

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO. 869 OF 2023**

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Abul Khayer and others

... Petitioners

-Versus-

Abu Taher

... Opposite party

None appears

.... For the petitioners.

Mr. Md. Shahin Ali, Advocate

.... For the opposite party.

**Heard and Judgment on 29.08.2024.**

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 07.06.2022 passed by the Additional District Judge, 4<sup>th</sup> Court, Cumilla in Civil Revision No. 25 of 2021 dismissing the same and thereby affirming the order dated 15.03.2021 passed by the learned Assistant Judge, Muradnagar, Cumilla in Title Suit No. 03 of 2008 rejecting the application for amendment of plaint filed by the plaintiffs under Order 6 Rule 16 read with Section 151 of the Code of Civil Procedure 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 the opposite party as plaintiff instituted above suit for declaration of title for 76 decimals land as described in the schedule to the plaint alleging that above property originally belonged to Bashu Miah who died leaving behind one son Anu Miah and two daughters namely Asmoter Nessa and Mazeda Khatun as his heirs. Bashu Miah had another son namely Keramot Ali who died during the life time of Bashu Miah leaving defendant No.1 as his son. As such the defendant No.1 did not inherit any property of Bashu Miah. Plaintiff purchased the property of above mentioned two daughters namely Asmoter Nessa and Mazeda Khatun by two registered kabala deeds.

Defendant No.1 contested above suit by filing a written statement alleging that Bashu Miah transferred disputed 76 decimals land to defendant No.1 by gift and above land has been subsequently recorded correctly in the name of the defendant in relevant S.A. and B.S. Khatian and defendant No.1 is in peaceful possession in above land.

In above suit the plaintiff filed a petition under Order 6 Rule 17 of the Code of Civil Procedure for impleading the heirs of above mentioned Asmoter Nessa and Mazeda Khatun by way of amendment of the plaint.

The learned Senior Assistant Judge rejected above petition for amendment of the plaint and the plaintiffs challenged above order by preferring a revision to the District Judge which was heard by the learned Additional District Judge who rejected above revision and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied with the above judgment and order of the learned Additional District Judge above petitioner on leave moved to this Court and obtained the Rule.

No one appears on behalf of the petitioner at the time of hearing of this revision.

Mr. Md. Shahin Ali, learned Advocate for the opposite party submits that the suit was fixed for arguments hearing. At above stage the plaintiffs submitted this petition under Order 6 Rule 17 of the Code of Civil Procedure only to prolong a disposal of the suit. The disputed land is claimed exclusively by defendant No.1 on the basis of gift from Bashu Miah. The heirs of two daughters of Bashu Miah namely Asmoter Nessa and Mazeda Khatun are not at all necessary parties in this suit. As such the learned Judges of the Courts below on correct appreciation of materials on record has rightly rejected above petition and the revision respectively which calls for no interference.

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

Undisputedly the suit property originally belonged to Bashu Miah. Plaintiff claims 76 decimals land as a successive heir of Bashu Miah and on the basis of purchase from two daughters of Bashu Miah namely Asmoter Nessa and Mazeda Khatun. Plaintiff claims that above land was not correctly recorded in his name the plaintiffs seek a decree for declaration of title. As such heirs of above two Femal heirs of Basu were necessary party in above suit. A judgment and decree of the civil suit is binding only upon the parties to the suit or their success. The learned Judges of the Courts below that they have failed to appreciate above aspect of the case and most erroneously rejected the petition for amendment of the plaint for impleading the successive heirs of Asmoter Nessa and Mazeda Khatun which is not tenable in law.

In above view of the materials on record I find substance in this application under Section 115(4) 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 judgment and order dated 07.06.2022 passed by the Additional District Judge, 4<sup>th</sup> Court, Cumilla in Civil Revision No.25 of 2021 affirming the order dated 15.03.2021 passed by the learned

Assistant Judge, Muradnagar, Cumilla in Title Suit No.03 of 2008 are set aside.

The petition filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint for impleading the successive heirs of Asmoter Nessa and Mazeda Khatun is allowed.

Let the plaint and relevant register be amended accordingly.

The learned Assistant Judge, Muradnagar, Cumilla is directed to ensure that the suit is ready for trial without further delay and when it is ready for trial proceed to dispose of the same on merit expeditiously.

**MD. MASUDUR RAHMAN**  
**BENCH OFFICER**