

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

CIVIL REVISION NO.1808 OF 2026

In the matter of:

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

And

Md. Bulu Mia

... Petitioner

-Versus-

Saiya Sultana Binu and others

... Opposite parties

Mr. Uzzal Bhowmick, Advocate with

Mr. Rezwan Hossain Siffat, Advocate

.... For the petitioner.

Mr. Chanchal Kumar Biswas, Advocate with

Ms. Sougata Guaha, Advocate

.... For the opposite party Nos.1-5.

Mr. Farid Hossain, Advocate

.... For the opposite party No.6.

Heard on 04.08.2026 and Judgment on 09.08.2026

S. M. Kuddus Zaman, J:

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon the opposite parties to show cause as to why the impugned order No.143 dated 26.04.2026 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.80 of 2023 should not be set aside and/or pas such order or further order or orders as to this Court may seem fit and proper.

Facts in short are that four plaintiffs the second wife, sons and daughters of deceased Afzal Hossain instituted above suit for declaration of title and partition of the property of Afzal Hossain. Defendants are the sons and daughters of above Afzal Hossain by his first wife.

In above suit plaintiffs filed a petition on 26.04.2026 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint to incorporate additional properties of above Afzal Hossain and produced 11 separate registered kabla deeds showing purchase of above properties by Afzal Hossain. The copy of above petition was received by the learned Advocate for defendant No.27 but no copy was served upon defendant No.6 or defendant No.21 the learned Joint District Judge allowed above petition on the same date. Above defendants could not file a written objection against above petition for amendment of plaint nor got an opportunity of being heard.

Being aggrieved by and dissatisfied with above order dated 26.04.2026 defendant No.21 as petitioner moved to this Court and obtained this Rule.

Mr. Uzzal Bhowmick, learned Advocate for the petitioner submits that defendant No.21 entered appearance in above suit and was contesting the claims of the plaintiff filing a written statement. But the learned Joint District Judge without serving a copy of above petition under Order 6 Rule 17 of the Code of Civil Procedure, 1908 or hearing the appointed Advocate of above defendants most illegally allowed

above petition which is not tenable in law. Learned Advocate further submits that the ends of justice will be met if the impugned judgment and order is set aside and above petition is remanded to the trial Court for re-hearing after giving defendant No.21 an opportunity to file a written objection and hearing.

Mr. Farid Hossain, learned Advocate for the opposite party No.6 supports above Rule and submits that no copy of above petition for amendment of the plaint was served upon opposite party No.6 who was defendant No.1 nor he was given an opportunity of being heard.

Mr. Chanchal Kumar Biswas, learned Advocate for opposite party Nos.1-5 submits that on 26.04.2026 defendant No.1 or defendant No.21 were not present in Court. Defendant No.27 was present and the copy of above petition for amendment of the plaint was duly served upon the appointed Advocate of defendant No.27. Advocate of defendant No.27 who did not raise any objection nor he wanted to file written objection against above petition. On consideration of above materials on record the learned Joint District Judge rightly allowed above petition for amendment of the plaint which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

Above suit is for partition of the properties of now deceased Afzal Hossain and plaintiffs are second wife and sons and daughters of Afzal Hossain by second wife and defendants are sons and daughters of above Afzal Hossain by his now deceased first wife. By above petition

for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure, 1908 the plaintiff sought to incorporate some new lands which were allegedly purchased by Afzal Hossain by 13 separate registered kabla deeds.

It turns out from impugned order dated 26.04.2006 that on above date only defendant No.27 was present and defendant Nos.1 and 21 were not present. The copy of above petition for amendment was duly served upon defendant No.27 who did not raise any objection nor he wanted to file a written objection.

A suit for partition must fail if each and every piece of ejmaly property is not brought into the hotchpotch and all co-sharers are not impleaded as defendants. The plaintiffs have incorporated some new land claiming that those were acquired by Afzal Hossain by purchase by registered kabla deeds. The learned Advocate for the petitioner strenuously submits that above kabla deeds are forged and ineffective deeds. The legality and propriety of above kabla deeds will be determined by the trial Court on consideration of evidence to be adduced by the parties at trial.

The Code of Civil Procedure, 1908 is liberal about amendment of the pleading. The pleadings of a Civil Suit can be amended at any stage of the proceedings and the only exception to not allow amendment of the pleadings is that no such amendment would defeat the right already accrued in favour of the opposite party.

We are unable to find any illegality in the findings of the learned Judge of the trial court that above amendment of the plaint does not change the nature or character of the suit. The defendants will be at liberty to submit additional written statement to encounter all claims and allegations incorporated by the plaintiffs in the plaint by above amendment.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and order passed by learned Joint District Judge nor we find any substance in this Civil Revisional application under Section 151(1) of the Code of Civil Procedure, 1908 and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

However, there will be no order as to costs.

Tamanna Rahman Khalidi, J:

I agree.