District-Chattagram.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3831 of 2022.

Md. Ismail, being dead his legal heirs:
1.(Kha) Abdul Mabud and another.
------ Defendants-Appellants-Petitioners.

-Versus-

Omar Khair, being dead his legal heirs:
1(a) Nurul Alam and others.
----- Plaintiffs-Respondents-Opposite-Parties.

Md. Altaf Hossain and others.
----- Non-Contesting-Opposite-Parties.

Mr. Sk. Md. Jahangir Alam, Advocate.
----- For the Defendants-Appellants-Petitioners.

Mr. Md. Amimul Eshan, Advocate.
----- For the Plaintiffs-Respondents-Opposite Parties.

Heard On: 19.11.2025
And
Judgment Delivered On: 26.11.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon opposite party Nos. 1 and 2 to show cause as to why the judgment and order dated 18.01.2022 passed by the learned Additional District Judge, 2nd Court, Chattagram in Other Appeal No. 130 of 2011, rejecting an

application under Order VI Rule 17 read with section 151 of the Code of Civil Procedure filed by the petitioners praying for amendment of the written statement, should not be set aside and/or why such other order or orders should not be passed as to this Court may seem fit and proper.

The opposite party Nos. 1 and 2, as plaintiffs, instituted a suit for partition before the Court of the learned Assistant Judge, Chandnaish, Patiya Chowki, Chattogram being Other Class Suit No. 88 of 1999 on 14.06.1999, impleading the predecessors of the present petitioners as defendants. The plaintiffs claimed 0.18 acres of land as their ancestral property and sought declaration of title along with partition. Their case, as pleaded in the plaint, is that the suit land originally belonged to Jahol Hossain and Amir Hossain who transferred the same to Hosian Ali and Abdul Karim on 06.03.1929. After the death of Hosian Ali, he was succeeded by his son and two daughters. Guru Meah died leaving two sons, two daughters and a wife, and accordingly, a deed of partition was executed on 11.06.1949. Sayeda transferred her share to plaintiff No. 1 on 19.06.1994. The share of Azal Khatun was purchased by the plaintiffs and defendant No. 3. Almas Khatun died leaving the plaintiff and defendant No. 3 as heirs. In this manner, the plaintiffs claim to have acquired ownership and

possession over 0.18 acres of land, wherein they are residing by constructing homestead.

The present petitioners, as defendants, appeared and filed a written statement denying the material allegations. Upon contested hearing, the learned trial Court by its judgment and preliminary decree dated 07.03.2011 declared the title of plaintiff No. 1 over 1.36 decimals of land, plaintiff No. 2's title over 6.5 decimals, and the title of defendants No. 4(ka) to 4(ja) over 2.6 decimals.

Being aggrieved by and dissatisfied with the said preliminary decree, the contesting defendants preferred Other Appeal No. 130 of 2011 before the learned District Judge, Chattogram, which was subsequently transferred to the Court of the learned Additional District Judge, 2nd Court, Chattogram for hearing. During pendency of the appeal, the defendant-appellants filed an application under Order VI Rule 17 read with section 151 of the Code praying for amendment of their written statement. It was stated therein that certain ancestral properties of both parties had not been included in the hotchpotch and that for complete and final partition all such properties ought to be brought on record.

According to them, without such amendment, proper adjudication of the rights of the parties would be frustrated.

The plaintiffs resisted the amendment by filing objection, contending that the land sought to be included is wholly outside the scope of the suit. They submitted that the suit relates exclusively to specific R.S. Plots No. 138 and 140 corresponding to B.S. Dag Nos. 159, 160, 161 and 162, all derived from a joint patta executed on 06.03.1929. Since a suit for partial partition of a joint patta is maintainable, introduction of additional land would fundamentally alter the nature of the suit and reopen the decree already passed. They further pointed out that the defendants had earlier filed a similar amendment application, which they themselves did not press.

The appellate Court, upon hearing both sides, rejected the amendment application by the impugned judgment and order. Hence the defendants, as petitioners, obtained the present Rule.

Mr. Sk. Md. Jahangir Alam, learned Advocate for the petitioners, submits that the appellate Court committed an error of law in rejecting the amendment application. He argues that in a partition suit, the essential requirement is to bring all joint properties of the

parties into the hotchpotch; otherwise the partition becomes incomplete. Referring to the decision in *Harun-or-Rashid vs. Gulaynoor Bibi & Others*, 19 BLC (AD) 123, he submits that amendment may be allowed at any stage if it does not change the nature of the suit. He contends that the proposed amendment neither changes the nature of the suit nor prejudices the plaintiffs, and therefore should have been allowed to resolve the dispute once for all.

