

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4930 OF 2023**

In the matter of:

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

And

Humayun Kabir and others

... Petitioner

-Versus-

Government of Bangladesh and others

... Opposite parties

Mr. Md. Hamidur Rahman, Advocate

.... For the petitioner.

Mr. Md. Moshiur Rahman, Assistant Attorney General

.... For the opposite party Nos.1-3.

Mr. Selim Hossain, Advocate

.... For the opposite party Nos.4 and

5.

**Heard and Judgment on 28.10.2024**

This Rule was issued calling upon the opposite parties to show cause as to why the Order No.45 dated 19.06.2023 passed by the Additional District Judge, 2<sup>nd</sup> Court, Noakhali in Title Appeal No.86 of 2017 so far as it relates to rejection of the application for amendment of the plaint 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 petitioner as plaintiff instituted above suit for declaration that the creation of the case record, the kabuliyat deed and the khatian showing settlement of 60 decimal land of Plot

No.662 to the defendant Nos.4 and 5 are unlawful and collusive and liable to be set aside.

It was alleged that 1 acre land of Plot No.662 belonged to the Government and the same was given settlement to the plaintiff as landless peasant by registered kabuliyat dated 05.01.2002 and plaintiff is in possession in the same by constructing dwelling house. The plaintiff came to know that defendant Nos.4 and 5 in collusion with the Officers of the local Assistant Commissioner Land Office has created collusive and fabricated khatian and kabuliyat showing settlement of 60 decimal land out of above Plot No.662 in favour of defendant No.4 and 5.

The suit was contested by defendant No.1 Government of Bangladesh represented by Deputy Commission, Noakhali and defendant Nos.4 and 5 by filing separate written statement wherein they have denied all claims set out in the plaint and stated that on compliance of relevant rules and procedure 60 decimal land has been given settlement to landless peasants defendant No.4 and 5 and they are in peaceful possession in the same.

On conclusion of trial the learned Assistant Judge dismissed the suit and being aggrieved by above judgment and decree of trial Court plaintiffs preferred Civil Appeal No.86 of 2017 to the District Judge which was transferred to the learned Additional District Judge for hearing.

In above appeal appellant filed a petition on 20.02.2022 for amendment of the plaint for inclusion of a relief for declaration of title in above land.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Additional District Judge rejected above petition vide impugned order dated 19.06.2023.

Being aggrieved by above judgment and order of the learned Judge of the Court of appeal below above appellants as petitioners moved to this Court and obtained this Rule.

Md. Hamidur Rahman, learned Advocate for the petitioners submits that the petitioners as plaintiffs instituted above suit under Section 42 of the Specific Relief Act, 1877 for a negative declaration that the kabuliyat, and settlement case showing settlement of 60 decimal of land of the disputed plot to defendant Nos.4 and 5 is unlawful and not binding upon the plaintiff. At appeal the appellant merely wanted to incorporate a further declaration of his title since his title was clouded. Above amendment does not change the nature, feature and character of the suit but the learned Additional District Judge has misconceived above facts and relevant laws and most illegally rejected above petition for amendment of the plaint which is not tenable in law.

On the other hand Mr. Md. Moshir Rahman, learned Assistant Attorney General for opposite party Nos.1-3 submits that the petitioner

as plaintiff instituted above suit in 2007 falsely claiming the land which was given settlement to defendant Nos.4-5 by the Government. Above suit was dismissed on contest and after about 15 years the petitioners submitted above petition for amendment of plaint to cause further delay in the disposal of the appeal on merit. On consideration of above materials on record the learned Additional District Judge rightly rejected above petition for amendment of the plaint which calls for no interference.

Mr. Selim Hossain, learned Advocate for the opposite party Nos.4 and 5 adopted the submissions made by the learned Assistant Attorney General and further stated that if this revision is allowed this Court should issue a direction upon the Court of appeal below to dispose of the appeal on merit after recording additional evidence if any expeditiously instead of remanding the suit to the trial Court for retrial.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that land of disputed Plot No.662 belonged to the Government and 60 decimal land from above plot was given settlement to landless defendant Nos.4 and 5. The Plaintiff claims that above 60 decimal land falls into his 1 acre land which was previously given settlement to him by the Government. But it turns out from the judgment of the trial that the settlement case of defendant Nos.4 and 5 was earlier in point of time than that of the plaintiff.

The Code of Civil Procedure, 1908 takes a lenient view as to the amendment of the pleadings and the general rule is that an amendment of the pleadings can be allowed at any stage of the proceedings provided the same does not defeat any right already accrued in favour of the opposite party.

It is true that the petition for amendment under Order 6 Rule 17 of the Code of Civil Procedure was submitted by the appellant after about 15 years of the filing of the suit and in the Court of appeal. But on the ground of delay alone a petition for amendment of the pleadings cannot be refused.

The plaintiff instituted above suit challenging the legality of giving settlement to the defendant the land of the disputed plot and by the proposed amendment of the plaint the plaintiff wants to add a declaration of his title in the land of above plot. As such proposed amendment if allowed shall not change the nature and character of the suit.

The learned Advocates for the opposite parties submits that the appeal needs to be disposed of on merit expeditiously instead of remanding of the suit for retrial. As mentioned above the proposed amendment does not incorporate any new fact but the same merely incorporates a new remedy. As such there is no scope for the appellant to reexamine more PWs excepting PW1. Since the suit was of 2007 it

demands that above appeal be disposed of on merit expeditiously without remanding the suit for retrial.

In above view of the materials on record I find substance in this application under Section 115(1) of the Code of Criminal Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned Order No.45 dated 19.06.2023 passed by the Additional District Judge, 2<sup>nd</sup> Court, Noakhali in Title Appeal No.86 of 2017 is set aside and the petition filed by above appellant under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint is allowed. The appellant shall incorporate above amendment of the plaint within 15 days from the date of receipt of this order and if he fails to do so this order shall be stand vacated.

The learned Additional District Judge, Noakhali is directed to record additional evidence if any and then proceed with the disposal of the appeal on merit expeditiously within period of 3(three) months from the date of receipt of this judgment.

However, there is no order as to costs.