

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1956 of 2023

Rabeya Khatun and others

..... Petitioners

-Versus-

Md. Mutalib and others

..... Opposite-Parties

Mr. Jobayer Mohammad Aourangzeb,
Advocate

... For the Petitioners

Mrs. Purabi Saha, Advocate

... For the Opposite Parties

Judgment on 25.08.2025

In this revision Rule was issued granting leave to revision at the instance of the petitioners calling upon the opposite party Nos. 1-5 to show cause as to why the impugned judgment and order dated 31.10.2022 passed by the learned District Judge, Dhaka in Civil Revision No. 107 of 2022 rejecting the same and thereby affirming the judgment and order dated 01.03.2022 passed by the learned Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 667 of 2021 allowing an application for amendment of plaint should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that this revisional application has arisen out of Order dated 31.10.2022 passed by

the learned District Judge, Dhaka in Civil Revision No. 107 of 2022 rejecting the case summarily affirming the order dated 01.03.2022 passed by learned Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 667 of 2021 allowing an application for amendment of plaint.

The Opposite Party Nos. 1-5, as plaintiff, instituted the original suit for partition claiming $.23\frac{1}{2}$ acre of land in their share and prayed for preliminary decree for partition of the suit land.

The defendant petitioner entered appearance in the suit and filed written statement denying all the material allegations made in the plaint contending that the suit is not maintainable; barred by limitation; bad for defect of parties and hotchpotch. In the written statement the defendants stated that Golap Miah, Amirunnessa, Sahela Bibi and Amina Khatun while owning and possessing the land Amiraunnessa and Sahela Khatun sold total $15\frac{1}{2}$ decimals of land to Kadam Ali and Koran Ali vide deed No. 3357 dated 12.02.1938.

The trial of the suit already has commenced and the plaintiff Opposite parties on 25.11.2021 filed application under Order VI, Rule 17 of the Code of Civil Procedure for amendment of plaint stating that at the

time of filing of the suit due to typing mistake prayer for cancellation of the deed No. 3357 dated 12.12.1938 was not inserted for which the plaint is required to be amended by adding a prayer.

The present petitioners, as contesting defendant, filed written objection against the application for amendment of the plaint stating that the proposed amendment will change the nature and character of the suit and parties to the deed No. 3357 dated 12.12.1938 are not made parties and the plaintiffs admittedly came to know about the deed before 27 years for which the proposed amendment is barred by limitation and is liable to be rejected.

The learned court on 01.03.2022, after hearing the parties, was allowed the application for amendment of plaintiff with a cost of Tk. 500/- holding that the proposed amendment will not change the nature of the suit and the same will be helpful for proper adjudication of the matter.

The present petitioner being aggrieved by and dissatisfied with the order passed by learned Assistant Judge preferred Civil Revision No. 107 of 2022 before the learned District Judge, Dhaka on the grounds that the order passed by learned court below is not proper and the proposed

amendment has been brought relating to a deed of 83 years old without impleading parties to the said deed and on the strength of the deed the SA. and R.S. survey have been done and as such, the impugned order dated 01.03.2022 is liable to be set aside.

The learned District Judge, Dhaka after hearing rejected the Civil Revision summarily observing that the proposed amendment will not change the nature of the suit and the findings of the trial court is proper and lawful and not required to be interfered with. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(4) of the Code of Civil Procedure seeking leave to revision and obtained the present Rule and order of stay.

Mr. Jobayer Mohammad Aourangzeb, learned Advocates appearing for the petitioners submits that the suit was filed in the year 2000. The plaintiff got their plaint amended on 23.03.2004, 26.01.2017, 09.10.2019 and 01.03.2022 on several times incorporating statements and by adding and deleting defendants in suit. He submits that the deed in question being No. 3357 dated 12.12.1938 has not been challenged in the original plaint. After 22 years of filing of the suit, the plaintiff filed the application for amendment of plaint praying for declaring the registered deed No. 3357

dated 12.12.1938 to be void, illegal, ineffective and not binding upon the plaintiff, whereas, from the statements made in the plaint, the plaintiffs came to know about existence of the said registered deed in the year 1995, from written statement filed in a proceeding under Section 145 of the Code of Criminal Procedure.

He submits that the suit in respect of challenging the deed in question as well as the amendment is hopelessly time barred as they did not challenge the same within three years from the date of knowledge. As such, the proposed amendment as well as the prayer made in the plaint in the year 2000 is also barred by limitation. The trial court while allowing the application for amendment of plaint failed to appreciate the provisions of law and allowed the application in a very slip shod manner without assigning any reason as to why the proposed amendment is required to be allowed. The revisional court also without admitting the revision most unfortunately fixed a date for admission of the revision and on the very day of hearing maintainability, the revisional court without assigning any reason rejected the revision summarily. As such, both the trial court as well as the revisional court committed illegality and serious error of law in the decision occasioning failure of justice.

Mrs. Purabi Saha, learned Advocate appearing for the opposite parties, submits that in the plaint filed in the year 2000, the plaintiff sought a declaration in respect of sale deed No. 3357 dated 12.12.1938, subsequently, by adding some words the prayer was amended in the year 2004. By the proposed amendment the plaintiff wanted to add few words in the plaint at different paragraphs relating to deed No. 3357 dated 12.12.1938 and nothing new tried to be incorporated by way of amendment or adding a prayer in similar manner for declaring the sale deed No. 3357 to be illegal and void which had been made in the original plaint.

She submits that in the event of proving the fact that the plaintiff was in the know of deed No. 3357 dated 12.12.1938 in the year 1995, after recording evidence at the time of trial, the suit may be failed on the ground of limitation only in respect of such prayer, but at this stage question of limitation is not a ground to refuse amendment of the plaint.

She submits that the trial court while allowing the application for amendment of plaint rightly held that by the proposed amendment nature and character of the suit will not be changed and the amendment is necessary for the purpose of determination of the dispute between the

parties, as such, the order met requirement of law as provided in Rule 17 of Order 6 of the Code. Similarly the revisional court while rejecting the revision summarily, held that the trial court giving reason allowed the application and by the proposed amendment, the defendant have nothing to lose and no injustice caused to them.

Heard the learned Advocates of both the sides, have gone through the application seeking leave to revision under Section 115(4) of the Code of Civil Procedure, plaint in suit, written statement, application for amendment of plaint, written objection thereto and the impugned judgment and order of both the courts below.

Original Title Suit No. 35 of 2000, subsequently renumbered as Title Suit No. 246 of 2005 and then Title Suit No. 667 of 2021 was filed seeking as many as four declarations, One of the declaration has been sought for as prayer 'Gha' in respect of sale deed No. 3357 dated 12.12.1938 by way of amendment, whereas, similar declaration has been sought for as prayer 'Kha' in the original plaint. By the proposed amendment, I find nothing new has been incorporated in the plaint detrimental to the interest of the defendant-petitioner.

In my view, the present amendment is not at all required to be incorporated as in the original plaint similar prayer is present. However, for additional prayer by way of amendment, the nature and character of the suit as well as reliefs sought for has not been changed in any way and the trial court thought it necessary for determination of real controversies between the parties. Amendment of plaint can be allowed at any stage of the proceeding, if the court thinks that the amendment is necessary for proper adjudication of the matter in dispute, accordingly, the trial court allowed the amendment. By the proposed amendment no illegality caused by the trial court as well as by the revisional court calling for interference by this Court.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the learned Advocate for the petitioner calling for interference by this Court.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to dispose of the suit within shortest possible time preferably within 06 (six) months from the date of receipt of this judgment and order giving top most priority.

Communicate a copy of this judgment to the court concerned at once.