

District-Bogura.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3541 of 2022.

Begum Khaja Eliza Yeasmin and another.

----- Plaintiffs-Opposite Parties-Petitioners.

-Versus-

Md. Abu Tareq alias Tarequl Islam and others.

----- Defendants-Petitioners-Opposite Parties.

Mr. Md. Saidul Alam Khan, with

Mr. Md. Asadur Rahman, Advocates

----- For the Plaintiffs-Opposite Parties-Petitioners.

Mr. Ala Uddin Ahmed, Advocate

----- For the Defendants-Petitioners-Opposite Parties.

Heard On: 10.07.2025; 16.07.2025.

And

Date of Judgment: 22nd Day Of July 2025.

Md. Toufiq Inam, J.

This Rule, at the instance of the plaintiff, was issued calling upon the opposite parties to show cause as to why the judgment and order dated 01.06.2022, passed by the learned Senior District Judge, Bogura in Civil Revision No. 21 of 2022, setting aside the order dated 03.03.2022 passed by the learned Senior Assistant Judge, 2nd Court, Bogura in Other Class Suit No. 79 of 2018, allowing the plaintiff's applications for amendment of the plaint and for local investigation, should not be set aside, or such other order passed as to this Court may seem fit and proper.

Briefly stated, the plaintiff instituted a suit for declaration of title and recovery of *khas* possession in respect of the suit land described in the schedule to the plaint. During the pendency of the suit, the plaintiff

filed two applications—one under Order VI Rule 17 of the Code of Civil Procedure (CPC) seeking amendment of the plaint, and the other under Order XXVI Rule 9 CPC seeking appointment of a local commissioner to measure the suit land and ascertain the existence of structures allegedly erected by the defendants.

The proposed amendment sought to incorporate additional facts, correct the date of the cause of action, elaborate on specific acts allegedly committed by the defendants, and specify the exact quantum of land allegedly under illegal possession. Importantly, the amendment did not alter the nature or character of the suit or affect the identity of the land in dispute.

Upon hearing both parties, the trial court allowed both applications by a single order dated 03.03.2022. The defendants challenged the said order in revision before the learned District Judge, who, by the impugned judgment, allowed the revision and set aside the trial court's order. Aggrieved by the said decision, the plaintiff moved this Court under Section 115(4) CPC and obtained the present Rule.

Mr. Md. Saidul Alam Khan, the learned Advocate for the plaintiff-petitioner, submits that the trial court rightly allowed the application under Order VI Rule 17 CPC, as the proposed amendment neither introduces a new cause of action nor alters the fundamental nature of the suit. Rather, it seeks to clarify existing averments, correct inadvertent errors, and specify the extent of the defendants' possession. The amendment is essential for a just and complete adjudication and would also help avoid multiplicity of litigation. No prejudice is caused to the defendants, who will have ample opportunity to respond by filing a written statement and cross-examining witnesses.

By relying on the case of *Akram Ali vs. Yasin Ali*, reported in 17 BLC (AD) 135, Mr. Khan argues that amendment of the plaint may be allowed at any stage of the proceedings to determine the real question in controversy, provided that the amendment does not change the nature and character of the suit land. Incorporation of additional facts, in this context, does not affect the legal identity of the land in dispute.

Mr. Khan further submits that the suit is still at the stage of preemptory hearing and no evidence has yet been recorded. Therefore, the defendants' objection that the amendment is impermissible after commencement of trial is both factually and legally untenable. The bar under the proviso to Order VI Rule 17 CPC only applies once trial has formally commenced, i.e., when the first witness is examined, which has not occurred in this case.

As to the application under Order XXVI Rule 9 CPC, he submits that in a suit involving allegations of illegal occupation and unauthorized construction, local investigation is indispensable for determining the actual physical status of the suit land, including measurements, boundaries, and structures. Although the defendants are in possession, the extent and boundary of such possession remain in dispute. Since the plaintiff seeks recovery of *khas* possession of a specific portion of land, accurate measurement is essential. The revisional court, in setting aside this discretionary and interlocutory order, acted without jurisdiction and failed to identify any perversity, legal infirmity, or failure to exercise jurisdiction by the trial court.

