

District: Gaibandha

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 1845 of 2024

In the matter of :

Md. Abu Bakkar Siddique

... Petitioner

-Versus-

Md. Abdur Rahman and others

...Opposite parties

Mr. Rasheduzzaman Bosunia, Advocate

...For the petitioner

Mr. Sasti Sarkar, Advocate with

Mr. Md. Sultanuzzaman, Advocate

...For the opposite parties

Heard on: 13.11.2024 and 04.12.2024

Judgment on: 09.12.2024

Rule was issued on leave, calling upon the opposite parties to show cause as to why the judgment and order dated 21.11.2023 passed by the Senior District Judge, Gaibandha in Civil Revision No. 11 of 2023, affirming those of dated 18.05.2023 passed by the Senior Assistant Judge, Gaibandha Sadar, Gaibandha in Other Class Suit No. 87 of 2020, rejecting the application for acceptance

of additional written statement filed by the defendant Nos. 1-3 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The opposite party Nos.1 and 2 as plaintiffs filed Other Class Suit No. 87 of 2020 before the Court of Senior Assistant Judge, Gaibandha Sadar, Gaibandha for permanent injunction impleading the present petitioner along with opposite party Nos. 3 and 4 as defendants.

The case of the plaintiffs briefly are that the scheduled .12 decimals of land appertaining to C.S. Khatian No. 379, plot No.3098 along with other land in total measuring an area of 2.95 acres was originally belonged to Badur Sheikh, Sadik Sheikh, Tamij Sheikh and Khutu Sheikh. In the C.S. record, it was commented that Tamij Sheikh was the sole possessor over .12 decimals of land in plot No. 3098. Tomijuddin Sheikh died intestate leaving behind 3(three) sons, Mozibur Rahman, Badiuzzaman and Azzizar Rahman, accordingly, S.A. khatian No.522 was prepared in their name. In the year 1965, .8 decimals of land from the northern side out of the aforesaid .12 decimals

was acquired by the Roads and Highways Department and the ownership of the rest .4 decimals of land was remained to the Mojibur Rahman and his brothers. Badiuzzaman died intestate issueless leaving behind brothers, Mozibur Rahman and Azizur Rahman.

The plaintiff No. 1 by way of purchase through 2(two) separate registered deeds became owner of 1.37 decimals of land and has been possessing the same after mutating his name through Mutation Case No. 1734 of 2009-10. The plaintiff No. 2 by way of transfer became owner of 1(one) decimal of land from the heirs of Tamijuddin Sheikh. The B.R.S. Khatian Nos. 290 and 192 were prepared and published in the name of plaintiff Nos. 1 and 2 against their portion. The vendor of the plaintiffs erected a partly constructed building establishing a rice mill in the said tin sed half constructed building together with some shops and has been possessing the property through running business. The plaintiffs, on the strength of their own, are in peaceful possession over 1.26 decimals of land as specified under schedule 'Ka' to the plaint and have taken initiative to complete the half done construction work into the suit land, but the defendants threatened them not to make

any construction and as such, the plaintiffs filed the suit praying for a permanent injunction restraining the defendants from interfering into the peaceful possession and construction work of the plaintiffs. During pendency of the suit, on 30.09.2020, the defendants together with some unruly persons forcibly and illegally entered into the plaintiffs' shop and dispossessed them from the suit land and as such, the plaintiffs by way of amendment incorporated a new prayer for recovery of khash possession.

