

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 3843 OF 2023.

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Md. Shahadat Hossain Howlader.

....Plaintiff-respondent-petitioner.

-Versus –

Abdul Jabbar Sardar and others.

....Defendant-appellant-opposite parties.

Mr. Humayun Kabir Sikder, Advocate

..... For the petitioner.

Mr. Abul Kalam Azad, Advocate.

..... For opposite parties.

Heard on: 12.05.2024 and Judgment on 14.07.2024.

On an application of the petitioner Md. Shahadat Hossain Howlader under section 115(4) of the Code of Civil Procedure the leave was granted and a Rule was issued calling upon the opposite parties to show cause as to why the impugned ex-parte order No. 02 dated 30.03.2023 passed by the learned District Judge, Barishal in Civil Revision No. 38 of 2023 set-aside the order No. 59 dated 19.02.2023 passed by the Assistant Judge, Uzirpur, Barishal in Title Suit No. 86 of 2017 should not be set-aside and/or such other or further order or orders passed as to this court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the plaintiff-petitioner filed Title Suit No. 86 of 2017 before the Assistant

Judge, Uzirpur, Barishal for declaration of title and recovery of position of the scheduled land.

At the time of hearing of the suit the opposite party No.3 Putul Rani Das wife of late Juran Das filed an application for addition of party under Order I Rule 10 of the code of civil procedure claiming that she has some interest in the suit land.

The trial court after hearing the parties and considering the facts and circumstances of the case rejected the said application for addition of party by its judgment and order dated 19.02.2023.

Against the said judgment and order of the trial court the opposite party No.3 as petitioner filed Civil Revision No. 38 of 2023 before the learned District Judge, Barishal.

The Revisional court on the next day which was for the date of hearing of the maintainability of the case, upon hearing the petitioner and considering the facts and circumstances of the case allowed the revisional application and thereby setting aside the judgment and order of the trial court by its judgment and order dated 30.03.2023.

Being aggrieved by and dissatisfied with the impugned judgment and order of the revisional court the plaintiff-petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure and accordingly the leave was granted and the Rule was issued.

The opposite party No. 3 enter appeared through Vokatnama to oppose the Rule.

Mr. Abul Kalam Azad, the learned Advocate filed counter affidavit on behalf of the opposite party No.3 annexing the some documents.

Mr. Humayun Kabir Sikder, the learned Advocate appearing on behalf of the plaintiff-petitioner submits that this a simple suit for declaration of title and recovery of possession. He submits that the petitioner specifically mentioned the scheduled property and claimed that the defendant were the tenant of the petitioner and they did not leave the suit land with repeated verbal request thus the plaintiff constrained to file this suit. He further submits that the opposite party No. 3 was not a necessary party in the suit land and in such a case the trial court rightly passed the impugned order whereas the revisional court without considering the material facts and documents of the case setting aside the order of the trial court. He further submits that the applicant opposite party No.1 did not mention that he has any title in the aforesaid portion of the suit land or he is in possession of the suit land in such a case implicating her as defendant in the instant case is not a good order of the revisional court since the persons who has no right and title in the suit land cannot be added as defendant. He further submits that the documents filed by the applicant which are not for the same property of the suit land, even no statement that she obtained any decree in the said land and though mentioned in the earlier decree but in the said decree of the Title Suit No. 86 of 2006 she was not a party of the said suit and no decree was passed in favour of the said party, in such a case the trial court

rightly rejected the same but the revisional court without considering the aforesaid facts and circumstances of the case passed the impugned judgment which he committed error in law resulting in an error in the decision occasioning failure of justice. He prayed for making the Rule absolute.

On the contrary Mr. Abul Kalam Azad, the learned Advocate filed counter affidavit on behalf of the opposite party No.3 and claimed that the opposite party No.3 has right and title over the suit land and the plaintiff claimed 6 decimal of land out of 1 acre of land but without mentioning any specific boundary claimed that he has been possessing the land by any partition deed or amicable partition. The applicant claimed the said land and also disclosed that she has entitlement some portion of land in the said suit land in such a case without giving scope to contest the suit the applicant should be deprived if any decree was passed. He further submits that the said matter should be considered by taking evidence whether the applicant has any entitlement in the suit land. He further submits that for avoiding further litigation it is required to add the applicant as defendant and when any person claimed that he/she has any entitlement or right and interest in the suit land then it is better to add him in the said suit and the applicant specifically claimed her title.

In reply Mr. Humayun Kabir, the learned Advocate of the petitioner submits that the plaintiff was not a party of the earlier suit, even the said

decree was challenged by other party and the title of the applicant has not yet been established.

I have heard the learned Advocate of both the sides, perused the impugned judgment and order of the courts below and the papers and documents as available on the record.

It appears that the plaintiff petitioner filed the suit for declaration of title and recovery of possession only in respect of .6 decimal of land out of 1 acre of land and wherein he specifically mentioned that the defendant Nos.1 and 2 were the tenant of the plaintiff and on repeated verbal request he did not handover the land to the plaintiff thus the plaintiff constrained to file the suit for declaration of title and recovery of position against the defendant Nos. 1 and 2. But it appears that the applicant claimed that the suit land is 1 acre and she obtained Sole Decree in Title Suit No. 138 of 2017. Though the said decree was challenged and the title of the applicant has not yet been established, however, since the applicant claimed that she has entitlement in the aforesaid land and the multiple suits are pending for disposal, in such a case it is my view that it is better to add the said applicant in the instant case for avoiding multiplicity of the case.

Considering the aforesaid facts and circumstances of the case it is my view that the revisional court after proper consideration of the facts of the case rightly passed the impugned judgment which should not be interfered with, thus I find no merit in the Rule.

In the result the Rule is discharged without any order as to cost. The impugned ex-parte order No. 02 dated 30.03.2023 passed by the learned District Judge, Barishal in Civil Revision No. 38 of 2023 setting-aside the order No. 59 dated 19.02.2023 passed by the Assistant Judge, Uzirpur, Barishal in Title Suit No. 86 of 2017 is hereby upheld.

Since this is long pending case the trial court is directed to dispose of the suit as early as possible preferably within 1 (one) year from the date of receipt of this judgment in accordance with law.

Communicated the order at once.

M.R.