

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2402 OF 2023

In the matter of:

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

And

Md. Abu Bakar Mondal and others

.... Petitioners

-Versus-

Md. Abdul Khaleque and others

.... Opposite parties

None appears

.... For the petitioners.

Mr. Biplob Goswami with

Mr. Md. Zobaidur Rahman, Advocates

.... For the opposite party Nos.1-7.

Heard on 25.02.2025.

Judgment on 02.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned order No.79 dated 23.03.2023 passed by the learned Additional District Judge, 2nd Court, Joypurhat in Partition Appeal No.95 of 2011 allowing the petition of the respondent-

plaintiff for amendment of the plaint without affording the opportunity of denying the amendment petition by the defendant appellant petitioner 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 in short are that opposite parties as plaintiffs instituted Partition Suit No.2 of 1994 for partition of 8.36 acres land seeking a separate saham for 8.03 acres land and above suit was decreed on contest and the plaintiff was allotted a separate saham for 8.03 acres land.

Being aggrieved by above judgment and decree of the trial Court above defendant Nos.1, 2 and 5 preferred Partition Appeal No.95 of 2011 to the District Judge, Joypurhat which was transferred to the Second Court of Additional District Judge for hearing.

In above appeal respondent submitted a petition on 23.03.2023 under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure for amendment of the plaint and appellant submitted a petition for adjournment. The learned Additional District Judge allowed both the petitions and directed for amendment of the plaint and fixed the appeal for hearing on 28.03.2023.

Being aggrieved by and dissatisfied with above judgment and order of the learned Additional District Judge above respondents as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioners at the time of hearing of this Rule although the matter appeared in the list for hearing on several dates.

Mr. Biplob Goswami, learned Advocate for the opposite party Nos.1-7 submits that the appellants submitted above petition for amendment of the plaint to counter the claims brought into the written statements of the respondents by amendment of their written statements and admission of additional evidence vide Order No.78 dated 01.03.2023. The respondents plaintiffs did not bring any new facts or change the nature and character of the plaint and on consideration of above materials on record the learned Additional District Judge rightly allowed above petition of the respondents for amendment of the plaint which calls for no interference.

I have considered the submissions of the learned Advocate for opposite party Nos.1-7 and carefully examined all materials on record.

It turns out from impugned order that on 23.03.2023 when the petition of the respondents under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint was taken up for hearing the appellant submitted a petition for adjournment and the learned Additional District Judge after hearing the learned Advocates for both sides allowed the petition for adjournment of the appellants as last chance. But on the next breath the learned Additional District Judge allowed above petition of the respondent under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint. It is clear from

above order of the learned Additional District Judge that the appellant was not heard nor he was given of an opportunity to raise an objection against the petition for amendment of the plaint of the respondents. Since the respondent was present on the date of hearing and his petition for adjournment was allowed the learned Additional District Judge should not have allowed the petition for amendment of the plaint of the appellant in the absence of the learned Advocate for the appellant and without hearing the appellant.

In above of the materials on record I hold that the impugned judgment and order passed by the learned Additional District Judge on 23.03.2023 suffers from serious illegality and I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned order No.79 dated 23.03.2023 passed by the learned Additional District Judge, 2nd Court, Joypurhat in Partition Appeal No.95 of 2011 allowing the petition of the respondent-plaintiff for amendment of the plaint is set aside.

The learned Additional District Judge is directed to dispose of above petition for amendment of the plaint of the respondents after giving the appellant an opportunity of being heard and in accordance with law within a period of 1(one) month from the date of receipt of this order.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER