

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1965 of 2022

Md. Shamshol Hoque

.....Petitioner.

-Versus-

Abdul Majid Bepari and others

.....Opposite parties.

Mr. Md. Mahbub Murshed, Advocate.

.....For the petitioner.

Mr. Md. Abdus Sabur Khan, Adv. with

Mrs. Jannatul Ferdousi, Advocate

.....For the opposite parties.

Heard and judgment on 7th July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 23.02.2022 passed by the District Judge, Munshigonj in Title Appeal No. 24 of 2018 so far it relates to the Annexure-G passed by the Assistant Judge, Gazaria, Munsigonj in Title Suit No. 12 of 2013 should not be set aside.

Opposite party as plaintiff filed Title Suit No. 12 of 2013 before the Court of Senior Assistant Judge, Gazaria, Munshigonj against the petitioner for declaration of title, which was contested by the petitioner by filing written statement.

The Assistant Judge, Gazaria, Munshigonj dismissed the suit on contest vide judgment and decree dated 15.02.2018.

Challenging the said judgment and decree plaintiff preferred Title Appeal No. 24 of 2018 before the Court of District Judge, Munshigonj.

On 11.04.2019 during pendency of the appeal, appellant filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint.

By the order dated 15.05.2019, the District Judge allowed that application. Tereafter on 05.09.2019 defendant petitioner filed an application for rejection of plaint under Order 7 Rule 11(d) / Order 41 Rule 3 of the Code of Civil Procedure and also filed an application on 21.08.2019 for amendment of the written statement.

By the impugned order dated 23.02.2022 the District Judge rejected both the applications.

Challenging the said order of the District Judge, defendant petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure but subsequently obtained the instant rule only against the order of rejecting the prayer for amendment of the written statement dated 21.08.2019.

Mr. Md. Mahboob Murshed, the learned advocate appearing for the petitioner drawing my attention to the impugned order submits that since it is the settled principle of law as been settled by our Apex court that: at any stage of the proceedings parties are at liberty to amend their pleadings even before the judgment and as such the District Judge erred in law in rejecting the application for amendment of the written statements.

Mr. Md. Abdus Sabur Khan, the learned advocate appearing for the opposite parties opposes the rule.

Heard the learned advocate and perused the impugned judgment.

In the application for amendment of the plaint on 21.08.2019 it appears that the defendant try to amend the written statement by mentioning the Diara number and khatians only but there is nothing to show that by this amendment their earlier written statement or pleadings in any way will change by inserting any facts for which it can be said that the order passed by the trial court on rejecting the application for amendment of the pleadings appears to be illegal and not passed in accordance with law. Since by way of amendment of the earlier written statement, nature and feature as well as the contents of the written statements as submitted by the defendant would not changed, the District Judge may allowed the application, failing which committed an error of law.

I thus find merits in this rule.

In the result, the Rule is made absolute and the judgment and order passed by the District Judge is hereby set aside and the application for amendment of the plaint is hereby allowed.

However the appellate court is further directed to dispose of the appeal expeditiously as early as possible preferably within a period of 6(six) months after receiving of the judgment.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.