

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 979 of 2022

Paschim Durduri Jugiram Pukur Par Masjid,
represented by its Motwalli Jamal Ahmad
Petitioner

-Versus-

Samshul Islam

Opposite party

Mr. Md. Ismail Hossain Bhuiyan, Advocate

...For the petitioner

Mr. M. Belayet Hossain, with
Mr. M. Mahmudul Hasan, and
Mr. M. Shubho Shattha Rafiq, Advocates

... For the opposite party

Heard on: 09.02.2025

Judgment on: 10.02.2025

Paschim Durduri Jugiram Pukur Par Masjid represented by its Motwalli Jamal Ahmad as plaintiff filed Other Class Suit No. 395 of 2015 impleading the present opposite party as sole defendant for permanent injunction in the Court of Senior Assistant Judge, Satkania, Chattogram. The suit was dismissed on contest on 25.07.2018. The plaintiff filed Other Appeal No. 155 of 2019 before the Court of District Judge, Chattogram. In the appeal, the plaintiff-appellant filed

two separate applications under Order 6 rule 17 read with Sections 107 and 151 of the Code of Civil Procedure (CPC) for amendment of the plaint. The plaintiff-appellant filed another application under Order 41 rule 27 read with Sections 107 and 151 of the CPC for adducing additional evidence in the appellate Court. The learned District Judge, vide order dated 28.10.2021 rejected all the applications. Challenging the same, the plaintiff-appellant filed the instant revision and obtained Rule on 28.02.2022.

The defendant-opposite party has entered appearance in the Rule.

I have heard the learned Advocates of both sides and perused the materials on record.

The plaintiff filed the suit for permanent injunction in respect of 15 decimals of land. The plaintiff's case is that the suit land is a waqf property and a mosque is constructed thereon. The mosque itself is the plaintiff which is represented by its Motwalli. The plaintiff's specific case is that the sole defendant created disturbance in the peaceful possession of the suit land by the plaintiff and hence, an order of permanent injunction is required to be passed upon the defendant restraining him from creating obstacle in the peaceful possession and activities of the mosque constructed on the suit land. In the schedule of the plaint, the suit land has been identified by giving the relevant R.S. and the corresponding B.S. Khatians and Plot numbers.

However, no boundaries were given in the schedule of the plaint. By the proposed amendment, the plaintiff prayed for insertion of boundaries in the schedule of the plaint. By another proposed amendment, the plaintiff prayed for insertion of facts in the plaint which were developed subsequent to the filing of the original suit. The appellate Court below rejected both applications for amendment of the plaint on the ground that the proposed amendments would change the nature and the character of the suit. Upon perusal of the plaint, written statement, judgment of the trial Court, the applications for amendment and other materials on record, I am of the view that the proposed amendments would not change the nature and the character of the suit rather those amendments are necessary for the purpose of determining the real question in controversy between the parties. Accordingly, the applications for amendment of the plaint are allowed.

Now, I turn to the application filed under Order 41 rule 27 for giving additional evidence in the appellate Court below. Paragraph No. 3 and the prayer portion of the application for giving additional evidence are quoted below:

“৩। উল্লেখিত অবস্থার প্রেক্ষিতে পশ্চিম দূরদূরী মোগিরাম পুকুর পাড়স্থ মসজিদের পরিচালনা কমিটি ও মামলার পরিচালনা দায়িত্ব অর্পনপত্র এবং উক্ত ফোরক আহমদের পিতা মৃত মকবুল আহমদের ওয়ারিশ সনদ অত্র মামলায় গত ২৮/০৭/২০১২ ইং Additional Evidence হিসেবে গ্রহণ করা প্রয়োজন। অন্যথায় আপীলকারী তথা মসজিদ অপূরণীয় ক্ষতির সম্মুখীন হইবে।

সুবিচারের স্বার্থে আপীলকারী পক্ষে দাখিলী মসজিদের পরিচালনা কমিটি,
দায়িত্বভার অর্পনপত্র ও ওয়ারিশ সনদ অত্র মামলার Additional Evidence
হিসেবে গ্রহণ করার আদেশ দানে বিহীত মর্জি হয়।”

The dates and other details of the documents sought to be given as additional evidence have not been mentioned in the application for additional evidence. On perusal of the said application, it cannot be ascertained with certainty as to which documents are proposed to be given as additional evidence. The application suffers from vagueness. The appellate Court below rightly rejected the application for additional evidence. Therefore, the impugned order dated 28.10.2021 so far as it relates to rejection of the application for additional evidence is affirmed.

In the result, the Rule is made absolute in part. Two applications for amendment of the plaint are allowed. The application filed by the plaintiff-appellant under Order 41 rule 27 for additional evidence is rejected.