Mr. Ala Uddin Ahmed, the learned Advocate for the defendant-opposite parties, contends that the trial court erred in passing a composite and cryptic order allowing both applications without considering the merits of each independently.

He argues that the proposed amendment introduces new facts, modifies the timeline and cause of action, and fundamentally alters the factual matrix of the case, thereby exceeding the permissible scope of amendment under Order VI Rule 17 CPC. It causes prejudice to the defendants, particularly as no plausible explanation has been offered for the delay in seeking such amendment. He further submits that since the written statement has already been filed and the trial has commenced, such amendment is no longer legally permissible.

Regarding the application for local investigation, Mr. Ahmed submits that it is unwarranted as possession is admitted and the dispute centers on title. The issues raised are capable of resolution through evidence at trial, without recourse to a local commissioner. Allowing both applications at a late stage will delay proceedings and cause prejudice to the defendants. The trial court's order, according to him, lacks independent reasoning and reflects a mechanical application of judicial mind. Thus, the revisional court rightly interfered.

Having heard the learned Advocates for both sides and upon perusal of the judgment and orders of the courts below, as well as the materials on record, this Court proceeds to render its decision.

Although the defendants' possession is admitted, the exact boundary, extent, and nature of such possession remain disputed, particularly in view of the proposed amendment specifying the portion claimed by the plaintiff. The plaintiff has also alleged unauthorized constructions. A local investigation is necessary to ascertain these physical facts, which cannot be effectively determined without an on-site investigation. Such an investigation would also aid in the proper framing and eventual execution of the decree, if any passed.

It is a settled principle that amendments under Order VI Rule 17 CPC should be allowed when necessary to determine the real controversy

between the parties and where no prejudice is caused to the opposing party. In the present case, the amendment clarifies and supplements existing pleadings without changing the nature or character of the suit. From the record, it is clear that although the written statement has been filed, the suit is still at the preemptory hearing stage and no evidence has yet been recorded. Legally, trial begins only when issues are framed and evidence commences. Therefore, the bar under the proviso to Order VI Rule 17 CPC does not apply in this case.

Even assuming, for argument's sake, that the trial had commenced, the proposed amendment does not change the nature or character of the suit but merely elaborates on the factual foundation. It is necessary for effective adjudication and causes no irremediable prejudice to the defendants, who may respond and participate fully. In *Akram Ali vs. Yasin Ali*, the Appellate Division held that an amendment may be allowed at any stage unless it changes the nature and character of the suit land, something which has not occurred here.

As to the application under Order XXVI Rule 9 CPC, in land disputes involving claims of encroachment or illegal construction, local investigation is often essential to ascertain physical facts such as boundaries and the existence of structures. Since the plaintiff seeks *khas* possession of a specifically demarcated area, and the extent of possession is in dispute, a local investigation is both relevant and necessary. The trial court exercised its discretion judiciously. The revisional court, however, failed to identify any jurisdictional error or perversity warranting interference.

Both applications concern procedural matters aimed at ensuring a fair and effective trial. The order passed by the trial court is interlocutory and does not finally determine any rights of the parties. It neither confers nor curtails any rights of the parties. The revisional court

overlooked the limited scope of its supervisory jurisdiction in interfering with such an order.

In view of the above, the impugned judgment passed by the learned District Judge is not sustainable in law.

Accordingly, **the Rule is made absolute.**

The judgment and order dated 01.06.2022 passed by the learned Senior District Judge, Bogura in Civil Revision No. 21 of 2022, is set aside.

The order dated 03.03.2022 passed by the learned Senior Assistant Judge, 2nd Court, Bogura in Other Class Suit No. 79 of 2018, allowing the plaintiff's applications for amendment of the plaint and for local investigation, is restored.

There shall be no order as to costs.

Let a copy of this judgment be sent to the court below forthwith.

(Justice Md. Toufiq Inam)

Ashraf /ABO.