others
Defendants-Respondents-Opposite
Parties

Mr. Masud Reza Sobhan, Advocate with
Mr. Fatema S. Chowdhury, Advocate
for the defendant No. 6-respondent-
petitioner

Mr. Md. Zakir Hossain, Advocate
for the plaintiff-appellant-opposite party
No. 1

Judgment on: 11.12.2023

This Rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the impugned Judgment and Order dated 02.6.2022 passed by the learned District Judge, Chattogram in Other Appeal No. 195 of 2021 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 further proceeding of the said Other Class Appeal No. 195 of 2021 was stayed.

The opposite party Nos. 1-4 as plaintiffs filed Other Class Suit No. 222 of 2013 in the Court of learned Joint District Judge, Satkania, Chattogram for recovery of Khas possession and for a declaration that Kabala deed No. 3861 dated 18.11.2003 is false, fraudulent and ineffective and the defendant No.6 has not acquired any title on the basis of it.

Only the defendant No. 6 contested the suit by filing a written statement denying all the material allegations made in the plaint.

The plaintiffs' case and the written statement have been narrated in details in this Revisional Application.

The learned Joint District Judge, Satkania, Chattogram dismissed the suit vide its Judgment and decree dated 28.3.2021.

Against the aforesaid Judgment and Decree the plaintiffs as appellants preferred Other Appeal No. 195 of 2021 before the learned District Judge, Chattogram.

During pendency of the appeal the appellant on 16.3.2022 filed an application under Order 6 rule 17 readwith section 151 of the Code of Civil Procedure for amendment of the plaint which was allowed by the learned District Judge, Chattogram on 2.6.2022.

Being aggrieved by and dissatisfied with the impugned Judgment and Order the respondent as petitioner moved this application under Section 115(1) of the Code of Civil Procedure, 1908 before this Court and obtained this Rule.

Mr. Masud Reza Sobhan, learned Advocate appearing with Ms. Fatema S. Chowdhury learned Advocate for the defendant No. 6-respondent-petitioner, submits that the Court of Appeal below should have considered that the proposed amendment introducing radical changes in the plaint cannot be allowed and it is settled principle of law that the amendment of plaint or written statement is not allowed when a party intends to fill up the gaps in his evidence and to remove the lacunae and defects in such evidence, as the Appellant with a malafide intention to succeed in the appeal filed the application and thus the Court of Appeal below committed an error of law resulting in an error in such Order occasioning failure of justice and hence the impugned Judgment and Order is liable to be set aside.

Mr. Md. Zakir Hossain, learned Advocate for the opposite parties, submits that for proper adjudication of the dispute and to avoid the multiplicity of proceeding/suits, amendment of plaint can be allowed and since there is no chance of changing nature and character of the suit by the proposed amendment the Appellate

Court below rightly allowed the application but the respondent petitioner with an intention to delay disposal of the appeal obtained the Rule which is liable to be discharged.

Heard the learned Advocates for the parties and perused the record.

From the record it appears that the plaintiff-opposite parties filed the application for amendment of the plaint prayed for insertion of a new prayer to the effect that “নালিশী সম্পত্তি বাদীর স্বত্বীয় সম্পত্তি মর্মে উচ্চরনে ডিএলি হয়” and as such prayer for amendment does not change any nature and character of the suit for which the Appellate Court below rightly allowed the application.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

Accordingly, the Rule is discharged without any order as to costs.

The impugned Judgment and Order dated 02.6.2022 passed by the learned District Judge, Chattogram in Other Appeal No. 195 of 2021 is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Communicate the Judgment to the Courts below at once.