

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3774 of 2023

IN THE MATTER OF :

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

-And-

In the Matter of:

Mst. Shahida Bewa

...Plaintiff-Petitioner

Versus

Md. Abdul Kuddus Bepari and others

...Defendant-Opposite parties

Mr. Diptish Chandra Halder, Advocate

... For the petitioner

Mr. Md. Abdul Alim, with

Ms. Marry Akter, Advocates

... For the Opposite Parties

Judgment on: 02.03.2026

Md. Riaz Uddin Khan, J:

At the instance of the plaintiff Rule was issued asking the opposite parties to show cause as to why the Order No. 42 dated 30.03.2023 passed by the Joint District Judge, Second Court, Natore in Title Appeal No. 186 of 2017 disallowing the application for amendment of the plaint filed under Order-VI Rule-17 of the Code of Civil Procedure should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule all further proceedings of Title Appeal No.186 of 2017 was stayed initially for a period of 04(four) months which was extended time to time.

Facts in a nutshell for disposal of the Rule are that the plaintiff petitioner filed a suit, Other Class Suit No.14 of 2007, for cancellation of deeds as described in the schedule "Uma" of the plaint contending *inter alia* that the plaintiff got the suit property as described in the schedule "Ka" of the plaint from her mother as heir and from her sister named Rezia Bibi through deed as described in schedule "Ga" of the plaint; some disputes arose between the parties for the suit land and as such there was a compromise between the parties to the effect that an ewaz (exchange) would be made between them with 03 decimals land of the plaintiff as described in the schedule "Kha" and 11 decimals land of the defendants as described in the schedule "Ga" of the plaint; the disputed deeds were executed by both the parties at Natore sub-registry office; the plaintiff asked the defendants to read out the deeds and the scribe and the father of the defendants said that the 3 decimals of the plaintiff's land has been given to the defendants and the 11 decimals land of plot No. 295 of the defendants has been given to the plaintiff and the deeds have been written according to their decision; thereafter, the defendants disclosed on 30.12.2004 that no exchange deed has been executed rather deed of sales have been executed and the plaintiff came to know on 09.01.2005 after obtaining copies of deeds that the defendants have been falsely and fraudulently executed deed of kabalas; no transaction has been made between the parties for the said deed of kabalas; the deeds as described in the schedule "Uma" of the plaint are concocted, fraudulent, ineffective and as such the

plaintiff prayed for cancellation of the said deeds; the plaintiff also prayed for declaration of title of the land as described in the schedule "Ka" of the plaint and when the suit was pending the defendants have evicted the plaintiff on 30.03.2014 from the land of plot No. 1513 as described in the schedule "Ka" of the plaint.

The defendants contested the suit by filing written statement denying all the material facts of the plaint and during trial the plaintiff examined 03 PWs while the defendants examined 02 DWs and both of the parties produced number of documents to prove their respective cases.

The Senior Assistant Judge, Natore Sadar, Natore tried the suit who after conclusion of trial was pleased to dismiss the suit by judgment and decree dated 15.10.2017 (decree signed on 22.10.2017) in Other Class Suit No. 14 of 2007.

Being aggrieved by and dissatisfied with the judgment and decree dated 15.10.2017 passed by the Senior Assistant Judge the plaintiff filed an appeal before the District Judge, Natore on 28.11.2017 being Title Appeal No. 186 of 2017 which has been subsequently transferred to the Court of Joint District Judge, 2nd Court, Natore for hearing.

During pendency of Title Appeal No. 186 of 2017 before the Court of Joint District Judge the plaintiff appellant on 27.07.2022 filed an application under Order-VI, Rule-17 of the Code of Civil Procedure for amendment of the plaint of Other Class Suit No. 14 of 2007 praying for declaration of title and recovery of khas possession.

The Joint District Judge, 2nd Court, Natore heard the application for amendment of plaint of Other Class Suit No. 14 of 2007 and was pleased to disallow the said application by order dated 30.03.2023 in Title Appeal No. 186 of 2017.

Being aggrieved by and dissatisfied with the said order dated 30.03.2023 the plaintiff petitioner filed the instant civil revision before this Court and obtained Rule and stay as stated at the very outset.

Mr. Diptish Chandra Halder, the learned Advocate appearing for the petitioner submits that the court of appeal below committed an error of law in holding that the nature and character of the suit will be changed if the application for amendment is allowed but actually the nature and character of the suit will not be changed and as such arrived at a wrong decision which is liable to be set aside for the ends of justice.

The learned advocate then submits that the court of appeal below ought to have considered that though it was stated in the plaint of Other Class Suit No. 14 of 2007 that the plaintiff has been evicted from the suit land of R.S. plot No. 1513 as described in the schedule "Ka" of the plaint on 30.03.2014 but due to inadvertent mistake on the part of the lawyer no prayer was made in the plaint regarding recovery of Khash possession after evicting the defendants from the suit land.

