

**Present:**

**MR. JUSTICE MD. SALIM**

**CIVIL REVISION NO.2278 OF 2024**

Chowdhury Md. Abul Hasan Ibn Kashem  
alias Abu Md. Bin Kashem Chowdhury.  
..... *Plaintiff-Petitioner.*

**-VERSUS-**

Chowdhury Md. Abu Nasar Ibn Kashem  
and others  
.....*Opposite parties.*

Mr. Ajoy Shankar Bhowmik, with  
Mr. Farida Yasmin, Advocates  
----- *For the petitioner.*

Ms. Sayeda Rafika Khatun, Advocate  
----- *For the opposite parties.*

**Heard on 27.02.2025 and 24.04.2025**

**Judgment on 24.04.2025**

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and order dated 15.02.2024 passed by the learned District Judge, Chattogram, in Civil Revision No.317 of 2023 rejected the civil revisional application summarily after affirming the Judgment and order dated 17.10.2023 passed by the learned Senior Assistant Judge, Rangunia, Chattogram in Other Suit No.231 of 2018

allowing the application under Order I Rule 10(2) of the Code of Civil Procedure for addition of party should not be set aside.

Facts in a nut-shell for disposal of the Rule is that the petitioner as plaintiff instituted Other Suit No.231 of 2018 before the Senior Assistant Judge, Rangunia, Chattogram, praying for a decree of partition of the scheduled land.

During the pendency of the suit, on 14.08.2023, the opposite party, No.1 Chowdhury Md. Abu Nasar Ibn Kashem filed an application under Order I, Rule 10(2) of the Code of Civil Procedure, for the addition of a party to the suit. Subsequently, the learned Senior Assistant Judge, Rangunia, Chattogram, allowed the application by the Judgment and order dated 17.10.2023, adding the opposite party No.1 as defendant No.7 in the suit.

Being aggrieved by and dissatisfied with the above Judgment and order dated 17.10.2023, the plaintiff preferred Civil Revision No.317 of 2023 before the learned District Judge, Chattogram. Subsequently, the learned District Judge, Chattogram, by the Judgment and order dated 15.02.2024,

rejected the civil revision and affirmed those passed by the trial Court.

Being aggrieved by and dissatisfied with the impugned Judgment and order dated 15.02.2024, the plaintiff as petitioner filed the present Civil Revision under Section 115(4) of the Code of Civil Procedure before this court and obtained the instant Rule with an order of stay.

Mr. Ajoy Shankar Bhowmik, the learned Counsel appearing on behalf of the petitioner, submits that the opposite party in the application failed to assign the reason for the addition of the party. Though he is not the necessary party in the instant case, the trial court and the revisional court below allowed the same without considering the facts and circumstances of the case. Moreover, the revisional court below, without issuing any notice to the opposite parties, summarily rejected the civil revision and thus committed an error of law, resulting in an error in the decision occasioning a failure of justice.

Ms. Sayeda Rafika Khatun, the learned Counsel appearing on behalf of the opposite party, submits that the petitioner Chowdhury Md. Abul Hasan Ibn Khashem, alias Abu Md. Bin

Khashem Chowdhury, is interested in the suit property. He had no wife or children. He died, leaving behind his father, Abu Kashem Chowdhury, his mother, Jahanara Begum, and two brothers, namely, Chowdhury Md. Abu Naser Ibn Kashem (opposite party No.1) and Abu Bakar Mohammad Ibn Kashem Chowdhury. So, he has the right to the suit land and the necessary party to contest the suit.

It manifests that opposite party No.1 has filed an application under Order I Rule 10(2) of the Code of Civil Procedure to add him as defendant No.7 on the plea that he is the necessary party to contest the suit, Chowdhury Md. Abul Hasan Ibn Kashem Chowdhury Prokash was his full brother. After his death, this plaintiff took the petitioner's brother's name as his own name and filed the instant suit to grab their property. Therefore, to adjudicate this matter, the applicant-opposite party No. 1 is the necessary party to adjudicate the matter.

It manifests that the trial court below, while allowing the application, says that--

“দাখিলীয় কাগজাদি ও নথি পর্যালোচনা করিলাম, পর্যালোচনায় চৌধুরী মোঃ আবু হাসান ইবনে কাসেম কর্তৃক দাখিলী কাগজাদির মধ্যে একটি দলিল ব্যতীত অন্য কোন মামলায় প্রকাশ নাম নেই। Voter এবং Certificate পর্যালোচনায় দেখা যায় যে, সেখানে প্রকাশ নাম নেই। এমতাবস্থায় চৌঃ মোঃ আবু হাছান ইবনে কাসেম এবং মোঃ বিন কাসেম একই ব্যক্তির নাম না দুই ব্যক্তির তা matter of trial হওয়ায় বিচারিক পর্যায়ে উক্ত বিষয়টি বিবেচনা করা হবে। অন্যদিকে আবেদনকারীর পক্ষ হওয়ায় আইনগত সুযোগ থাকায় তাকে পক্ষভুক্ত করা হলো।”

On the other hand, the revisional court below considered the trial court's findings and says that the applicant is the necessary party to adjudicate the instant case.

The settled proposition of law is that a party may be considered a necessary party after fulfilling two conditions. First, there must be a right to some relief against him regarding the matter involved in the suit, and second, his presence should be necessary to enable the court effectively and completely to adjudicate upon and settle the question involved in the suit.

In the instant suit, the applicant-opposite party No.1 applied to add him as a defendant on the plea that he is the necessary party to contest the suit because Chowdhury Md. Abul Hasan Ibn Kashem Chowdhury Prokash was his full brother. After his death, this plaintiff took the petitioner's brother's name as his own name and filed the instant suit to grab their property.

Considering the above facts and circumstances, It appears that both the Courts below rightly found that it will be decided during trial whether the plaintiff and the dead brother of the opposite party No.1 (applicant) are the same person or not. Therefore, it appears that both the Courts below did not commit any error of law in passing the Judgment and order. In that view, it seems that opposite party No.1 is necessary for the suit, and his presence is required for an effective decision in the subject matter. I, therefore, do not find merit in the Rule.

Resultantly, the Rule is discharged.

The Judgment and order dated 15.02.2024 passed by the learned District Judge, Chattogram in Civil Revision No.317 of 2023 rejecting the civil revision summarily and affirming the order dated 17.10.2023 passed by the learned Senior Assistant

Judge, Rangunia, Chattogram in Other Suit No.231 of 2018 is hereby affirmed.

The order of stay passed by this court at the time of issuance of Rule stands vacated.

Communicate this Judgment at once.

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**(Md. Salim, J).**