

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 1623 of 2012**

**IN THE MATTER OF :**

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

-And-

**In the Matter of:**

Mohammad Mohsin being dead his heirs Asma  
Begum and others

... Plaintiff-Petitioners

Versus

Rezaul Karim and others

... Defendant-Opposite parties

Mr. M.A Azim Khair, Advocate with

Ms. Shahanaj Akther, Advocates

... For the petitioners

Mr. Sk. Zulfiqur Bulbul Chowdhury, Advocate with

Mr. Md. Ramjan Miah, Advocate

... For the opposite parties

**Judgment on: 21.05.2026**

**Md. Riaz Uddin Khan, J:**

At the instance of the plaintiffs this Rule was issued asking the opposite parties to show cause as to why the impugned order No.47 dated 20.02.2012 passed by the Additional District Judge, Second Court, Chittagong in Other Appeal No.380 of 2006 should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of the issuance of Rule the operation of the impugned order was stayed for a

period of 06(six) months which was extended time to time.

Succinct facts for disposal of this Rule are that the predecessor of the present plaintiffs filed Miscellaneous Case No.91 of 1978 which was subsequently re-numbered as 32 of 1984 and at present re-numbered as Title Suit No.240 of 2004 against the opposite parties for declaration of Title in the scheduled land and conformation of possession and if the plaintiffs are dispossessed during the pendency of the suit alternatively for recovery of possession and for further declaration that the decree passed in Title Suit No.29 of 1959/12 of 1961/17 of 1962 by the Additional District Judge, 1<sup>st</sup> Court, Chittagong and proceedings of the Other Execution Case No.03 of 1976 are illegal, unwarranted and not binding upon the plaintiffs and further for recovery of Taka-84500/- as compensation.

The plaint case as stands today is that the suit holding originally belonged to Shailendra Krishna Roy and others and R.S khatian was accordingly published in their names. The said Shailendra Krishna Roy and his brothers settled 6 gondas of land some time in 1938/39 AD with one Chamuda Begum, wife of Oli Meah on receipt of annual rents at a fixed rate of Tk.6/-. The said Chamuda Begum used to possess the suit land by paying rents to the Roy estate until the State Acquisition and Tenancy Act came into operation. This Chamuda Begum had acquired an indefeasible

right under the law and by way of adverse possession to the knowledge of all concerned. Chamuda Begum also paid rent to the Government since the State Acquisition and Tenancy Act came into operation and the Government accepted her as tenant in the holding. The plaintiffs who are husband and wife were first inducted into premises of R.S plot No. 61 contiguous to the suit plot as tenants under defendant No.17 (Chamuda Begum). The plaintiffs purchased the schedule land from defendant No.17 who executed four registered kabalas in 1977 and BS khatain No.531 was finally published in the plaintiffs name Ambar Ali alias Askar Ali and his wife Sufia Khatun. PS Khatain No.15/18 was wrongly recorded in the name of Oli Meah who was the husband of Chamuda Begum. Actually PS khatain should have been published in the name of Chamuda Begum. The plaintiff on purchase of the suit land made improvement by reclaiming the land on filling earth and constructed new house after obtaining due permission from the CDA. The plaintiffs also install water connection and electricity connection and holding has also been created for the premises under number 56/A. The BS khatain have been mutated and separated in respect of the suit land in the name of the plaintiffs' son. That the defendants 1-16 most illegally and brutally destroyed the house of the plaintiffs in scheduled premises on 02.08.1978 and the plaintiffs apprehend that defendants 17-24 had underhand in the said mischief and damage. The plaintiffs have sustained a loss of Taka-84500/-