Mr. Halder lastly submits that the court of appeal below misconceived and misunderstood the scope of Order VI, Rule 17 of the Code of Civil Procedure and as such arrived at a wrong decision in disallowing the application for amendment of plaint on the plea of

delaying the case and as such the impugned order is liable to be set aside for the ends of justice. In support of his contention the learned advocate for the petitioner cited the decision of Abdul Motaleb Vs. Md. Ershad Ali and others reported in 1998 BLD (AD) 121; the case of Afruz Miah (Md) and another Vs. Al-haj Md. Siraj Miah being dead his legal heirs Karimunnessa and others reported in 43 DLR (AD) 89, the case of Managing Committee N.M.C Model High School and others Vs. Obaidur Rahman Chowdhury and others reported in 31 DLR (AD) 133, the case of Shahjadpur Central Co-operative Bank Ltd. Vs. Mujibur Rahman and others reported in 50 DLR (AD) 86 and the case of Abdul Khaleque Gazi and others Vs. Abdul Aziz Mollah and others reported in 53 DLR (AD) 82.

On the other hand the learned Advocate Mr. Abdul Alim with Ms. Marry Akter appearing for the opposite parties submits that the Joint District Judge committed no wrong in disallowing the application for amendment at the stage of hearing the appeal as the proposed amendment will change the nature and character of the suit. The learned Advocate further submits that the proposed amendment is made only to fill up the lacuna of the suit hence it should not be allowed. In support of his contention the learned advocate for the opposite parties cited the decision of Abdul Wadud Contractor and another Vs. Nazir Ahmed and others reported in 48 DLR (AD) 120 and in the case of Rajdhani Unnayan Kartripakkha (RAJUK) Vs. Mir Nousher Ali reported in 46 DLR (AD) 134.

I have heard the learned advocates for both the parties, perused the application along with the

annexures including the plaint and application for amendment.

It appears from the impugned order that the Joint District Judge rejected the prayer for amendment on the finding that during the continuation of the suit the plaintiff did not amend the prayer for recovery of Khas possession though it was mentioned in the plaint that the plaintiff was dispossessed. The learned judge further observed that the proposed amendment for changing the dag number is also not admissible in law as both these proposed amendment would change the nature and character of the suit.

Let us examined relevant provisions of Order-VI, Rule-17 of the Code of Civil Procedure which deals with the amendment of the pleadings runs as under:

Order-VI, Rule-17: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court is of opinion that in spite of due diligence, the party could not have raised the matter before the commencement of trial:

Provided further that if an application for amendment is made after the trial has commenced and the Court is of opinion that

the application is made to delay the proceedings, the Court shall make an order for the payment to the objector such cost by way of compensation as it thinks fit.

From plain reading of the above provision it is clear that the pleadings can be amended at any stage of the proceedings subject to satisfaction of the court that despite due diligence the party could not have raised the matter before the commencement of trial and if the court is of the opinion that the application is made to delay the proceedings, it may be asked to pay cost to the objector.

In the present case I have cautiously perused the proposed amendment and the original plaint. The original suit was for cancellation of deed and declaration of title. Now, the application for amendment of the plaint is filed at the appellate stage seeking relief for recovery of khas possession along with earlier prayers and correction of a plot number. In the plaint it appears that the plaintiff categorically stated the date and time he was dispossessed/evicted from the suit property but it was the learned advocate who inadvertently did not insert the prayer of recovery of khas possession. It further appears that in the proposed amendment the petitioner further prayed for correction of a plot number. The learned Joint District Judge could not understand and appreciate the position of law that unless the proposed amendment is fundamentally change the character and nature of the suit the prayer for amendment cannot be denied rather the court may at any stage of the proceedings allow either party to alter or amend his

pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties but it cannot be allowed, if, it changed the nature and character of the suit, or if the prayer for amendment had become barred by lapse of time and a right had accrued to the other side. One of the fundamental principles governing the amendment of the pleadings is that all the controversies between the parties as far as possible should be included and multiplicity of the proceedings avoided as decided in 31 DLR (AD) 133. It cannot be said in the given facts and circumstances that the petitioner did not have due diligence and it would be less charitable to say, the application for amendment was made only for the purpose of making delay. What the learned judge could order in the instant case was at best to ask the appellant petitioner to pay cost by way of compensation to the objectors. Be that as it may, generally, our superior courts allow the parties to add prayer for recovery of possession by way of amendment at any stage of the suit in a suit for declaration of title and/or partition. The main purpose is to determine the real questions in controversy between the parties.

A suit for declaration of title and recovery of possession is essentially based on a common claim of the plaintiff which may call for different relief or reliefs in different situations and as such the adding of a relevant new relief by way of amendment does not change the nature and character of the suit when the claim of the plaintiff basically rests on the same

foundation. [Reliance placed on 1998 BLD (AD) 121]. In the instant case since in the contents of the claim of the original plaint and the proposed amendment is in the same foundation by adding a relief for recovery of possession, it cannot be said that it would change the fundamental nature and character of the suit. Hence the Joint District Judge committed an error in rejecting the application for amendment. Therefore, I find merits in the instant Rule.

In the result the Rule is made **absolute**. However, there will be no order as to cost.

The impugned order no.42 dated 30.03.2023 passed by the Joint District Judge, 2nd Court, Natore in Title Appeal No.186 of 2017 is hereby set aside and the application for amendment of the plaint dated 27.07.2022 is allowed.

The learned Joint District Judge is directed to dispose of the appeal as early as practicable preferably within 06(six) months from the date of receipt of this judgment giving opportunity to the parties to adduce and produce their witness and documents in light of the amendment, if necessary, before the Appellate Court in accordance with law. The appellate court must not allow adjournment to the parties except in dire necessity keeping in mind that the appeal is of in the year of 2017.

The order of stay passed earlier by this Court stands vacated.

Communicate the judgment and order at once.