

Bench:
Mr. Justice Bhishmadev Chakrabortty
Civil Revision No.6564 of 2023
Mst. Khodeza Begum and others
.....petitioners
-Versus-
Government of the People's Republic of
Bangladesh and othersopposite parties
Mr. Md. Mamrujul Hassan (Jewel),
Advocate for the petitioners
Ms. Sharmin Ara Sultana, Advocate
..... for opposite party 4
Judgment on 03.07.2025

This Rule, at the instance of plaintiff-appellants, was issued calling upon opposite party 4 to show cause as to why the judgment and order of the Additional District Judge, Court 1, Mymensingh passed on 06.06.2023 in Other Class Appeal 204 of 2011 allowing the application of opposite party 4 filed under Order 1 Rule 10 of the Code of Civil Procedure (the Code) for addition of party shall not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing this Rule operation of the impugned order was stayed for a limited period which was subsequently extended and still subsists.

Facts relevant for disposal of the Rule, in brief, are that the petitioners as plaintiffs instituted Other Class Suit 22 of 2005 in the Court of Joint District Judge, Court No.2, Mymensingh against the defendant government praying for declaration of title in the suit

land measuring 7.99 acres claiming that its enlistment as Vested and Nonresident Property in the name of the government is erroneous. The government contested the suit by filing written statement. On conclusion of trial, the trial Court dismissed the suit.

Being aggrieved by the plaintiffs filed Other Class Appeal 204 of 2011 before the District Judge, Mymensingh. The appeal was subsequently transferred to the Court of Additional District Judge, Court 1, Mymensingh for hearing. During pending of the appeal, opposite party 4 to this Rule filed an application under Order 1 Rule 10 of the Code for adding him as respondent. The appellants filed written objection against the application denying the statements made therein. However, the Additional District Judge by its judgment and order under challenge in this revision allowed the application.

Mr. Md. Mamrujul Hassan, learned Advocate for the petitioners taking me through the impugned judgment and order and other documents appended with the Rule petition submits that the impugned order is a non speaking order. The Court of appeal below without assigning any reason whatsoever allowed the application for addition of party which cannot be sustained in law. He then submits that the third party applicant is neither a proper party nor his presence is necessary in the suit to adjudicate the matter in dispute. He adds that Omita Rani Ghosh the successor of the original owner as plaintiff instituted Other Class Suit 112 of

1995 against the predecessor of the petitioners for declaration of title and recovery of possession which was decreed on compromise on 25.01.1997 where Omita Rani admitted title and possession of the plaintiffs' predecessor in the suit land. Now a third party claiming Omita Rani's heirs cannot make any claim over the same. In not taking into account the aforesaid facts the Court of appeal below committed error of law resulting in an error in such order occasioning failure of justice. Therefore, judgment and order passed by the appellate Court would be set aside.

Ms. Sharmin Ara Sultana, learned Advocate for opposite party 4 opposes the Rule by filing a counter affidavit denying the statements made in the Rule petition. She submits that third party applicant Snehashish Ghosh Mishu is the son of Omita Rani Ghosh who is the daughter of Abinash Chandra Datta, original owner of the suit land. Since he is in possession of the suit land, therefore, he has vital interest in the suit land. She refers to the written objection filed against the application for addition of party and submits that the property in the previous Title Suit 112 of 1995 and this suit is not identical. The plaintiff did not disown that the applicant is not the heir Omita Rani. Since the applicant claimed the suit land as an heir of Omita Rani who is the daughter of ROR recorded tenant, therefore, his presence is necessary for effective disposal of the appeal. The Court of appeal below correctly appreciated the fact narrated in the application for addition of party and allowed the

same. There is no illegality in the impugned judgment, and as such the Rule, would be discharged.

I have considered the submissions of both the sides, gone through the impugned order, the application filed under Order, 1 Rule 10 of the Code, the objection made thereon and other documents appended with the Rule petition.

The plaintiffs instituted the original suit against the government for declaration of title in the suit land. He lost in the trial Court and then filed the present appeal before the District Judge. During pending of the appeal, a third party filed the application for adding him as respondent. In the application he claimed that original owner Abinash Chandra who got the suit land as reversionary died leaving behind his daughter Omita Rani and the applicant is her son. He claimed that he has right, title and possession in the suit land and his predecessor never handed over the suit land to anyone and the documents of the plaintiffs are forged. In the original suit he was not made party. In the written objection the plaintiff-appellants (petitioners herein) admitted that Abinash Datta died leaving behind daughter Omita Rani as heir. He further claimed that Title Suit 112 of 1995 was filed by the mother of this applicant which was decreed on compromise and Omit Rani got a part of the suit property. But on going through the judgment and decree passed in the aforesaid suit, I find that the suit was for 5.94 acres of land and this suit is for 7.99 acres. The parties to the

previous suit and the present suit are not same. The applicant claimed that he has interest in the suit land as heirs of Omita Rani who was the heir of ROR recorded tenant. I find that he has vital interest in the suit and he is a proper and necessary party to the appeal. In disposal of the appeal his presence would no way be prejudiced the petitioners rather his presence is necessary for its effective disposal. Although I am not satisfied with the non speaking order of the appellate Court passed on the application for addition of party but the decision of allowing the application is found correct.

Therefore, I find no substance in this Rule and accordingly the Rule is discharged. No order as to costs.

The order of stay stands vacated.

The impugned order passed by the appellate Court is hereby upheld. However, the concerned appellate Court is directed to dispose of the appeal expeditiously preferring within 04(four) months from the date of receipt of this judgment and order.

Communicate this judgment and order to the concerned Court.