due to the destruction of their house. Plaintiffs have repeatedly asked the defendants to compensate the loss but defendants refused to pay the same. The defendants are now trying to construct a structure in the scheduled land by ousting the plaintiffs. The illegal destruction of the plaintiffs house by the defendants and their constant threat to the plaintiffs have created a cloud over the plaintiffs right title and interest in the schedule land. The defendants are legally bound to compensate the plaintiffs for the loss and damage caused to the plaintiffs. The plaintiffs are entitled to a decree declaring the right title and interest in the suit land and also conformation of their possession in the same. The plaintiffs and their predecessor's interest have acquired a valid title in the scheduled land by continuous, uninterrupted possession for beyond the period of statutory period of limitation to the knowledge of all including the defendants and their predecessors. The cause of action firstly arose on 02.08.1978 when the defendants destroyed the house of the plaintiffs and all days of threaten and finally on 01.11.1978, the last day of threatening within jurisdiction of this Court. The plaintiffs immediately after the demolition of the dwelling house by the defendants reconstructed a bamboo fenced tin-roof house on the suit land. The plaintiffs re-occupied the suit land and since then plaintiffs have been in occupation of the suit land for a period beyond the statutory period of limitation on payments of

the rents and municipal taxes. The defendants alleged to have got decree to the extent of 10 ganda only in RS Plot no.60 (part) out of 1.215 i.e. 3 kani 3 kara. With these averments the plaintiffs filed the instant suit.

The defendants filed written statement and contested the suit denying all the material allegations and after conclusion of trial the trial court dismissed the suit against which the plaintiff filed Other Appeal No.380 of 2006 before the District Judge which was ultimately transmitted for hearing before the Additional District Judge, 2<sup>nd</sup> Court, Chittagong. At one stage of the hearing of the appeal the present petitioners (plaintiff-appellants) filed an application for amendment of the plaint under Order-VI, Rule 17 read with section 151 of the Code of Civil Procedure. In the amendment application the plaintiffs proposed the following amendment:

“A. In the plaint at page 6 after the paragraph No.8 the following para will be added as para No.9 and para Nos. 9,10,11,12 of the plant will be treated as 10,11,12,13 respectively.

“9. That Chamuda Begum, wife of Oli Meah Sowdagar, became the owner of the suit land by settlement deed dated 06.09.1938 and got possession thereof and accordingly she had been possessing the suit land by paying rents to the Roy estate till the State Acquisition and Tenancy Act, 1950 came into operation. Thus Chamuda Begum, wife of Oli Meah

become the tenant under government and paid rents to the government accordingly. Thereafter Chamuda Begum sold suit property to the predecessors of appellants Ambar Ali vide kabala No.11736 and kabala No. 11738 dated 14.10.1977 and also sold to Sufia Khatun, wife of Ambar Ali, the plaintiff-appellant No.7 vide kabala No.9959 dated 19.08.1997 and kabala No.11737 dated 08.10.1977 and delivered possession thereof. But in the averment of those kabala it was inadvertently written that Chamuda Begum inherited the suit property from her husband Oli Meah but it was not correct at all. But the right title, interest and possession of the suit property was not any way interrupted by this wrong averment and on the basis of the purchased deed Ambar Ali the predecessor of the appellants and Sufia Khatun the appellant No.7 got the possession of the suit land and considering the title of the kabalas and their possession B.S Khatain was rightly recorded in the name of Ambar Ali, the predecessor of the appellants and in the name of the plaintiff appellant No.7. But in order to avoid any objection in future the matter was brought to the notice of Chamuda Begum who appreciated the matter and made deed of declaration admitting the wrong averment of kabala vide deed of declaration No.2949 dated 20.03.2007 against kabala No.11738 dated 14.10.1977 and deed of declaration No.2952 dated 20.03.2007 against kabala No.11736 dated 14.10.1977 and deed of declaration No.2950 dated 20.03.2007 against kabala No.11737 dated

14.10.1977 and deed of declaration No.2951 dated 20.03.2007 against kabala No.9959 dated 19.08.1977 respectively”.

Against this application for amendment, the defendant-respondent-opposite parties filed written objection contending *inter alia* that as per amicable settlement the recorded owner Rajob Ali Roy and other owners leased out the disputed property in favour of one Chintamony Muchi and subsequently leased out the same in favour of Pitamber Jamader and accordingly Pitamber Jamader executed kabuliyat and registered the same vide kabuliyat No.928 dated 11.03.1940. Aforesaid Pitamber Jamader died leaving Mukia Jamader as heir and said Mukia Jamader transferred the disputed land in favour of Abdus Sobhan Chowdhury vide kabala No.3315 dated 08.08.1947. Abdus Sobhan Chowdhury gave permission to Mukia Jamader to live into the house as temporary licensee and aforesaid licensee Mukia Jammader inducted Oli Meah in that house. At that circumstance Abdus Sobhan Chowdhury filed Other Suit No.29 of 1959 in the court of Sub-Judge, Chittagong wherein all heirs of R.S recorded tenants, that is, Lalita Roy wife of Shailendra Krishna Roy, Purna Rama Roy wife of Pran Krishna Roy and Sreemoti Rajbala Roy wife of Gokul Krishna Roy were impleaded in Other Suit No.29 of 1959 as defendant Nos.17, 18 and 19 and aforesaid unauthorized occupier Oli Meah was impleaded as defendant No.03. Then Other Suit No.29 of 1959 was transferred to the court of Additional Sub-judge, Chittagong and re-numbered

as Other Suit No.17 of 1962. After conclusion of trial said Other Suit No.29 of 1959/ 17 of 1962 was decreed on contest on 10.09.1964 against which aforesaid Mukia Jamader then preferred First Appeal No.17 of 1967 before the then Dhaka High Court and the said First Appeal No.17 of 1967 was ultimately dismissed. The heirs of Saleh Ahmed Chowdhury then filed Other Execution Case No.03 of 1976 and obtained possession of the suit land on 02.07.1978. In that situation predecessor of the present appellants, Ambar Ali falsely created kabala Nos. 11737, 11738, 11736 and 9959 on 08.03.1977 from wife of Oli Meah namely Chamuda Begum and in those kabala it was mentioned that Oli Meah was owner of disputed land and Chamuda Begum as his wife inherited the same from her husband. Appellants' predecessor Ambar Ai and his wife Sufia Khatun as plaintiffs filed Miscellaneous Case No.91 of 1978 and subsequently it was re-numbered as Other Suit No.32 of 1984 which is now renumbered as Other Suit No.240 of 2004. Then the present substituted plaintiffs departing from previous story of plaint introduced a new story that Chamuda Begum was a tenant under raiyot of Shailendra Krishna Roy by creating bogus deed. The present plaintiff-appellants falsely created forged unregistered deed of settlement dated 06.09.1938 which is a product of forgery. Alleged settlement dated 06.09.1938 and his back page is very much covered tactfully which is fully a symbol of fabrication. After creating the deed of settlement dated 06.09.1938 appellants also

created deed of declaration No.2952 dated 20.03.2007 against kabala No.11736 dated 14.10.1977, deed of declaration No.2949 dated 20.03.2007 against kabala No.11738 dated 14.10.1977, deed of declaration No.2950 dated 20.03.2007 against kabala No.11737 dated 14.10.1977 and deed of declaration No.2951 dated 20.03.2007 against kabala No.9959 dated 19.08.1977. Be it mention here that the appellants predecessor's kabala No.11736, 11737 11738 dated 14.10.1977 and kabala No.9959 dated 19.08.1977 shown that at the time of that kabala the vendee Chamuda Begum was aged about 50 years. So it is clear that at the time of alleged unregistered deed of settlement dated 06.03.1938 the age of Chamuda Begum was 10 years 10 months 26 days. So it is also clear that at the time of settlement deed dated 06.09.1938 Chamuda Begum was a minor girl. But the alleged deed of settlement dated 06.09.1938 shows that Chamuda Begum obtained alleged settlement as married wife of Oli Meah which is absurd. Actually alleged unregistered deed of settlement dated 06.09.1938 was created by the appellants for meeting their ill-desire and the appellants in the lispensens of suit/appeal also created alleged deed of declaration Nos.2952, 2949, 2950 and 2951 dated 20.03.2007 collusively from title-less person Chamuda Begum. Plaintiff appellants are trying to include new absurd story in the proposed amendment petition which is contradictory to their previous story. Hence, it is obvious that appellants proposed amendment is

illegal and not maintainable as per provision of Order-VI, Rule-17 read with section 151 of the Code of Civil Procedure and as such the petition is liable to be rejected otherwise the respondents will suffer irreparable loss which cannot be compensated by any amount of money.

