

Present:

Mr. Justice Farid Ahmed.

Civil Revision No.4488 of 2023.

Amena Bewa and others
.....Plaintiffs-appellants-petitioners.

-Versus-

Mokabbar Hossain Talukder and another
....Opposite parties.

None appears.....For the petitioners.

Mr. Arobinda Kumar Roy, Advocate
... For opposite party Nos.1-2.

Heard on 10.12.2023.

Judgment on 12.12.2023.

The petitioners filed this revisional application under section 115(4) of the Code of Civil Procedure against the judgment and order dated 21.06.2023 passed by the learned District Judge, Bogura in Civil Revision No.29 of 2023 disallowing the revision and affirming the judgment and order dated 02.03.2023 passed by the learned Assistant Judge, Kahalo, Bogura in Other Class Suit No.44 of 2015 allowing the application under Order 1 rule 10 of the Code of Civil Procedure.

Plaintiff's case, in short, is that the suit land of Mouza Shanil Bouroi

under Kahaloo Police Station of District-Bogura under Khatian No.41, 26, 168, 216, 265 and 348 are of land $1.80\frac{1}{4}$ acres which was belong to plaintiffs predecessor Kafil Uddin Talukder and others and the said suit property of Kabil Uddin Talukder purchased from Hariram Agarwala by dint of registered deed No.5388 dated 03.02.1975 and Kabil Uddin Talukder was in possession. Thereafter Kabil Uddin Talukder and defendants were purchased some land from co-sharer of the said suit land thus in the suit land property (jot). They got their share of $90\frac{1}{4}$ (dec) of each of schedule 'Ka' and in the 'Kha' schedule property predecessor of the plaintiffs Kabil Uddin Talukder and the defendants got $17\frac{1}{4}$ decimals of property in the own respective share. Kabil Uddin Talukder was attacked in paralysis diseases in the year 1980 and was died in 1995. At that time Kabil Uddin was not in general sense. After the death of Kabil Uddin Talukder his heirs petitioner Nos. 1 to 12 became heirs. Defendant's have no any possession in the suit land but he raised claime on 07.04.2015 and thereafter searching of the Sub-Registrar Office that the plaintiff got a deed being No.5167 dated 23.06.1986 and thereafter plaintiffs obtained certified copy of the said deed and came to knowledge and the said deed is created illegal and the said deed should be cancelled.

The defendants contested the suit by filing a written statement

denying material allegation of the plaint and stating that the plaintiffs suit is not maintainable and no any such reason to file this suit. Defendant stated that Hariram Agarwarwala Nalishi 'Ka' schedule of property sold $90\frac{1}{2}$ decimals to Kabil Hossain, Mokabbor Hossain and Rahim Uddin by through kabala deed No.5222 dated 05.02.1975. Thereafter to some purchaser Agarwala sold $90\frac{1}{2}$ decimals of land to Mokabbor Hossain through deed No.3580 dated 26.12.1975. Thereafter Rahim Uddin sold $60\frac{1}{4}$ decimals of land to Kabil Hossain and Mokabbor Hossain through deed No.7489 dated 14.03.1977. Thus Kabil Hossain was in possession and was the owner of said $90\frac{1}{4}$ decimals of land and the said land of 'Ka' schedule transferred to Mokabbor Hossain through deed No.5167 dated 23.06.1986 and Kabil accepted the 'Kha' schedule of land. Thus Mokabbar Hossain has been possessing $90\frac{1}{4}$ decimals of land and hal record was prepared in the name of Mokabbar Hossain sold 1.10 decimals of land to Shilpi Construction Ltd. and Shilpi Construction was in possession Kabil Uddin was not ill at the time of selling the said land or he is not suffering paralysis diseases. Kabil Uddin is sound mind executed and registered the deed No.5167 dated 23.06.1986 and accepted the 'Kha' schedule of property. Plaintiff brought his suit for illegal gain or and the suit is liable to be dismissed.

The petitioners have examined the witnesses as P.Ws and to produce some documents which have been marked as Exhibits. On the other hand the defendants examined witness D.Ws and to produce some documents which have been marked as exhibits to prove each other case.

The learned Assistant Judge, Kahalo, Bogura passed the judgment and decree on 04.02.2018 (decree signed on 11.02.2018) passed in Other Class Suit No.44 of 2015, dismissing the suit.

The plaintiff as appellant preferred appeal being Other Class Appeal No.24 of 2018 in the court of Joint District Judge, 1st Court, Bogura against the judgment and decree dated 04.02.2018 (decree signed on 11.02.2018) passed in Other Class Suit No.44 of 2015, and after hearing the said appeal on 14.08.2018, judgment and decree passed (decree signed on 20.08.2018) in Other Class Appeal No.24 of 2018, dismissing the appeal.

Thereafter the plaintiffs petitioners filed the Civil Revision being No.4022 of 2018 in the Hon'ble High Court Division of the Supreme Court of Bangladesh, against the judgment and decree dated 14.08.2018 (decree signed on 20.08.2018) passed in Other Class Appeal No.24 of 2018. After hearing the said revision case on 18.08.2021 the Hon'ble Judge of the High Court Division of the Supreme Court of Bangladesh has been pleased to make the Rule absolute and send back the case on remand to the trial court below for deciding the suit a fresh in accordance with law.

None appears on behalf of the petitioners to press the Rule.

Learned Advocate Mr. Arobinda Kumar Roy appearing on behalf of the opposite Nos.1 and 2 at the very outset submits that he informed the learned Advocate for the petitioners but he did not turn up to this Court though notice was properly served. At this circumstance the judgment is delivered upon hearing the learned Advocate for the opposite parties.

He submits that the fact of the case is very short. When the case was in the seisin of the trial court the opposite party No.2 filed an application under Order 1 rule 10(2) read with section 151 of the Code of Civil Procedure for adding him as defendant. He strongly submitted that he filed the application for addition of party by annexing the title deed and other related papers that he has the right, title in the suit property and in his absence trial was going on. The trial court upon considering the application and annexed papers i.e. title deed and other related papers found that he is necessary party for resolving the real controversy in between the parties which is the main object of the Order 1 rule 10(2) of the Code of Civil Procedure. In his absence no decree can be passed. At this circumstance the application was allowed.

Against the said order the opponent filed revisional application before the District Judge, Bogura. Learned District Judge on perusing the

papers rejected the revisional application affirming the judgment and order of the trial court.

Against the said judgment and order the plaintiff-petitioner filed instant revisional application before this Court.

Learned Advocate Mr. Arobinda Kumar Roy also submits that since the present opposite parties have right and title over the suit property keeping absent them from the suit without making them party suit cannot be disposed of. Because if they are not be added as party their right and title will be hampered and they will be deprived in their title over the suit property as they have claimed.

It is very acceptable and lawful submission before this court under Order 1 rule 10(2) of the Code of Civil Procedure. For proper appreciation Order 1 rule 10(2) of the Code of Civil Procedure is quoted herein below:-

“10(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

According to Order 1 rule 10(2) of the Code of Civil Procedure the court will decide who is the necessary party, if he is necessary party he will be added as party and who is not necessary party his name will be struck down from the plaint. For the cause of effectual adjudication of dispute and to settle the question involved in the suit necessary party may be added. It is the legal position of the Code of Civil Procedure in addition of party. Learned Advocate for the opposite parties finally submits that earlier the petitioner filed revision before the Hon'ble High Court Division being No.4022 of 2018 for dragging the trial. He prayed to dispose of the suit within short possible time.

I have perused the judgment and order of the trial court as well as the revisional court. I find that earlier the petitioner filed revisional application under section 115(2) of the Code of Civil Procedure. Now the petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure by taking the leave from this Court. The revisional application filed before this Court without mentioning what important question of law involve in this case. This is a vexatious application under section 35A of the Code of Civil Procedure. There was no reason to file this revisional application against the concurrent findings of the courts below. This Court can grant leave if there is any important question or issue involved therein. But as discussed herein above I do not find any important question of law

involved in this matter though leave was granted.

However the petitioners filed this revisional application presumably for prolonging the trial for their own benefit. The petitioners filed this application and engaged the legal machinery for killing the time. I find no merit in this Rule. The Rule has no leg to stand.

In the result, the Rule is discharged with cost of Tk.5,000/ (Taka five thousand). The trial court will realize this cost. Without realizing the same the plaintiffs-appellants-petitioners shall not get the opportunity to adduce evidence before the trial court. The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

The trial court is directed to dispose of the trial without giving any adjournment without specific reason and dispose of the suit within 6(six) months from the date of receipt of this judgment.

Communicate this judgment to the concerned court immediately.

M.Islam.
B.O.