The defendant Nos. 1-3 contested the suit by filing a joint written statements denying all the material averments made in the plaint contending, *inter alia* that in the year 1965, Roads and Highways Department acquired .8 decimals of land from the northern side of plot No. 3098 from the property left by the C.S. recorded tenant Tamijuddin Sheikh and after acquisition thereof .4 decimals of land was remained in the share of the heirs of Tamijuddin Sheikh. Although Roads and Highways Department acquired the said .8 decimals of land but did not take over possession of the same; taking the advantage, the sons of Tamijuddin Sheikh were possessing the entire .12 decimals of land and thereafter, Mozibur Rahman and Azizar Rahman, son of

Tamijuddin Sheikh suppressing the fact of acquisition of the .8 decimals of land transferred the same in favour of the plaintiffs. In the year 2020, Roads and Highways Division took initiative to evict the unauthorized persons from the acquired land and since the plaintiffs along with others refused to hand over the possession in favour of the Department. Accordingly, the department using bulldozer evicted them and recovered the possession of the property. The Roads and Highways Department after recovery of the possession from the illegal occupants, demarcated the land by putting boundary pillar. The defendants through purchase became owner of 0.0197 ojutangsho land, approximately about .2 decimals out of the .4 decimals of land remained unacquired in the southern side of plot No.3098, which has been shown by preparing sketch map in the bottom of the written statement. The plaintiffs have no rice mill, grocery or flexi load/bikash shop into the suit property. The plaintiffs' possessed land has been recovered by the Roads and Highways Department by evicting them. The vendor of the plaintiffs practiced fraud upon the plaintiffs by selling out title less property to them and the plaintiffs have not acquired any right, title over the suit land,

despite with false allegation they filed the instant suit. During the pendency of the suit, the plaintiffs amended their plaint several times and the defendants also filed additional written statement on several occasions and on 18.05.2023, the defendants again filed an additional written statement asserting that the scheduled property having not been partitioned by met and bound and the property is an ejmally one and thus, without impleading the co-sharers of the said land and without seeking partition, the present suit is not at all maintainable. The additional written statement has been annexed as Annexure-‘A’ to the civil revisional application. On 18.05.2023, learned Senior Assistant Judge, Gaibandha Sadar, Gaibandha rejected the application for acceptance of additional written statement filed on behalf of the defendants holding that:

“এই মোকদ্দমাটি F.P.H. পর্যায়ে রয়েছে। ইতোপূর্বে PW-1 ও PW-2 এর সাক্ষ্য শেষ হয়েছে। বিবাদীপক্ষ অতিরিক্ত জবাব আনয়ন করেছেন যা সুদীর্ঘ এবং পূর্বের জবাবের সাথে পরস্পর বিরোধী। বিবাদীপক্ষ PW-1 কে যে সাজেশন দিয়েছেন তার সাথে দাখিলী অতিরিক্ত জবাব পরস্পর বিরোধী। অধিকন্তু, বিবাদীপক্ষ জবাবের সাথে সামঞ্জস্য রেখে সংশোধনে অনিচ্ছুক। বিধায়, বিবাদীপক্ষের আনীত অতিরিক্ত জবাবের আবেদন না-মঞ্জুরের সিদ্ধান্ত হলো।”

Having been aggrieved, the defendants preferred Civil Revision No. 11 of 2023 before the District Judge, Gaibandha and learned District Judge by his judgment and order dated 21.11.2023 rejected the civil revision, affirming those of dated 18.05.2023 passed by the Senior Assistant Judge, Gaibandha Sadar, Gaibandha in Other Class Suit No. 87 of 2020.

Being aggrieved by and dissatisfied with the aforesaid order of learned District Judge, Gaibandha, the defendant No. 1 filed this revisional application and obtained the Rule.

Mr. Md. Rasheduzzaman Bosunia, learned Advocate for the petitioner submits that both the Courts below failed to consider that due to bonafide mistake the defendants could not incorporate some necessary statements and sketch map, although in the original written statement it was stated that a sketch map has been incorporated at the bottom of the written statement but inadvertently could be incorporated. He next submits that in the original written statement, although it has been stated that the plaintiffs have been evicted by the Roads and Highways Department, but the defendants could not specify the plaintiff's

