

District-Rangpur.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 1706 of 2024.**

Sree Ambika Chandra Barman.

---- Plaintiff-Petitioner-Petitioner.

-Versus-

Sreemoti Usha Rani Barmani and others.

----Defendant- Opposite Parties-Appellants
- Opposite Parties.

Mr. Ashfaqur Rahman, Advocate with

Mr. Sumit Kumar Sarker, Advocate

----For the Plaintiff-Petitioner-Petitioner.

Mr. Md. Ashrafuzzaman, Advocate

----For the Defendant- Opposite Parties-Appellants
- Opposite Parties.**Heard On: 03.12.2025.**

And

Judgment Delivered On: 10.12.2025.**Md. Toufiq Inam, J.**

This revisional application, filed under section 115(4) of the Code of Civil Procedure, by leave, calls in question the Judgment and Order dated 25.01.2024 passed by the learned Additional District Judge, 1st Court, Rangpur in Civil Revision No. 05 of 2023, whereby the revisional application was rejected and the Order dated 12.02.2023 passed by the learned Assistant Judge, Gangachara, Rangpur in Other Suit No. 96 of 2018 was affirmed. By the said order, the trial Court allowed three applications filed by the defendant Nos. 1-7, namely, an application for accepting an additional written statement, an

application seeking leave to file such additional written statement, and an application for withdrawal of the suit from the stage of argument. The petitioner seeks to have the impugned orders set aside.

The plaintiff's case, in brief, is that one Raghunath Barman was the original owner of the suit land, and C.S. Khatian No. 459 was duly prepared and published in his name. After his death, his two daughters, Kombala Barmani and Menoka Dasya alias Meneka Barmani (defendant No.7), inherited the property. Subsequently, Kombala Barmani transferred 36 decimals of land to the plaintiff's father, Avay Chandra Barman, whereupon S.A. Khatian No. 673 was prepared and published in his name.

It is the plaintiff's further case that S.A. Khatian No. 672 was prepared and published in the name of Meneka Dasya for 15 decimals under Plot No. 2504 and 22 decimals under Plot No. 2505. Thereafter, Avay Chandra Barman sold his land to Suren Chandra Barman, the husband of Meneka. The plaintiff asserts that Meneka Barmani and her husband Suren Chandra, having acquired 37 decimals and 36 decimals respectively, transferred 14 decimals from S.A. Plot No. 2505 to Avay Chandra Barman by registered Sale Deed No. 6218 dated 09.03.1981. Suren then sold 4 decimals to one Monmohan and 25 decimals to the plaintiff's brother, Atul Chandra Barman, thereby exhausting all his title in the suit land. The plaintiff states that thereafter defendant No. 7, Meneka, transferred 35 decimals to him

through six registered sale deeds dated 01.02.1988, 05.04.1989, 19.08.1990, 17.12.1991, 01.03.1995 and 23.09.1999. After these successive transfers, Meneka retained only 2 decimals.

Although she retained only 2 decimals, Meneka executed a Declaration of Gift Deed No. 1496 dated 30.03.2015 in favour of her three daughters (defendant Nos. 1, 2 and 5), purporting to gift 8 decimals of land. Thus, although defendants Nos. 1, 2 and 5 could at best acquire 2 decimals, defendants Nos. 1-7 are now claiming an additional 6 decimals beyond their entitlement. The plaintiff alleges that on 16.03.2018, defendants Nos. 1-7 dispossessed him from the land described in Schedule "Ga" to the plaint. Despite repeated requests on the same day to restore possession, the defendants refused, compelling him to institute the present suit.

The defendants contested the suit by filing a written statement, denying the material allegations and asserting that Raghunath originally owned 30 decimals under Plot No. 2504 and 43 decimals under Plot No. 2505, totaling 73 decimals, which were correctly recorded under C.S. Khatian No. 459. Upon his death, Kombala inherited 36 decimals and Meneka inherited 37 decimals. Kombala transferred her share to Avay Chandra Barman, and S.A. Khatian No. 673 was accordingly prepared in his name. Avay later sold the land to Suren, the husband of Meneka. The defendants further asserted that S.A. Khatian No. 672 correctly recorded 37 decimals in the name of

Meneka, and she and her husband possessed that land until D.P. Khatian No. 1755 was prepared in her name. Thereafter, on 30.03.2015, Meneka executed Gift Deed No. 1496 in favour of her daughters, transferring 7 decimals from Plot No. 2504 and 1 decimal from Plot No. 2505. They claim that Meneka retained the remaining land and continued in possession, rendering the suit liable to be dismissed.

The plaintiff examined three witnesses, including himself as PW1, and produced documentary evidence which were marked as exhibits. The defendants examined three witnesses, including defendant No. 3 as DW1, and also produced documents which were marked as exhibits. After closure of evidence, the case was fixed for argument on 12.02.2023. On the date fixed for argument, defendants Nos. 1–7 filed an application seeking acceptance of an additional written statement, raising for the first time a plea that Kombala and Meneka had no right to transfer the property, and asserting a reversionary claim. The application further sought leave to file the additional written statement and withdrawal of the suit from the stage of argument.

By Order No. 55 dated 12.02.2023, the learned trial Court allowed the said applications with a cost of Tk. 1,000/- and permitted the defendants to recall PW1. The plaintiff challenged this before the learned Additional District Judge by filing Civil Revision No. 05 of

2023, which was dismissed, thereby affirming the trial Court's order.

Against which the Plaintiff as petitioner obtained the present Rule.

A significant aspect of the matter is that in paragraph 7 of the original written statement filed on 13.05.2019, the defendants expressly admitted that Kombala transferred her inherited 36 decimals to Avay Chandra Barman, that S.A. Khatian No. 673 was duly prepared in Avay's name, and that Meneka had transferred her inherited land to her three daughters. The defence witnesses also deposed in line with these admissions.

In stark contrast, the additional written statement sought to be introduced at the argument stage contains a wholly inconsistent and contradictory plea-alleging for the first time that neither Kombala nor Meneka had any right to transfer the land. This new plea is diametrically opposed to their earlier admission, contradicts the evidence they themselves adduced, and completely alters the nature and character of the defence.

Mr. Ashfaqur Rahman, learned Advocate for the plaintiff-petitioner, submits that the defendants' application does not refer to any enabling provision of law. He contends that the Code of Civil Procedure recognises limited scope for development or modification of pleadings under Order VI Rule 5 (better particulars), Order VI Rule 17 (amendment of pleadings), Order VIII Rule 8 (new defence arising

after filing written statement), and Order VIII Rule 9 (additional written statement as a subsequent pleading). In his submission, the application of the defendants does not fall under any of these categories.

He argues that Order VI Rule 5 only permits clarification of existing pleadings; Order VI Rule 17 cannot be invoked to substitute a new and inconsistent defence; Order VIII Rule 8 applies only to defences arising after the written statement; and Order VIII Rule 9 requires leave of the court and permits only a supplemental, not a contradictory, pleading. He emphasises that Order VI Rule 7 expressly prohibits departure from earlier pleadings.

He argues that the proposed additional written statement supplants rather than supplements the original defence, rendering all earlier assertions redundant. He cites 46 DLR (AD) 130 (*Abul Kalam Azad v. Sunhar Ali*), where the Appellate Division refused an additional written statement introducing a new and inconsistent case at a late stage of trial. He also relies on 51 DLR 420 (*Abdur Rahman v. Sajjadur Rahman*), where an inconsistent plea in an additional written statement was similarly rejected. He further submits that, consistent with 57 DLR 106 and AIR 1958 (Madras) 383, an additional written statement may be accepted only upon a satisfactory explanation of earlier omission, which is wholly absent here.

Per Contra, Mr. Ashrafuzzaman, learned Advocate appearing for the defendant-opposite parties, submits that the trial Court committed no illegality in allowing the defendants to file an additional written statement and in permitting withdrawal of the suit from the stage of argument. He contends that the defendants merely sought to clarify and elaborate certain aspects of their defence which, due to inadvertence and lack of proper legal guidance, were not adequately stated in the original written statement. According to him, the proposed additional pleading does not introduce a new case, nor does it contradict the earlier stand, but rather provides necessary particulars that would assist the Court in effectively resolving the real issues in controversy.

He further submits that amendment of pleadings should be approached with a liberal hand and that the primary duty of the Court is to ensure a fair adjudication on the basis of all relevant materials. He argues that any omission in the earlier pleading should not be fatal, especially when the defendants have acted bona fide and when the plaintiff would have ample opportunity to respond to the additional statement. He relies on the principles underlying Order VI Rule 17 and Order VIII Rule 9 of the Code of Civil Procedure to contend that supplemental pleadings are permissible when they serve the ends of justice.

He also argues that no prejudice would be caused to the plaintiff-petitioner by allowing the additional written statement, as the stage of final hearing had not culminated in a judgment. He submits that the learned revisional Court rightly exercised its jurisdiction under section 115(4) CPC in affirming the order of the trial Court, as the discretion exercised was sound, judicious, and intended to avoid multiplicity of proceedings. According to him, the plaintiff's challenge is driven by technicalities rather than any real hardship, and the impugned orders, being well reasoned and legally justified, warrant no interference.

