

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

CIVIL REVISION NO. 709 OF 2023

In the matter of:

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

AND

In the matter of:

Sadot Ali alias Shazad Ali and another

.... Petitioners

-Versus-

Md. Abdul Khalek and others

....Opposite-parties

Mr. Mohammad Mehdi Hasan, Advocate

... For the petitioners

Mr. Khandaker Aminul Haque, Advocate

....For the opposite party nos.3-12

Heard on 11.02.2024 13.02.2024 18.02.2024

and Judgment on 18.02.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J:

At the instance of the present petitioners who are the applicants in
Title Suit No. 234 of 2014, this rule was issued calling upon the opposite-
party nos. 1-18 to show cause as to why the order no.43 dated 29.08.2022

passed by the learned Joint District Judge, 1st court, Gazipur in the said suit rejecting an application for addition of party filed under Order 1 Rule 10 read with section 151 of the Code of Civil Procedure rejecting the same should not be set aside set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of the said Title Suit No. 234 of 2014 was initially stayed for a period of 03(three) months which was lastly extended on 21.08.2023 for another 06(six) months.

The short facts leading to issuance of the rule are:

The present opposite party nos. 1-14 as plaintiffs originally filed the suit seeking following reliefs:

(ক) নালিশী 'ক' তপসিল বর্ণিত ভূমিতে বাদী পক্ষ ১(যোল আনা)

স্বত্তে মালিক মর্মে বাদী পক্ষের অনুকূলে বিবাদী পক্ষের প্রতিকূলে এক ঘোষণা মূলক রায় ডিক্রি দিও;

(খ) নালিশী 'খ' তপসিল বর্ণিত সম্পত্তির আর, এস ২ নং খতিয়ানে

১ ও ২ নং বাদী ও ৩-১২ নং বাদীদের পিতার নাম ও আতরের নেছা, ফাতেমা বেগম দেব নামের পরিবর্তে বন বিভাগের নামে হইয়াছে যাহা সম্পূর্ণ ভ্রামাত্মক এবং বাদীগণের উপর বাধ্যকর কার্যকর নহে ও বন বিভাগের ভূমি নহে মর্মে বাদী পক্ষের অনুকূলে বিবাদী পক্ষের প্রতিকূলে এক ঘোষণা মূলক ডিক্রি দিতে;

(গ) মোকদ্দমায় ময় খরাদি বাদী পক্ষের অনুকূলে বিবাদী পক্ষের

প্রতিকূলে এক ডিক্রি দিতে;

(ঘ) বাদী পক্ষগণ আর যে যে বৈধ প্রতিকার পাইতে হকদার

তৎসমূহের এক ডিক্রি দিতে আঞ্জতা হয়।

The suit was filed claiming a total area of 174.50 decimals of land against the present opposite party nos. 15-18 as principle defendants. However, long after 8(eight) years of filing the said suit, the petitioners as applicants on 11.03.2022 filed an application for adding them as co-plaintiffs in the suit stating *inter alia* that, they are the heirs of the second wife of late Johur Ali but the plaintiffs of the suit did not implead them as co-plaintiffs though their presence is very much required to dispose of the suit effectively. Against that application for addition of party, the present opposite party nos. 1-14 who are the plaintiffs in the suit filed a joint written objection denying all the material averment so made in the plaint stating *inter alia that*, since the mother of the applicants Ayton Nesa during her life time transferred 35 decimals of land by registered sale deed she inherited from her second husband late Johur Ali so the applicants are not entitled to claim as any heirs of their mother, Ayton Nesa. It is at that stage, the applicant as petitioners came before this court and obtained instant rule and order of stay.

Mr. Mohammad Mehdi Hasan, the learned counsel appearing for the petitioners upon taking us to the revisional application in particular, the impugned order and all other document appended therewith at the very outset submits that, the petitioners did not claim the property so left by the second husband of their mother, Johur Ali rather they wanted to implead as co-plaintiffs in the suit as a heirs of their mother, Ayton Nesa and therefore the learned judge of the trial court has failed to appreciate that very legal point and very erroneously rejected the application which calls for interference by this Hon'ble court.

The learned counsel by referring to Annexure-‘D’ and ‘D-1’ to the revisional application which is the succession certificate (উত্তরাধিকার সনদ) of late Johur Ali as well as late Ayton Nesa also contends that, from Annexure-‘D-1’ it clearly implies that after the Ayton Nesa has got one son and one daughter named the applicant no. 1, Md. Sahad Ali and daughter, Mugli Begum from her first husband namely, Zinnat Ali so they are the heirs of late Ayton Nesa and on the demise of their mother, they became the heirs of their late mother, Ayton Nesa and entitled to be added as co-plaintiffs in the suit but that very point has been missed by the learned judge while passing the impugned order by rejecting the application. On those two counts, the learned counsel finally prays for making the rule absolute on setting aside the impugned order and prayed for impleading the present petitioners as co-plaintiff in the suit.

Conversely, Mr. Khandaker Aminul Haque, the learned counsel appearing for the opposite party nos. 3-12 by filing a counter affidavit at the very outset submits that, in the statement so have been made in the application for addition of party in the form of “যেভাবে পক্ষ ভুক্ত করিতে হইবে” the applicants-petitioners has very consciously disclosed the name of their father as late Johur Ali but fact remains, the name of their father is, Zinnat Ali so only to grab the property left by Johur Ali they wanted to add as a party to the suit.

The learned counsel by referring to the annexure to the counter-affidavit also contends that, in the suit being Title Suit No. 96 of 2012 the applicants also disclosed the name of their father as Zinnat Ali and that very suit was filed by the petitioner for the suit land measuring an area of

31 decimals of land and since as per the succession their mother is entitled to only 26 decimals of land as heir of late Zahur Ali and in the meantime since she already transferred 35 decimals of land by sale deed in the year 1967 so the mother of the present petitioners has ceased to have any property in the suit land left by Johur Ali so they are not entitled to be added as any parties to the suit. On that legal and factual aspect, the learned counsel finally prays for discharging the rule enabling the trial court to proceed with the suit which was stayed for a long time.

The learned counsel then placed his reliance in the decision reported in 40 DLR 317 though that decision was passed by a single bench.

We have considered the submission so advanced by the learned counsel for the petitioners and that of the opposite party nos. 3-12 at length. We have also gone through the revisional application including the impugned order and the documents so have been appended with the counter-affidavit filed by those opposite parties. There has been no denying that, the applicants-petitioners are the son and daughter of late Ayton Nesa and their father name is, Zinnat Ali so they are entitled to get the property on the demise of their mother, Ayton Nesa as her heirs. Now only question remains, whether after selling the property by Ayton Nesa acquired from her second husband, Johur Ali they are entitled to be added as any party especially as co-plaintiffs in the suit or not. On that very point though there has been no discussion in the impugned order but the learned counsel appearing for the petitioners by taking us to the schedule of the plaint so have been annexed as of Annexure-‘A’ to the application contends that, since the suit was filed for an area of 174.50 decimals of land and the

mother of the present petitioners is entitled to only 26 decimals of land or not as has been asserted by the opposite parties it can only be decided while adjudicating the suit or by filing a suit for partition. Since it has robustly been asserted that the petitioners are only claiming the share left by their mother, Ayton Nesa not any share left by their step father, Johur Ali so there would have no ambiguity to implead the petitioners as co-plaintiffs in the suit. However, we find ample substance to the said submission so placed by the learned counsel for the petitioner because it has not yet been decided what quantum of land, Ayton Nesa, the mother of the petitioners are entitled to get as a heirs of her left husband, Johur Ali. So if the present petitioners are added any co-plaintiffs in the suit the plaintiffs would not have been prejudiced rather for effective adjudication of the suit, the petitioners are the necessary and proper party to be added as co-plaintiffs in the suit..

Given the above facts and circumstances we don't find any substance in the impugned judgment and order which is liable to be set aside.

Accordingly, the rule is made absolute however without any order as to cost.

The impugned judgment and order no.43 dated 29.08.2022 passed by the learned Joint District Judge, 1st court, Gazipur is hereby set aside.

The trial court is hereby directed to implead the petitioners as co-plaintiff nos. 15 and 16 in the suit and then proceed with the suit accordingly.

The order of stay grated at the time of issuance of the rule thus stands recalled and vacated.

Let a copy of this order be communicated to the court concerned forthwith.

Mohi Uddin Shamim, J:

I agree.

Kawsar /A.B.O