

**District: Sirajgonj**

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

**Present:**

**Mr. Justice Md. Zakir Hossain**

**Civil Revision No. 3933 of 2022**

**In the matter of:**

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

-And-

**In the matter of:**

Most. Mariam Bibi and others

..... Petitioners

-Versus-

Most. Rowshan Ara Haque and others

..... Opposite Parties

Mr. Jahirul Haque Kislul, Advocate

.....For the petitioners

Mr. Md. Zakir Hossain, Advocate

..... For the opposite parties

**Heard On: 01.11.2023**

**Judgment On: 25.02.2024**

**Md. Zakir Hossain, J:**

At the instance of the petitioners, the Rule was issued with the following terms:

*“Let a Rule be issued calling upon the opposite party Nos. 1-7 to show cause as to why the judgment and order dated 19.05.2022 passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Sirajgonj in Other Class Appeal No. 67 of 2018 rejecting the application under Order 1 Rule 10 of the Code of Civil Procedure shall not be set aside and/or such other or further order or*

*orders passed as to this Court may seem fit and proper.”*

Facts leading to the issuance of the Rule are *inter alia* that the opposite party Nos. 5-6 being the plaintiffs instituted Other Class Suit No. 212 of 2013 before the Court of the learned Senior Assistant Judge, Ullapara, Sirajgonj for declaration of title in the land as mentioned in the schedule to the plaint. The defendant Nos. 6, 7 & 8 entered appearance in the suit and contested the suit by filing written statement and denied the allegation as set out in the plaint. After conclusion of the trial, the learned Senior Assistant Judge was pleased to decree the suit. Being aggrieved by and highly dissatisfied with the judgment and decree of the learned Senior Assistant Judge, the contested defendant Nos. 6, 7 & 8 preferred Other Class Appeal No. 67 of 2018 before the Court of the learned District Judge Sirajgonj. After admitting the appeal, the learned District Judge transmitted the record of the same to the learned Joint District Judge, 3<sup>rd</sup> Court, Sirajganj for disposal. In the aforesaid appeal, the instant petitioner filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to be added as party. Upon hearing, the learned Joint District Judge was pleased to reject the said petition. Challenging the legality and propriety of

the judgment and order of the learned Joint District Judge, the petitioners moved this Court and obtained the Rule.

Heard the submissions advanced by the learned Advocate of the parties at length and perused the materials on record with care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

In the judgment of the trial Court the learned Assistant Judge held:

“বিবাদীপক্ষ দাবী করেন আজিজুল হক তালুকদার এস.এ. ১৫৭ খতিয়ানের সাবেক ৮০৬ দাগের উত্তরাংশের ১৫ শতক ভূমি ময়দান আলীর সাথে ৫৬১৬ নং বিনিময় দলিল মূলে হস্তান্তর করেন। উক্ত ৫৬১৬ নং দলিল (প্রদংক) হিসেবে চিহ্নিত হয়েছে। যেহেতু আজিজুল হক নালিশী দাগে তার ১৫ শতক হস্তান্তর করেছেন, নালিশী দাগে তার কোন স্বত্ত্ব নেই এবং একই কারণে ৬/৭/৮ নং বিবাদীর অত্র মোকদ্দমায় প্রতিদ্বন্দ্বীতার কোন যৌক্তিক কারণ নেই। কিন্তু আজিজুল হকের নামে আর.এস ৬৮ খতিয়ানে রেকর্ড হয়েছে যা বিবাদীপক্ষের স্বীকৃত মতেই ভ্রমাত্মক এবং ৬৮ খতিয়ানে ময়দান আলীর নামে রেকর্ড হওয়া উচিত ছিল।”

The petitioners in his petition to be added as party has clearly depicted under paragraph-3 contending that in respect of 15 decimals of land appertaining to Kha-schedule to the plaint, the petitioner became owners and have possessing the same for more than 15 years. The learned Advocate of the opposite parties submits that since the land of the petitioners are admitted and undisputed they are neither necessary party nor proper party.

Appeal is continuation of the suit. Appellate Court shall have power of the trial Court in addition to power vested upon it under Section 107(1) of the CPC. In an appropriate case, Court may add or strike out the name of any person at any stage of the proceedings including at the appellate stage.

It appears from the record that the petitioner's predecessor; Moydan Ali obtained 15 decimals of land from Azizul Haque Talukder appertaining to khatian No. 157, plot No. 806 by dint of a registered exchanged deed which was duly acted upon. The contention of the petitioner has not been denied either by the plaintiff or the defendant of the original suit. But the learned Judge of the Appellate Court without considering the vital aspect and without considering the facts delineated in the application to be added as party to the aforesaid appeal most illegally rejected the petition.

My penultimate conclusion is that, the petitioners have got interest in the suit land. Therefore, the contention of the petitioners that they are at least proper party cannot be rebuffed. Moreover, their presence cannot be ignored in any view of the matter. Hence, I find substance in the Rule. The Rule deserves to be made absolute.

In the result, the Rule is made absolute; however, without passing any order as to costs and accordingly, the impugned judgment and order passed

by the learned Joint District Judge, third Court Sirajgonj is hereby set aside.

The learned Joint District Judge is directed to dispose of the Other Class Appeal No. 67 of 2018 within 04 (four) months from the date of receipt of the copy of this judgment on merit positively. No unnecessary adjournment petition shall be entertained from either side.

Let a copy of the judgment be transmitted to the Courts below at once.

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**(Md. Zakir Hossain, J)**