

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

CIVIL REVISION NO. 889 of 2011

**Md. Kashem Sharif @ Abul Kashem
Sharif and others**

...Petitioners

-Versus-

Md. Abul Hossain and others

....Opposite parties

Mr. Md. Habibur Rahman, Advocate

..... for the petitioners

Mr. Md. Humayun Kabir, Advocate

... for the opposite party Nos. 1-10

Heard on: 05.11.2023

Judgment on: 06.11.2023

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon opposite party Nos. 1 to 10 to show cause as to why judgment and order dated 06.01.2011 passed in Civil Revision No. 09 of 2009 by learned District Judge, Munshigonj dismissing the revision and affirming an order dated 01.03.2009 passed by learned Assistant Judge, Lohajang in Title Suit No. 20 of 2006 should not be set aside.

At the time of issuance of Rule this Court vide order dated 13.03.2011 stayed operation of the impugned order for a period of 06 (six) months which was, subsequently, extended from time to time.

Facts, relevant for the purpose of disposal of this Rule, are that opposite party Nos. 1-10 as plaintiffs instituted Title Suit No. 20 of 2006 against the present-petitioners and opposite Nos. 11-13 for

a decree of declaration of title to and recovery of khas possession of the suit land as described in the schedule of the plaint. The petitioners as defendants contested the suit by filing written statement. Eventually the suit was fixed for peremptory hearing and P.W.1 was partly examined. At that stage the plaintiff opposite parties filed an application under Order VI rule 17 of the Code of Civil Procedure for amendment of the plaint. Defendant Nos. 1-4 and 6 (petitioners) filed written objection against the application for amendment contending that by proposed amendment the nature and character of the suit would be changed.

The trial Court, upon consideration of the materials on record, vide order dated 01.03.2009 allowed the application for amendment. Defendant Nos. 1-4 and 6 challenged the order of the trial Court in Civil Revision No. 09 of 2009 before the learned District Judge, Munshiganj who, upon hearing both the parties, vide judgment dated 06.01.2011 dismissed the revision by affirming the order of the trial Court.

Challenging the legality and propriety of the judgment passed by the revisional Court, the defendants have come up with this second revision and obtained the instant Rule.

The plaintiff-opposite party Nos. 1-10 have entered appearance to contest the Rule.

Mr. Md. Habibur Rahman, learned Advocate appearing for the petitioners submits that the revisional Court, upon misconception of law and without proper assessment of the materials on record, illegally dismissed the revision in allowing the amendment of the plaint. Learned Advocate further submits that by proposed amendment the plaintiffs sought to introduce a new relief for rent

which is barred by limitation and the proposed amendment would change the nature and character of the suit. Learned Advocate further submits that the plaintiffs relinquished the claim of mesne profits by laps of time for which the defendants have accrued a valuable right and as such, the revisional Court should have allowed the revision by rejecting the application for amendment.

Mr. Md. Humayun Kabir, learned Advocate appearing for opposite party Nos. 1-10 in support of the judgment of the revisional Court submits that the revisional Court upon consideration of the materials on record came to its proper findings and decision in dismissing the revision by affirming the order of the trial Court allowing the amendment of the plaint because of the fact that by proposed amendment the nature and character of the suit would not change and as such, no interference is called for by this Court.

I have heard the learned Advocates, perused the plaint of the title suit, application for amendment of plaint, written objection filed by the defendants, the impugned judgment passed by the revisional Court as well as the order passed by the trial Court.

On perusal of the plaint of Title Suit No. 20 of 2006 it appears that the plaintiffs filed the suit for a decree of declaration of title to and recovery of khas possession of the suit property by introducing a genealogy by which they have acquired title to the suit land. In the plaint it has been stated that the cause of action of the suit arose on 03.01.2005 when the defendants dispossessed the plaintiffs from the suit land. It also appears that the plaintiffs filed advaluram Court fees upon the valuation of the suit property.

On perusal of the application for amendment it appears that by propose amendment the plaintiffs sought to introduce a different

type of genealogy by which they have acquired title to the suit land. The plaintiffs also sought to introduce a new prayer to the effect that they are entitled to Tk. 200 per month with effect from 03.01.2005, the date of their dispossession from the suit property.

Sub-section (12) of section 2 of the Code of Civil Procedure defines mesne profits stating that “mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits. According to rule (12) of Order XX of the Code of Civil Procedure, the Court has power to pass a decree for the possession of property and for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or from the institution of the suit until the delivery of possession to the decree holder.

On the other hand, rule (2) of Order II of the Code stipulates that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and sub-rule 2(3) of Order II of the Code provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Sub-rule (3) of rule (2) of Order II of the Code of Civil Procedure gives the plaintiff an opportunity to claim more than one relief after institution of the suit with leave of the Court. Rule (12) of Order XX of the Code empowers the Court to pass a decree of recovery of possession of property with relief of mesne profits or rent. Such claim of rent or mesne profits, if omitted, at the time of

institution of the suit, the plaintiff as per sub-rule 2(3) of Order II of the Code may introduce such claim after institution of the suit with the leave of the Court.

In *Abdul Karim Meah vs Arch Bishop Christian Missionaries and another* 36 DLR (AD) 38 it has been held, “for realisation of the omitted claim, the plaintiff will be debarred from filing a subsequent suit, but there is no prohibition to the realisation of the omitted claim in the suit by amending the claim. Amendment of the plaint may be allowed at any stage of a proceeding, according to the established rules and practices governing amendments”. In *Managing Committee N.M.C. Model High School and others vs. Obaidur Rahman Chowdhury and others* 31 DLR (AD) 133 it has been held, “amendment of the pleadings could be allowed at any stage of the proceedings for the purpose of determining the real question of controversy between the parties, but it could not be allowed, if, it changed the nature and character of the suit or if the prayer for amendment had become barred by lapse of time and a right had accrued to the other side”. In *M.A. Jahangir & another vs. Abdul Malek and others* 41 DLR 389 it has been held, “merely because an amendment is new from what has been stated in the plaint, it cannot be a ground for refusal of amendment of the plaint unless it changes the character of the suit”. In *Shah Afzal Arafin Abu Shafiq and others vs. Fazle Elani Md. Asaduzzaman Khalif (Makhan) and others* 9 BLT 359 it has been held, “the settled law for amendment of pleadings is that a prayer for amendment should be considered liberally for bringing all possible controversies between the contending parties in a single suit for complete and effective adjudication of the suit by avoiding multiplicity of litigations”.

In the present case it appears that the plaintiffs by way of proposed amendment has sought to introduce some new facts in regards genealogy of their title and also sought to introduce a prayer for decree of rent at the rate of Tk. 200 per month from the date of alleged dispossession. In view of the decisions cited above and relevant provisions of law, such type of amendment of the plaint will not change the nature and character of the suit. The amendment will not also prejudice the defendants because the defendants have every opportunity to controvert the amended facts and claim by way of filing additional written statements, if any.

In that view of the matter I am of the view that the Court of revision upon considering the materials on record and relevant provisions of law rightly dismissed the revision by upholding the order of the trial Court.

In that view of the matter, I find no merit in this Rule.

In the result, the Rule is discharged however, without any order as to costs.

The order of stay granted earlier is hereby vacated.

The trial Court is directed to proceed with the suit and conclude the trial as expeditiously as possible.

Let a copy of this judgment be communicated to the concerned Court at once.

(Md. Badruzzaman, J)