serial number mentioned at the list as has been incorporated with the notice served by the Roads and Highways Department upon the illegal possessors and in the additional written statement, it has been specified that the plaintiff's name was specified and mentioned at serial no. 266 of the said list of eviction notice. He continues to submit that since the defendants could not manage the eviction notice or prepared list of illegal possessors, prepared by the Roads and Highways Department in due time, thus, the said fact could not be incorporated in the written statement. He further submits that both the Courts below failed to consider the settled principle of law that the amendment of written statement is to be allowed to enable the defendant to bring into the record the point of controversy and in case of amendment of plaint although there is some restriction imposed upon the plaintiff such as the nature and character of the original suit can not be changed, but there is no legal bar upon the defendant to claim as many roots or as many ways in defending his right, even can take inconsistent pleas with each other. Both the Courts below committed an error of law, occasioning failure of justice in rejecting the application for additional written statement.

On the other hand, Mr. Sasti Sarkar, learned Advocate appearing with learned Advocate Mr. Md. Sultanuzzaman submits that the defendant Nos. 1 to 3 by way of additional statement dated 23.05.2023 tried to incorporate some inconsistent statements from their earlier one filed before the Court and since the defendants pleaded something differently in earlier occasion, now they are estopped by law of Estoppel in taking new and inconsistent pleas under section 115 of the Evidence Act. He next submits that both the Courts below considered that before filing the additional written statement the plaintiffs already examined 2(two) witnesses and if the defendants are allowed to incorporate new and inconsistent pleas then, the plaintiffs shall be highly prejudiced and in course of argument he referred the statements made in paragraph No. 9 of the counter affidavit filed on behalf of the opposite party, which is as follows:

“The defendant made further statement প্রকাশ থাকে যে, এই বিবাদীগণের

উল্লিখিত স্ব স্ব দখলীয় জমিগুলি বিবাদীগণ বিগত ২০১৪ইং সালে ক্রয় করিয়া দখলভোগ করিতেছে।

কিন্তু এই বিবাদীগণ আর্থিক সংকটের ফলে ২০১৪ইং সালে দলিল করিয়া নিতে পারে নাই these

statements is contradictory to the defendant's earlier written statement which are as follows:

In line nos. 7 to 31 of page no. 6 & 7 of written statement dated 12.09.2021 filed by the defendants, it has been stated to the effect that:

এস. এ প্রজা মজিবর রহমান একোয়ারকৃত ০৮ শতক বাদ দাগের দক্ষিণ অংশে ০৪ শতক মধ্যে ০২ শতক জমিতে স্বল্পবান থাকিয়া গত ০৪/০৮/৯৩ইং তারিখের ৬২২৮নং কবলা দলিলে ১/২ শতক জমি জনৈক সাজু মিয়ান নিকট বিক্রয় করে। সাজু মিয়া উক্ত ১/২ শতক জমি গত ১৫/০৬/২০২০ইং তারিখের ২৮৫২নং রেজি:কৃত কবলা দলিলে ০.০০৩০ বা ৩০/১০০ শতক জমি ৩নং বিবাদী ও তাহার ভ্রাতা নূর আলম সিদ্দিক বরাবর হস্তান্তর করে দখল হস্তান্তর করেন।

ইহা ছাড়াও এস. এ প্রজা আজিজার রহমান একোয়ার বাদ ০৪ শতক মধ্যে ০২ শতক জমি রেখে মারা গেলে পুত্র সিরাজুল গং প্রাপ্ত হয়। সিরাজুল গত ২৮/০৮/৯৭ইং তারিখের ৭৩৫৭নং দলিলে সাহেরা বেগম বরাবর ০১ শতক জমি বিক্রয় করেন। সাহেরা বেগমের নামে ২৪৯১ ডিপি খতিয়ান হয়। অতঃপর সাহেরা বেগম উক্ত জমি গত ৩১/০৩/১৯ইং তারিখের ২৩৮৯নং দলিলে সাইদার রহমান বরাবর বিক্রয় করেন। সাইদার রহমান উক্ত জমির বাবদ ৪২৩৯নং খারিজ খতিয়ান খুলিয়া গত ১৫/০৬/২০২০ইং তারিখের ২৮৫৪নং দলিলে ৩নং বিবাদী ও তাহার ভ্রাতা নূর আলম সিদ্দিক বরাবর হস্তান্তর করে দখল হস্তান্তর করেন।