Per contra, Mr. Md. Amimul Ehsan, learned Advocate for the plaintiff-opposite-parties, submits that the proviso to Order VI Rule 17 expressly bars amendments after commencement of trial unless due diligence is shown, which is absent in this case. He contends that the amendment is a belated attempt to delay disposal of the appeal. He further submits that the suit property is confined to specific R.S. and B.S. plots derived from a joint patta and that the plaintiffs were fully entitled to maintain a suit for partial partition. Allowing the amendment, he argues, would reopen a contested preliminary decree and fundamentally change the nature of the dispute. He also emphasizes that the defendants previously filed a similar amendment application which they themselves chose not to press.

Upon due consideration of the submissions advanced on behalf of the respective parties and on careful scrutiny of the revisional record, this Court finds that the prayer for amendment of the written statement at the appellate stage is wholly untenable in law and unsustainable on facts.

The petitioners' principal contention is that certain ancestral properties of the parties were inadvertently omitted from the hotchpotch and that such omission should now be rectified through amendment. However, the record reveals that throughout the pendency of the suit before the learned trial Court, the defendants never raised any such plea. They filed their written statement, participated fully in the trial, cross-examined witnesses, adduced their evidence, and contested the suit on its merits. At no point did they allege that additional properties existed which required inclusion for an effective partition. It is only after the trial Court passed a preliminary decree determining the shares of the parties on the basis of the pleadings and evidence that the defendants suddenly sought to introduce new properties.

The statutory mandate embodied in the proviso to Order VI Rule 17 is clear and unequivocal- once the trial has commenced, no

amendment is to be allowed unless the applicant satisfies the Court that despite the exercise of due diligence the matter could not be raised at an earlier stage. The petitioners have not merely failed to satisfy this requirement—they have not even attempted to provide any cogent or acceptable explanation for their omission. Their plea is wholly silent as to what prevented them from raising such issues before trial commenced or during the long pendency of the proceedings. Mere assertion that certain ancestral properties exist is no substitute for demonstrating due diligence, which is the statutory threshold.

Moreover, allowing such an amendment after the passing of a preliminary decree would, in effect, reopen matters that have already been adjudicated upon and settled. The law is well-settled that amendment cannot be allowed if its effect is to nullify, undermine, or indirectly challenge a decree passed on contest. A preliminary decree in a partition suit determines the shares of the co-sharers and crystallizes their respective rights. If the amendment sought were permitted, it would inevitably require reopening the evidence, introducing fresh factual disputes, and initiating a re-trial of the entire suit—an exercise contrary to the doctrine of finality of judicial decisions and impermissible within the procedural framework.

Equally relevant is the fact that the defendants themselves had earlier filed a similar amendment application which they later chose not to press. Having once abandoned that plea, they cannot now be allowed to revive it as an afterthought in order to prolong the proceedings. The attempt to seek an amendment at this stage appears more a strategy to delay the appeal than a bona fide effort to secure proper adjudication of rights.

The plaintiffs have consistently maintained that the suit land relates solely to R.S. Plots No. 138 and 140, corresponding to B.S. Dag Nos. 159, 160, 161 and 162, all derived from a joint patta dated 06.03.1929. The trial Court accepted this position on evidence. The plea that a partition suit must necessarily include all possible ancestral properties is legally erroneous. The law recognizes the maintainability of a suit for partial partition, particularly where the plaintiffs' claim is confined to a specific joint patta. The petitioners cannot enlarge the scope of the suit beyond what was pleaded, nor compel the plaintiffs to litigate matters unrelated to the original cause of action.

In this backdrop, the appellate Court rightly concluded that the proposed amendment would fundamentally alter the nature of the

defence, expand the boundaries of the dispute, and disturb rights crystallized by a contested preliminary decree. The appellate Court therefore committed no error of law in rejecting the amendment application. On the contrary, its decision is firmly rooted in the statutory text, the jurisprudential principles governing amendment after commencement of trial, and the overarching need to preserve finality and prevent multiplicity or prolongation of proceedings.

For these reasons, this Court finds no merit in the Rule.

Accordingly, the Rule is discharged.

The judgment and order passed by the learned appellate Court are hereby maintained.

There shall be no order as to costs.

The interim order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let the judgment be communicated to the Court below at once.

(**Justice Md. Toufiq Inam)**

Sayed. B.O.