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

Present:
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3801 of 2015

IN THE MATTER OF :
An application under section 115(4) of the Code of Civil Procedure

-And-

In the Matter of:
Md. Nijam Uddin Akand
...... Petitioner

Versus

Md. Altaf Hossain and others
......Opposite parties

Mr. Md. Rafiqul Islam, Advocate
.... For the petitioner

Heard and Judgment on: 30.07.2024.

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party Nos. 1-13 to show cause as to why the Judgment and Order dated 13.09.2015 passed by the District Judge, Barisal summarily rejecting the Civil Revision No. 57 of 2015 and thereby affirming the order dated 10.05.2015 passed by the Senior Assistant Judge, Sadar Court, Barisal in Title Suit No. 309 of 2011 rejecting the petition under Order 1, Rule 10 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 the operation of Title Suit No.309 of 2011 was stayed.

The facts for disposal of the rule, in brief, are that the opposite parties filed the suit for declaration contending *inter alia* that the suit

property originally belonged to Kurman Hawlader in Nim Hawla Right and his land was recorded in C.S Khewat No. 190, Plot No. 1173 measuring an area of .85 acre land of Mouza Bogura Alekanda under Police Station Barisal Kotwali, District: Barisal. That CS owner Kurman Hawlader died leaving behind 4 sons namely Asmot Ali, Akubbar Ali, Ekabbor Ali, Mohabbat Ali. Akubbar died leaving behind one son Jahur Ali. Johur Ali being owner and possessor died leaving behind 3 sons, plaintiff No.1 Altaf Hossain, Asraf Ali, Manik Hawlader, 2 daughters plaintiff Nos. 2/3 Halima Begum and Delwara Begum. Asraf Ali died leaving behind 3 sons namely Md. Nana Hawlader, Md. Nagor Hawlader, Md. Manir Hawlader and 2 wives, Moroni Begum and Monowara Begum, plaintiff nos. 4-8; Manik Hawlader died leaving behind 3 sons namely Md. Alam Hawlader, Md. Milon Hawlader, Md. Rimon Hawlader, one daughter Samina Akter, one wife Aleya Begum, plaintiff Nos.9 to 13. At the time of R.S operation aforesaid land was recorded in R.S Khatian No.240 corresponding to S.A Khatian No.2583 plot No.323/324/325/326/327 measuring an area of 90 acres. But the said land was recorded in part in the names of heirs of Kurman and part land was recorded in the name of Nani Bala. The record in the name of Nani Bala is wrong. That Fulmon Bibi, the predecessor of defendant Nos. 1-3 claimed the said 90 acre of land by a registered saf kabala dated 30.8.1955 and filed Title suit No. 301 of 1957 before the 2nd Munsif Court, Barisal and obtained an *ex parte* decree dated 24.12.1957. That the predecessor of defendant Nos.1-3 never claimed the suit land but her heirs after many years of so-called *ex parte* decree on 01.07.2011

claimed right and title over the suit land which clouded the right and title of the plaintiffs. Hence the suit for declaration that the *ex parte* decree passed in Title Suit No.308 of 1957 is void, inoperative, fraudulent and collusive in respect of the schedule land.

The defendant nos.1-3 appeared and contesting the suit by filing written statement denying all the material facts made in the plaint. The suit is now pending for trial and meanwhile, after completion of recording depositions of PWs the defendant no.1 has examined as DW-1.

At this stage of the suit, after being informed, the present petitioner appearing before the trial court on 23.04.2015 filed an application for addition of party as defendant under Rule-10 of Order-1 read with section 151 of the Code of Civil Procedure. The plaintiffs filed written objection against that and after hearing, the trial court by his order dated 10.06.2015 rejected the application.

Against that order of rejection of the trial court the petitioner filed Civil Revision no.57 of 2015 before the District Judge, Barishal who by his impugned judgment and order dated 13.09.2015 was pleased to reject the same summarily.

Being aggrieved by and dissatisfied with the said judgment and order passed by the District Judge, the petitioner moved this Court and obtained the Rule and order of stay as stated at the very outset.

Mr. Md. Rafiqul Islam, the learned Advocate appearing for the petitioner submits that the Defendant No. 1 is the heir of Fulmon Bibi and he transferred his

land by a registered heba deed No. 3332 dated 17.08.2008 to Hasina Mamtaj and that Hasina Mamtaj being owner and possessor of the suit land transferred her share to the present petitioner by a registered sale deed No. 2485 dated 23.03.2010 an area measuring 2.98 acre of land. Since the petitioner is a *bona fide* purchaser of the Suit Land and is in possession of the same, he is the necessary party and as such the learned courts below ought to have allowed the application under Order-1, Rule-10 of the Code of Civil Procedure. He then submits that the petitioner filed application under Order-1, Rule-10 read with section 151 of the Code of Civil Procedure claiming that the petitioner acquired property by a registered sale deed before institution of the suit and it is his legal right to save his title and interest in the property but the courts below on wrong conception of law rejected the application on the finding that the Defendant No. 1, the vendor of the present petitioner will save the right and interest of the petitioner.

The learned advocate next submits that the Defendant No. 1 in no way can protect the petitioner's right, title and interest in the Suit Land as the Defendant did not admit that he sold the property to the petitioner and it is the right of the petitioner to protect his right, title and interest in the suit property.

The learned advocate finally submits that in any view the judgment and orders passed by the courts below is not sustainable in law.

No one appears to oppose the Rule.

It appears from record that at the time of issuance of Rule the Lower Court Record was called for by this Court and thus the Lower Court Record is presently laying with this civil revision.

I have heard the submission of the learned advocate of the petitioner, perused the application along with the annexures including both the judgment and orders passed by the courts below.

It appears from the order dated 10.06.2015 passed by the trial court that the learned judge of the trial court rejected the application for addition of party on the findings that the applicant (petitioner) claimed the Suit Land from the Defendant No. 1 and the Defendant No. 1 neither in his written statement nor in his deposition before the court admitted any such transfer of property; if defendant no.1 gets the property in this suit, the applicant will get his share; the Suit is at the last stage as DW-1 has already been examined for which at this stage this application cannot be allowed.

It further appears from the *inlimine* judgment and order passed by the revisional court that the learned judge did not give his own opinion rather observed that he found no infirmity in the order passed by the trial court.

Rule-10(2) of the Order-1 of the Code of Civil Procedure provides that the Court may at any stage of the proceedings, either upon or without any application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who

ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

From the plain reading of the provision it is clear that at any stage of the proceedings, if the Court thinks it is just that the name of any person who ought to have been joined, as plaintiff or defendant as the case may be, or to adjudicate (effectually and completely) upon and settle all the questions involved in the suit whose presence before the Court should be added. Court has to take into consideration that whether he is necessary party or proper party. If he is a necessary party it is mandatory for the court to add him as party but if he is proper party it is rule of prudence and not rule of law, that he should be added as party to adjudicate the matter effectually and completely between the parties. In the case of Jahan Ara Vs Shamsul Haq reported in 27 DLR (AD) 129 the Appellate Division opined that in the absence of necessary party, a decree cannot be passed in favour of the plaintiff. There is catena of decisions of our apex Court as well as Indian Supreme Court that a party may be added at any stage of the suit, even at the argument stage or at the time of passing decree. In order to be added as a party, the applicant must show his independent right in respect of the subject-matter of the suit. [54 DLR (AD) 80]. The High Court Division in the case of Zahirul Haq Vs. Shankar Lal reported in 1999 BLD held that where a person purchased a portion of the suit property and is in possession, his presence

is necessary in the interest of justice. In determining the necessary party our Appellate Division in 27 DLR (AD) 129 (supra) opined that there is a two-fold test for determining a necessary party- (1) there must be a right to some relief against such party in respect of the same matter involved in the proceeding and (2) it is not possible to pass an effective decree in his absence.

In the present case it turns out from the application filed by the present petitioner for addition of party as well as from the impugned judgment that the petitioner claimed that he purchased the property from one Hasina Mamtaj who got the property from Defendant No. 1 by way of heba deed and all these transactions happened before the institution of the present suit. So, the suit is not hit by the principle of lis pendens. Since the petitioner claimed that he got some portion of land measuring 2.98 acre in the suit property and is in possession by mutating his name, it is his right to defend his claim. The applicant prima facie showed his independent right in the subject-matter of the suit. Order-1, Rule-10 clearly states that any stage of the case a party can be added for effective and complete adjudication and settle all the question involved in the suit, as such both the courts below committed error of law in finding that at the stage the application for addition of party could not be allowed. In such view of the matter, both the findings of the courts below are wrong. Since both the courts below committed error of law which occasioned failure of justice, I am inclined to interfere with the impugned judgment and order passed

by the learned District Judge as well as the order passed by learned Senior Assistant Judge, sadar, Barishal.

In the result the Rule is made **absolute**.

The trial court is directed to include the present petitioner as a Defendant in the original Suit (Title Suit No.309 of 2011) and proceed in accordance with law.

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

Communicate the judgment and order at once. The office is directed to send down the Lower Court Record at once.

Ziaul Karim
Bench Officer