ইহা ছাড়াও এস. এ প্রজা মজিবর রহমান একোয়ার বহিঃভূত ০৪ শতক জমি মধ্যে হইতে গত ২০/০৮/১৯৯৬ইং তারিখের ৫৫৫৭নং দলিলমূলে ০১ শতক জমি আফসার উদ্দিন বরাবর হস্তান্তর

করিলে আফসার উদ্দিনের নামে ২১৫নং ডিপি খতিয়ান হয়। অতঃপর আফসার উদ্দিন মারা গেলে পুত্র আল আমিন সরকার গং প্রাপ্ত হইয়া ৪৪০৩নং খকারিজ খতিয়ান খুলিয়া গত ০১/০৯/২০২০ইং তারিখের ৫৪৮৩নং দলিলে ০.০০৬৬ বা ৬৬/১০০ শতক জমি ৩নং বিবাদী ও তাহার ভ্রাতা নূর আলম বরাবর বিক্রয় করে।

এমতে এই বিবাদী ৩টি দলিলে ০.০০৩০ + ০.০১০০ + ০.০০৬৬ = ০.০১৯৬ শতক বা প্রায় ০২ শতক জমি ক্রয় করিয়া নালিশী ৩০৯৮ দাগের উত্তর অংশের একোয়ারকৃত ০৮ শতক জমি বাদ ০৪ শতক মধ্যে পশ্চিম ও দক্ষিণ অংশে মাঝামাঝি দখল লইয়া দোকান ঘর নির্মাণে ব্যবসা করিয়া দীর্ঘদিন যাবৎ নিরংকুস স্বত্বে নিরবিচ্ছিন্নভাবে দখলভোগ করিয়া আসিতেছে।

In line no. 9 of page no. 6 of written statement dated 12.09.2021 the defendants added additional written statements on 17.02.2022 to the effect that:

এস. এ প্রজা মজিবর রহমান একোয়ারকৃত ০৮ শতক বাদ দাগের দক্ষিণ অংশে ০৪ শতক মধ্যে ০২ শতক জমিতে স্বত্ববান থাকিয়া গত ০৪/০৮/৯৩ইং তারিখের ৬২২৮নং কবলা দলিলে ১/২ শতক জমি জনৈক শামীম সরকার নিকট হস্তান্তর করে। শামীম সরকার উক্ত জমি ২৯/১২/৯৬ইং তারিখের ১০৩৮৭নং দলিলমূলে ...। সাজু মিয়া উক্ত ১/২ শতক ০২/০২/০৩ইং তারিখের ১২০৪নং দলিলমূলে জনৈক সাখাওয়াত হোসেন বরাবর বিক্রয় করেন। সাখাওয়াত হোসেনের নামে ২৪৩১নং ডিপি খতিয়ান হয়। সাখাওয়াত হোসেন উক্ত জমির বাবদ ২২৯১নং খারিজ খতিয়ান খুলিয়া উক্ত ১/২ শতক জমির মধ্যেজমি গত ১৫/০৬/২০২০ইং তারিখের ২৮৫২নং রেজিঃকৃত কবলা দলিলে ০.০০৩০ বা ৩০/১০০ শতক জমি ৩নং বিবাদী ও তাহার ভ্রাতা নূর আলম সিদ্দিক বরাবর হস্তান্তর করে দখল হস্তান্তর করেন।

৭নং পাতার ১৬নং লাইনের নাই শব্দের পর- বাদীর দাবীকৃত বিআরএস ০২ ও ২৯২নং খতিয়ানের জমি সড়ক ও জনপথের একোয়ারকৃত জমি। উক্ত খতিয়ানের জমি এই বিবাদীগণ ক্রয় করেনি বা দখল করে না। উক্ত খতিয়ানের দক্ষিণ পার্শ্বের জমির বাবদ স্বহু দখল সৃষ্টে এই বিবাদীগণের ভেন্ডরের নামীয় ২৪৯১, ২১৫, ও ২৪৩১নং খতিয়ানের জমি ক্রয় করিয়া দোকান নির্মাণে দখলভোগ করিতেছে।”

And thereby from the above it is apparent that the defendants tried to make out a case contrary to the earlier case made out in their written statement.

Heard learned Advocates of both the parties, perused the revisional application together with the annexures and counter affidavit filed on behalf of the opposite parties and the provisions of law.

It appears that the present opposite party Nos. 1 and 2 as plaintiffs filed Other Class Suit No. 87 of 2020 before the Court of Senior Assistant Judge, Gaibandha Sadar, Gaibandha for permanent injunction sought for an order of restraint upon the defendants from interfering into the peaceful possession of plaintiffs or from interfering into the construction work proceeded by the plaintiffs into the scheduled property. From the record, it further appears that during pendency of the suit, the plaintiffs by

way of amendment incorporated new statement that they were dispossessed by the defendants from the suit land on 13.09.2020, incorporating a new prayer sought for recovery of khash possession. The defendants contested the suit by filing written statement. During pendency of the suit, on 18.05.2023 defendants filed an additional written statement by way of an application before the trial Court and the trial Court by its order dated 18.05.2023 rejected the same holding that the additional written statement is inconsistent with the original one and is a lengthy one, moreover, already P.Ws. 1 and 2 has been examined before the Court. Thus, the defendants cannot be allowed at this moment to amend their written statement incorporating such lengthy and inconsistent statements.

Having been aggrieved, the defendants preferred an unsuccessful civil revision before the District Judge, being No. 11 of 2023, incorporating a detail explanation with the revisional application stating the reasons for filing the application for additional written statement, which has been annexed as Annexure-‘B’ to the instant civil revisional application. Learned District Judge without even going through the civil revisional

application or examining the additional written statement and without applying his judicial mind rejected the revisional application, against which the defendants preferred the second revision before this Division. It is settled by consistent judgments of the Apex Court as well as of this Division that the provision for amendment incorporated in the Code contemplated several reasons, one of which is that the Court may exercise its discretion authority to allow either of the parties to amend their pleadings for the purpose of determining the real question or controversy or issues between the parties and it is settled proposition that amendment of a plaint and those of a written statement are not necessarily governed under the same principle, although some important general rules for allowing amendment is common between the amendment of plaint and of written statement, such as, in both the cases the application should be bonafide and must be for the purpose of determining the real controversy between the parties, but the Courts are more liberal in allowing amendment of written statement. In the case of Major (Retd.) Mohammad Afsaruddin Vs. Kamal Rahman report in 41 DLR 190, a Division Bench of this Division while dealing with the principle of

allowing written statement, endorsing another judgment of this Division passed in the case of Deputy Commissioner (Revenue), Dhaka Vs. Dr. Abdur Rahman and others reported in 26 DLR 205, held as follows:

“Regarding the difference between the amendment of the plaint and that of written statement in the following words, - “It is to be noted that amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principles. Some important general principles are no doubt common to both, such as the application of amendment whether of a plain or a written statement must be bonafide and must also be for the purpose of determining the real controversy between the parties and where it is just. But the rule that the plaintiff cannot be allowed to amend his plaint so as to alter materially or substitute his cause of action or the nature of his claims, has necessarily no counterpart in the law relating to amendment of the defence or the written

statement. The governing consideration in an application to amend the written statement should be how far, if at all, the proposed amendment of the defence is necessary to determine the real controversy between the parties. It is thus evident that the Court has the positive duty to decide whether the proposed amendment is necessary to determine the real controversy between the parties. If that test is satisfied the amendment shall be allowed, otherwise not.”

It is to be noted here that Hon’ble Appellate Division of the Supreme Court of Bangladesh subsequently by it’s judgment in the case of Dr. Abdur Rahman and others Vs. the People’s Republic of Bangladesh reported in 30DLR(SC) 93 affirmed the aforementioned judgment and view of the High Court Division passed in the reported case of 26 DLR, holding that the Court concerned shall have to find out according to the terms of the Rule, whether the proposed amendment is likely to facilitate the determination of the real questions of controversy.

In a subsequent judgment passed by this Division, in the case of Tohfa Khatun and others Vs. Moulavi Mukhlisur Rahman and others reported in 49 DLR 315 held that:

“Law does not impose any bar either on the defendant to claim as many roots to their title as they want and even if they be conflicting to each other but that itself cannot be a ground for rejecting an application for amendment of written statement.”

Under the case in hand, the plaintiffs filed the suit for permanent injunction and subsequently by way of amendment a prayer of recovery of khash possession has been incorporated in the plaint stating that their predecessors-in-interest were absolute owner and possessors of .12 decimals of land under plot No. 3098 appertaining to C.S. Khatian No. 379, wherefrom .8 decimals of land has been acquired by the Roads and Highways Department and the plaintiffs became owner of 1.26 decimals of land out of the remaining .4 decimals from the previous owner and the specific case of the plaintiffs is that the said previous owners were in peaceful possession by constructing a pacca building, running

business of grocery, shop of flexi load/bkash. On the other hand, the case of the defendants is that the plaintiffs were victim of fraud, specifically asserting that although the .8 decimals of land has been acquired by the Roads and Highways Department, but the department did not take over the possession of the same. Accordingly, the previous owners were continuing in possession over the entire .12 decimals of land of plot No. 3098 and taking the said advantage, the heirs of C.S. recorded tenant, Tamijuddin Sheikh sold out some title less property out of the said .8 decimals of land to the plaintiffs, which are part and parcel of the acquired land and subsequently, the Roads and Highways Department after taking initiative evicted the plaintiffs from their illegal possession and recovered the land by using bulldozer and there remains no pacca building, no grocery or flexi load/bkash shop and the defendants are legal possessors or owners of 0.0196 ojutangso, approximately about .2 decimals of land, which they purchased from the remaining .4 decimals of land, remained after acquisition and are in peaceful possession thereof.

From the aforesaid facts, it appears to this Court that real controversy is that whether the plaintiffs purchased property is the

part and parcel of the acquired .8 decimals or not and whether the defendants are legal possessors of approximately .2 decimals of land out of the remaining .4 decimals of land. From the proposed additional written statement, it appears that the proposed factual statement as well as the sketch map (inadvertently could not be incorporated in the original written statement) are very much the core issue or question in real controversy.

From the record, it appears that both the Courts below, in rejecting the application for amendment/acceptance of additional written statement, assigned some unjustified reasons which appears to this Court is not cogent and valid ground and thus, the impugned order calls for interference by this Court.

In the result, the Rule is made absolute.

The judgment and order dated 21.11.2023 passed by the Senior District Judge, Gaibandha in Civil Revision No. 11 of 2023, affirming those of dated 18.05.2023 passed by the Senior Assistant Judge, Gaibandha Sadar, Gaibandha in Other Class Suit No. 87 of 2020, rejecting the application for acceptance of additional written statement filed on behalf of the defendants is

hereby set aside. The application for additional written statement stands allowed.

Since this is a suit for permanent injunction together with a prayer for recovery of khash possession and as such, learned Senior Assistant Judge, Gaibandha Sadar, Gaibandha is hereby directed to hear and dispose of the suit expeditiously, preferably within 6(six) months from the date of receipt of this judgment and order and without allowing the parties any unnecessary adjournment.

No order as to cost.

Communicate the judgment and order at once.