Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 3209 of 2024
Zakir Hossain Rony
.....petitioner
-Versus-
Monir Hossain Raju and others
.....opposite parties

Mr. M. Ashraf Ali, Advocate
.....for the petitioner

Mr. Ali Imam Khaled Rahim with
Mr. A.H.M. Obaydul Kabir, Advocates
.....for the opposite parties

Heard on: 10.06.2026, 14.06.2026 and 16.06.2026

Judgment on: 17.06.2026

In the instant revision Rule was issued calling upon the opposite parties 1-4 to show cause as to why the judgment and decree dated 01.04.2024 passed by the Additional District Judge, Court No. 8, Dhaka in Title Appeal Number 143 of 2023 dismissing the appeal thereby affirming the judgment and decree dated 08.11.2022 passed by the Joint District Judge, 3rd Court, Dhaka in Title Suit Number 171 of 2020 should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The petitioner as plaintiff filed Title Suit Number 171 of 2000 on 02.10.2020 in the Court of Joint District Judge, 3rd

Court, Dhaka seeking partition of the land measuring .1089 acres together with the structures standing thereon as described in the schedule to the plaint.

The case of the plaintiff in short is that late Abdul Wahab alias Naushad acquired title to the suit property by six registered deeds executed on different dates and upon his death left the plaintiff and defendants 1-4 as his heirs. According to the plaintiff he became owner of 14/48 share equivalent to .0318 acres of the suit property and has been possessing the same jointly with the defendants. The plaintiff further stated that defendant 1 is entitled to 14/48 share equivalent to .0318 acres and defendants 2 and 3 are each entitled to 7/48 share equivalent to .0159 acres and defendant 4 is entitled to 1/8 share equivalent to .0136 acres of the suit property and the building standing thereon. Since the defendants allegedly refused to partition the property upon demand the plaintiff filed the suit.

Defendants 1-4 entered appearance and filed a written statement. In the written statement the defendants admitted the entire case of the plaintiff. They specifically admitted the quantum of shares as stated in the plaint and further stated that they have no objection if a preliminary decree for partition is

passed according to the shares mentioned by the plaintiff. They also deposited the requisite court fees in respect of their sahams.

Subsequently the defendants filed an application under Order 12 Rule 6 of the Code of Civil Procedure praying for judgment upon admission. The records further reveal that on the date when the said application was filed and on subsequent date the plaintiff was represented before the Court and had full notice of the proceedings. At no stage did the plaintiff dispute the admissions made by the defendants or object to the passing of a decree upon such admissions.

Upon consideration of the pleadings and the clear admissions made by the defendants the Joint District Judge by judgment and decree dated 08.11.2022 decreed the suit under Order 12 Rule 6 of the Code of Civil Procedure and declared the respective shares of the parties.

Being dissatisfied with the said judgment and decree the plaintiff preferred Title Appeal Number 143 of 2023 before the District Judge, Dhaka which was subsequently transferred to the Court of Additional District Judge, 8th Court, Dhaka. Upon hearing the parties the appellate Court by judgment and decree dated 01.04.2024 dismissed the appeal and affirmed the

judgment and decree passed by the trial Court. Challenging the concurrent decisions of the Courts below the plaintiff has obtained the present Rule.

Learned Advocate Mr. M. Ashraf Ali appearing on behalf of the petitioner submits that both the Courts below committed error of law occasioning failure of justice in decreeing the suit without proper consideration of the relevant facts and circumstances. He submits that during pendency of the appeal the plaintiff filed an application for amendment of the plaint and the appellate Court failed to dispose of the same before deciding the appeal. According to him the appellate Court thus acted illegally in dismissing the appeal without first adjudicating upon the amendment petition. He further submits that partition is an equitable relief and before passing a decree in a partition suit the Court is required to examine the extent to which relief can legally and equitably be granted. He argues that a suit for partition involves equitable considerations and therefore before granting relief the Court is required to examine all surrounding circumstances affecting the property and the rights of the parties. He contends that the Courts below failed to undertake such exercise and thereby arrived at erroneous decisions.

On the other hand Mr. Ali Imam Khaled Rahim along with Mr. A.H.M. Obaydul Kabir learned Advocates appearing on behalf of the opposite parties submits that the suit was decreed strictly in accordance with the plaintiff's own pleadings and prayers. He submits that the defendants admitted the plaintiff's claim in clear terms and therefore the trial Court rightly exercised its jurisdiction under Order 12 Rule 6 of the Code.

He further submits that the plaintiff was present and represented before the Court when the application under Order 12 Rule 6 was filed. Despite having full opportunity the plaintiff neither disputed the admissions nor opposed the prayer for judgment upon admission. Having remained silent at the relevant stage and having obtained a decree exactly in terms of his own case the plaintiff is now estopped from challenging the same. He further submits that the proposed amendment neither sought alteration of the schedule of the suit property nor amendment of the prayer portion of the plaint. The plaintiff also did not implead any Bank or financial institution despite alleging mortgage liability. Therefore the proposed amendment did not raise any new issue necessary for adjudication of the real controversy involved in the suit. He

argues that had such amendment been allowed the suit would have suffered from misjoinder of causes of action and would have become vulnerable under the provisions of Order 2 Rule 6 of the Code of Civil Procedure. He also submits that the plaintiff did not allege fraud in obtaining the decree. Consequently after obtaining a decree precisely in terms of his own pleadings and prayer the plaintiff cannot legitimately challenge the same in appeal and revision. The learned Advocate further points out that the plaintiff filed another suit being Title Suit Number 443 of 2020 concerning the very subject matter referred to in the amendment petition and the appellate Court upon calling for and examining the records of the said suit found no legal impediment in proceeding with the present suit. Therefore even though the appellate Court did not pass a separate order on the amendment application the substance of the matter was duly considered. He lastly submits that partition does not amount to transfer of property and therefore any mortgage liability if existing would continue to bind the respective shares even after partition. Such question is totally foreign to the present partition suit. In support of his submissions he refers to the case of Safaruddin Vs. Fazlul Haq reported in 49 DLR(AD) 151.

I have heard the learned Advocates for the respective parties, perused the revisional application, the impugned judgments and decrees and the materials on record.

The admitted facts of the case leave little room for controversy. The petitioner himself filed the suit seeking partition of the suit property. In the plaint he specifically disclosed the shares of all the co-sharers and prayed for partition accordingly. Defendants 1-4 entered appearance and filed a written statement clearly admitting the plaintiff's case. They admitted not only the status of co-sharership but also the exact quantum of shares as described in the plaint and expressly stated that they have no objection if a preliminary decree is passed in accordance therewith.

On the basis of such admissions the defendants filed an application under Order 12 Rule 6 of the Code of Civil Procedure. The records reveal that the plaintiff was represented before the Court when the said application was filed and considered. Despite having full knowledge of the proceedings the plaintiff did not dispute the admissions and also did not seek framing of any issue and did not raise any objection against the proposed judgment upon admission.

The trial Court therefore rightly proceeded to pronounce judgment under Order 12 Rule 6 of the Code and passed the preliminary decree declaring the shares of the parties.

The plaintiff thereafter preferred an appeal and during pendency of the appeal filed an application for amendment of the plaint. Curiously enough by the said amendment petition the plaintiff attempted to introduce a case that the suit suffers from defect of hotchpot and certain matters relating to mortgage liability and other properties require consideration. The submissions advanced by the petitioner do not ring any bell. The most striking feature of the case is that the plaintiff having filed the suit himself and having pleaded the shares himself and having obtained a decree strictly in accordance with his own pleadings and prayers subsequently sought to challenge the very foundation of his own suit.

The law does not encourage a litigant to approbate and reprobate in the same breath. A party cannot be permitted to assume one position before the trial Court and after obtaining a decree on that basis assume a completely inconsistent position before the appellate and revisional Courts merely because the outcome no longer suits his convenience.

The proposed amendment itself shows the inherent contradiction in the petitioner's stand. On the one hand he sought partition of the suit property. On the other hand, he attempted to contend that the suit was defective for non-inclusion of other properties and therefore should not have been decreed. Such a position is not only self-destructive but also indicative of a deliberate attempt to frustrate the lawful entitlement of the other co-sharers who admittedly possess shares in the property.

It is well settled that the rule requiring inclusion of joint properties in a partition suit is not inflexible. Whether omission of a particular property is fatal depends upon the facts and circumstances of each case. More importantly a plaintiff who consciously institutes a suit on a particular cause of action cannot ordinarily be allowed after obtaining a decree in terms of his own pleadings to challenge that decree by asserting that his own suit was defective from its inception.

The appellate Court rightly noticed that the matters sought to be introduced by amendment were not necessary for determination of the controversy involved in the present suit. It further appears that the plaintiff has already filed another Title Suit Number 443 of 2020 concerning the subject matter

sought to be incorporated by way of amendment. Therefore the proposed amendment neither advanced the cause of justice nor assisted the Court in determining the real questions in controversy between the parties.

The argument regarding mortgage liability is equally misconceived. Partition is not a transfer of property. It merely demarcates and separates pre-existing rights of co-sharers. Consequently any lawful encumbrance if existing continues to remain attached to the property in accordance with law. Such question does not affect the maintainability of the present partition suit and does not constitute a ground for refusing a preliminary decree.

It further transpires from the records that no allegation of fraud, misrepresentation, collusion or concealment was ever made against the defendants in obtaining the decree under Order 12 Rule 6 of the Code of Civil Procedure. The decree was passed on admitted facts. In the absence of any challenge to the validity of those admissions the decree cannot be faulted.

The conduct of the plaintiff throughout the proceeding leaves little doubt that after obtaining a decree in accordance with his own pleadings he subsequently attempted to avoid the

consequences thereof by introducing totally inconsistent pleas. Such conduct cannot be encouraged by a Court of law.

The Courts below concurrently found that there existed no disputed question requiring trial and the plaintiff was entitled to the relief claimed in the plaint. The findings are based upon the pleadings and admissions of the parties and do not suffer from any misreading of evidence or non-consideration of material facts or error of law.

I find no substance in the contention that the Courts below committed any error of law occasioning failure of justice.

Accordingly the Rule is discharged.

The judgment and decree dated 01.04.2024 passed by the Additional District Judge, 8th Court, Dhaka in Title Appeal Number 143 of 2023 dismissing the appeal thereby affirming the judgment and preliminary decree dated 08.11.2022 passed by the learned Joint District Judge, 3rd Court, Dhaka in Title Suit Number 171 of 2000 are hereby maintained.

There shall be no order as to costs.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J:

Naher, B.O.