

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.6076 OF 2024

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Julfikar Ali @ Shahin and others
... Petitioners

-Versus-

Firoz Ahmed and others
... Opposite parties

None appears

.... For the petitioner.

Mr. Mohammad Abu Bashir, Advocate

.... For the opposite parties.

Heard and Judgment on 26.06.2025

This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 11.09.2024 passed by the learned District Judge, Rangpur in Civil Revision No.01 of 2024 allowing the Civil Revision and thereby reversing the judgment and order dated 22.11.2023 passed by the learned Senior Assistant Judge, Mithapurkur, Rangpur in Other Suit No.115 of 2009 allowing the application for recalling the DW1 and amendment application should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above Other Class Suit No.115 of 2009 for partition of 10 decimal land

appertaining to C. S. Khatian No.206 and S. A. Khatian Nos.253 seeking a separate saham for 1 decimal land. It was alleged that the plaintiffs purchased above 1 decimal land from Jobeda Khatun by registered kabla deed dated 31.12.1994 and possessing above land but above land has not been partitioned by meets and bounds and defendants refused to effect an amicable partition.

Defendant Nos.19-22 contested above suit by filling a joint written statement denying the right, title, interest and possession of the plaintiff in above land.

After conclusion of evidence of both the parties above suit was fixed for argument hearing. At this stage above defendants filed a petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement for denying the correctness, legality and effectiveness of above registered kabla deed dated 31.12.1994 of the plaintiffs.

On consideration of submissions of the learned advocates for the respective parties and materials on record the learned Senior Assistant Judge allowed above petition for amendment of the written statement.

Being aggrieved by above judgment and order of the trial Court above plaintiffs as petitioners preferred Civil Revision Case No.01 of 2024 to the learned District Judge, Rangpur who allowed above revision, set aside the judgment and order of the trial Court and

rejected above petition under order 6 Rule 17 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with above judgment and order of the Court of revision below above plaintiffs as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioners at the time of hearing of this Rule although the matter appeared in the list for hearing on several dates.

Mr. Mohammad Abu Bashir, learned Advocate for the opposite parties submits that in the written statement defendant Nos.19-22 admitted the registered kabla deed of the plaintiff dated 31.12.1994 but at the time of giving evidence in Court as DW1 Jobeda Khatun denied due execution of above kabla deed. Thereafter the defendants submitted above petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement to deny the legality and effectiveness of above kabla deed. Since the defendants admitted the correctness and effectiveness of registered of the kabla deed dated 31.12.1994 in their written statement a valuable right accrued in favor of the plaintiffs. The defendant has tried to defeat above right by way of above amendment of the written statement which is not tenable in law. On correct appreciation of above materials on record the learned

District Judge has rightly allowed the revision and set aside the judgment and order of the trial Court which calls for no interference.

I have considered the submissions of the learned advocate for the opposite parties and carefully examined all materials on record.

As mentioned above plaintiff has claimed to have purchased 1 decimal land from Jobeda Khatun by registered kabla deed dated 31.12.1994 and on the basis of above purchase he filed the instant suit for partition. In their written statement defendant Nos.19-22 admitted the correctness and genuinity of above registered kabla deed dated 31.12.1994. At the time of giving evidence DW1 was given a suggestion by the plaintiff that above kabla deed was a correct and genuine deed which was denied by above witness. After above evidence the defendants submitted a petition under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement alleging that above statement as to plaintiffs kabla deed dated 31.12.1994 in the written statement was made erroneously. The defendants do not admit the genuinity and correctness of above kabla deed.

An admission is a statement made voluntarily and against the interest of the maker of the statement. An admitted fact does not require further prove by legal evidence. In a civil litigation admission may be made either in the pleadings or in the evidence.

Defendants have claimed that at the time of drafting of the written statement above statement as to the impugned kabla deed

dated 31.12.1994 of the plaintiffs was made erroneously and the same was not true. The Code of Civil Procedure, 1908 is liberal as to the amendment of the pleadings. The pleadings can be amended at any stage of the proceedings provided a right already accrued in favor of any party is not defeated by the proposed amendment. The defendants have claimed that above statement was made erroneously and not voluntarily nor above statements was true. Allowing an amendment does not mean that the amended facts have been accepted by the Court as true or proved.

In above view of the facts and circumstances of the case and materials on record I hold that the learned Judge of the trial Court on correct appreciation of materials on record rightly allowed the petition for amendment of the written statement but the learned District Judge utterly failed to appreciate above materials on record and most illegally allowed the revision of the plaintiff and set aside the lawful judgment and order of the trial Court which is not tenable in law.

I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute. The impugned judgment and order dated 11.09.2024 passed by the learned District Judge, Rangpur in Civil Revision No.01 of 2024 is set aside and the judgment

and order dated 22.11.2023 passed by the learned Senior Assistant Judge, Mithapurkur, Rangpur in Other Suit No.115 of 2009 is restored.

However, there is no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER