

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

**PRESENT:**

**Mr. Justice Md. Badruzzaman**

**AND**

**Ms. Justice Aynun Nahar Siddiqua**

**CIVIL REVISION NO. 1571 OF 2025**

Muhammad Yusuf Choudhury and others

..... Petitioners

-Versus-

**Musammat Dilruba and others.**

..... Opposite Parties

Mr. Lukman Karim Advocate

...For the Petitioners

None appears

...For the opposite parties.

**Heard and Judgment on: 09.06.2026**

**Md. Badruzzaman, J.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 13.01.2025 passed by the learned Joint District Judge, 3rd Court, Chattogram, in Other Suit No. 24 of 2017, rejecting an application filed under Order I Rule 10(2) of the Code of Civil Procedure for addition of parties, should not be set aside.

The facts, relevant for the disposal of this Rule, are that opposite party No. 1, as plaintiff, instituted Other Suit No. 24 of 2017 praying for a decree for specific performance of contract against opposite party Nos. 2-8, contending, inter alia, that on 21.01.2015 one Abdul Mabud entered into an agreement for sale of the suit property in favour of the plaintiff for a consideration of Tk. 10,00,00,000/- (Taka ten crore), having received earnest money of Tk. 9,95,00,000/- (Taka nine crore ninety-five lac). Subsequently, the vendor died leaving behind opposite party Nos. 2-8 (defendant Nos. 1-7) as his legal heirs. However, due to the pendency of Partition Suit No. 294 of 2007 and Partition Appeal No. 150 of 2005, and as the suit property had not yet been mutated in the name of the vendor or his successors, the deed of sale could not be executed and registered and accordingly, the plaintiff has filed the suit.

During pendency of the suit, the present petitioners filed an application under Order I Rule 10 of the Code of Civil Procedure praying to be added as defendants in the suit, contending, inter alia, that they are the successors-in-interest of the original owner, Dr. Baharuddin, and co-sharers of the suit property. They further contended that the vendor had purportedly agreed to transfer land in excess of his lawful share and that, for effective and complete adjudication of the dispute, they were necessary and proper parties to the suit.

Upon hearing the parties, the trial Court rejected the said application by the impugned order dated 13.01.2025. Being aggrieved thereby, the third-party applicants have preferred this Civil Revision and obtained the instant Rule.

None appears to oppose the Rule when the matter is taken up for hearing.

Mr. Lokman Karim, the learned Advocate appearing on behalf of the petitioners, submits that Partition Suit No. 294 of 2007 was pending before the learned Joint District Judge, 3rd Court, Chattogram, and Partition Appeal No. 150 of 2005 was pending before the learned Additional District Judge, 7th Court, Chattogram, in respect of the suit property. He further submits that the suit property was not recorded in the name of the vendor in the latest B.S. record and, therefore, in view of the provisions of law, the property could not legally be transferred. According to the learned Advocate, unless these facts are brought to the notice of the trial Court, there is every likelihood of an erroneous decree being passed. In support of his submissions, the learned Advocate has referred to the decision in *Md. Tofazzal Hossain Vs. Sunil Kumar Basak and others*, reported in 7 BLT (AD) 103.

We have heard the learned Advocate for the petitioners and perused the revisional application, the plaint of the suit, the application for addition of parties, and other materials available on record.

On perusal of the plaint of Other Suit No. 24 of 2017, it appears that the suit has been instituted for specific performance of contract on the basis of an agreement for sale allegedly executed on 21.01.2015 by Abdul Mabud in favour of the plaintiff in respect of the suit property for a consideration of Tk. 10,00,00,000/-, out of which Tk. 9,95,00,000/- was allegedly paid as earnest money.

The recitals of the agreement, as stated in the plaint, further indicate that Partition Suit No. 294 of 2007 and Partition Appeal No. 150 of 2005 were pending in respect of the suit property and that, upon disposal of those proceedings and completion of mutation in the name of the vendor, the sale deed would be executed and registered in favour of the plaintiff or her nominees. From the aforesaid statements made in the plaint, it appears that the aforesaid partition suit and partition appeal were admittedly pending in respect of the suit property. It further appears that the property had not been mutated in the name of the vendor.

Section 53C of the Transfer of Property Act provides that no immovable property shall be transferred by way of sale unless the transferor's name appears in the latest record-of-rights prepared under the State Acquisition and Tenancy Act, 1950. Therefore, unless the name of the vendor or his successors of the agreement are duly mutated in the relevant latest record, no valid deed of sale can be registered in favour of the vendee-plaintiff.

Moreover, the present petitioners claim to be co-sharers in the suit property and contend that the predecessor of the defendants had sought to transfer land in excess of his lawful share. In such circumstances, the petitioners have a direct interest in the subject matter of the suit, and their presence is necessary for effective and complete adjudication of the controversy involved therein.

In *Md. Tofazzal Hossain Vs. Sunil Kumar Basak and others*, reported in 7 BLT (AD) 103, the Appellate Division held that 'it is true that ordinarily in a suit for specific performance of contract only the contracting parties are necessary parties. But in the peculiar facts of that case, where the suit

property was apparently joint property and one of the admitted co-sharers had not been impleaded, the Court rightly held that such co-sharer was a proper party for effective adjudication of the real controversy involved in the suit’.

The aforesaid decision clearly indicates that a third party may be added as a defendant in a suit for specific performance of contract where he can prima facie establish an interest in the suit property as a co-sharer or where there exists some legal impediment affecting enforceability of the contract.

In the instant case, the plaintiff herself has admitted in the plaint that one partition suit and one partition appeal are pending in respect of the suit property and that the vendor had not mutated his name in the relevant record. Therefore, the petitioners have been able to establish a prima facie interest in the suit property and are proper parties for effective adjudication of the dispute.

In view of the above we find merit in the Rule.

Accordingly, the Rule is made absolute, however without any order as to costs.

The impugned order dated 13.01.2025 passed by learned Joint District Judge, 3rd Court, Chattogram, in Other Suit No. 24 of 2017 is hereby set aside. The application filed by the petitioners under Order I Rule 10(2) read with section 151 of the Code of Civil Procedure is allowed. The petitioners shall be added as defendant Nos 7-35 in the suit.

The trial Court is directed to proceed with the suit in accordance with law by giving added defendants an opportunity to contest the suit by filing written statement, if any.

Communicate a copy of this judgment and order to the Court below at once.

**(Justice Md. Badruzzaman)**

**I agree,**

**(Justice Aynun Nahar Siddiqua)**