Having considered the submissions of the learned Advocates and perused the materials on record, it appears that the principal issue for determination is whether the trial Court was justified in allowing the defendants' applications for filing an additional written statement and for withdrawal of the suit from the stage of argument. The legality of the revisional Court's affirmance of that order also falls for consideration.

It is undisputed that the defendants filed their original written statement on 13.05.2019. In that pleading they expressly admitted the lineage of title, the inheritance of Kombala and Meneka, and the transfers made by them, including the transfer by Kombala in favour of the plaintiff's father. They also acknowledged that S.A. Khatian No. 673 was prepared in the name of Avay Chandra Barman and that Meneka later transferred her holdings to her three daughters through a

registered gift. This admission of the defendants was not only clear and categorical but was further fortified by the oral testimony of DW1, DW2 and DW3.

The record shows that the suit proceeded to full trial, witnesses were examined and cross-examined, and documentary evidence were exhibited. The proceedings were concluded and the matter was posted for argument. It is at this mature stage of the suit that the defendants sought to introduce a completely new and contradicting defence by way of an additional written statement, seeking to assert that neither Kombala nor Meneka had any right to transfer the suit property. This plea is diametrically contrary to their earlier admission, and if permitted, would fundamentally change the nature of the defence.

The law relating to pleadings, particularly the provisions under Order VI Rule 5, Order VI Rule 17, Order VIII Rule 8 and Order VIII Rule 9 of the Code of Civil Procedure, establishes a structured framework within which amendments or supplemental pleadings may be allowed. The defendants' application does not fit within any of these provisions. Order VI Rule 5 deals with clarification of existing pleadings; here, the defendants are not clarifying but replacing their earlier case. Order VI Rule 17 does not allow amendments that introduce an entirely new and inconsistent defence or that take away admissions previously made. Order VIII Rule 8 applies only to a defence that arises after filing the written statement, which is not the

case here. Order VIII Rule 9 permits a subsequent pleading but does not sanction an inconsistent pleading that would displace the earlier one.

It is consistently held that a party cannot be permitted to resile from a clear admission, particularly at an advanced stage of trial. In 46 DLR (AD) 130 (Abul Kalam Azad v. Sunhar Ali), the Appellate Division held that an additional written statement cannot be allowed when it seeks to introduce a new case inconsistent with the earlier written statement. Similarly, in 51 DLR 420 (Abdur Rahman v. Sajjadur Rahman), it was held that a defendant cannot be allowed to take up an inconsistent defence after closure of evidence. The High Court Division in 57 DLR 106 and the Madras High Court in AIR 1958 Madras 383 also emphasized that a satisfactory explanation for omission of a plea must be furnished before an additional written statement is accepted. In the present case, no such explanation has been provided.

It is a well-settled principle that pleadings define the scope of the controversy. Once the parties have proceeded to trial and evidence has been adduced, neither party may shift their stance in a manner that prejudices the other. Permitting a contradictory additional written statement at the stage of argument would deny the plaintiff the opportunity to meet the new case and would effectively render the entire trial nugatory.

Equally concerning is the trial Court's decision to allow withdrawal of the suit from the stage of argument. Withdrawal at this stage, coupled with the acceptance of a new pleading, effectively amounts to reopening the entire trial. Such an approach is contrary to the scheme of the Code and undermines the finality and discipline of civil proceedings. The revisional Court, regrettably, failed to appreciate these legal infirmities and mechanically affirmed the trial Court's order without addressing the core issue of inconsistency in pleadings and the impermissibility of retracting admissions.

This court is of the considered view that an additional written statement cannot be allowed after closure of evidence if it contradicts earlier admissions, introduces a wholly new defence, or alters the nature of the original pleading, as such an allowance prejudices the other party and disrupts the orderly conduct of the trial. Permitting such inconsistent amendments at the argument stage would be contrary to law and the settled principles governing pleadings, justifying interference under section 115(4) CPC.

In view of the above-

- a) The Rule is made absolute.
- b) The Judgment and Order dated 25.01.2024 passed by the learned Additional District Judge, 1st Court, Rangpur in Civil Revision No. 05 of 2023 and the Order dated 12.02.2023 passed by the learned Assistant Judge,

Gangachara, Rangpur in Other Suit No. 96 of 2018 are hereby set aside.

- c) The applications for taking additional written statement, for leave to file the same, and for withdrawal of the suit from the stage of argument are hereby rejected.
- d) The trial Court is directed to proceed with the suit from the stage of argument and dispose of the same expeditiously in accordance with law.

Let the lower Court records be sent down at once along with a copy of this judgment.

(Justice Md. Toufiq Inam)

Ashraf/ABO.