After hearing both the parties the Additional District Judge, 2<sup>nd</sup> Court, Chittagong by his impugned order No.47 dated 20.02.2012 rejected the application for amendment on the findings that the appeal was fixed for hearing and at that stage by filing this application the appellants trying to introduce new facts which appears to fulfill the lacuna of their case by which the defendants would be prejudiced.

Being aggrieved by and dissatisfied with the said impugned order the plaintiff-appellants filed the instant civil revision before this Court and obtained the Rule and order of stay as stated at the very outset.

Mr. M.A. Azim Khair along with Ms. Shahanaj Akther, the learned advocate appearing for the petitioners submits that the learned Additional District Judge committed error of law resulting in an error in decision occasioning failure of justice in passing the impugned order rejecting the application for amendment of the plaint merely because the application has been filed at the appellate stage without at all considering the principle of law to the effect that an amendment of plaint can be made at any

stage of the proceeding in order to finally settle the real issues and controversy between the parties.

Mr. Khair next submits that the learned Additional District Judge abruptly rejected the application for amendment holding that the plaintiffs have filed application to fill-up the lacunas without at all considering, discussing and stating which lacunas are sought to be filled up. The learned advocate then submits that plaint case is that vendor Chamuda Begum acquired title over the disputed land by way of taking settlement from the R.S recorded owner Shailendra Krishna Roy and his brothers and by the proposed amendment the plaintiffs merely wanted to clarify that said Chamuda Begum sold the suit property to the predecessor of the plaintiff-appellants through four kabala dated 14.10.1977, 19.08.1977 and 08.10.1977 but in the averment it was inadvertently written that she inherited the suit property from her husband Oli Meah and she subsequently upon become aware of the same executed deeds of declaration dated 20.03.2007 admitting the said wrong averment of the said kabala. Mr. Azim Khair lastly submits that the proposed amendment in no way change the nature and character of the suit rather it has been filed in line with the averment of the plaint just to clarify some facts. The learned advocate in support of his contention cited the decisions of the case of Pakistan National Shipping Corporation and another Vs. Resource International and others

reported in 1 MLR (AD) 439; the case of Radha Kirshna Jogani (Agarwalla) Vs. Dwarka Das Agarawalla and others, 36 DLR(AD)253; the case of Keramat Ali and another Vs. Muhammad Yunus Haji and others, 15 DLR (SC) 120 and the case of Md. Atiqur Rahman Vs. Khan Mohammad Ameer and others reported in 26 BLT(AD) 49. Mr. Azim Khair heavily relied upon this decision of 26 BLT (AD) 49 contending that even after the amendment of Order-VI, Rule-17 of the CPC came into operation the position of law has not been changed as decided by this decision.

Pet-contra Mr. Sk. Zulfiqur Bulbul Chowdhury, the learned advocate appearing for the opposite parties opposing the Rule submits that the plaintiff-petitioners in their application dated 22.05.2008 filed in Other Appeal No.380 of 2006 brought an afterthought story to the effect that “অতি সম্প্রতি বাদিগন বিভিন্ন কাগজ পত্র/ দলিলাদী পুনরায় খুজিতে গিয়া বিগত ০৬.০৯.১৯৩৮ ইং তারিখের বন্দবস্তি দলিলের মূল কপি বাদিগনের পূর্ববর্তি আমস্বর আলীর চাকুরী সংক্রান্ত কাগজপত্রের ফাইলে আংশিক পোড়া অবস্থায় খুজিয়া পান” relating to the alleged trace out of the unregistered patttannama dated 06.09.1938 but failed to narrate where the alleged service file of their predecessor was kept by their predecessor Ambar Ali and who communicated the alleged story to them to the effect that Ambar Ali kept the copy of alleged patttannama dated 06.09.1938 in his alleged service file and from when and on what date the plaintiffs came to know and/or find out the copy of alleged patttannama dated 06.09.1938. Hence, by the aforesaid lump statement of the appellants

having been trying to overcome the hurdle of the provision of limitation as well as to put up the defendant opposite parties to face further suffering for further years together, the vague unspecified self-made afterthought statement narrated in the amendment application dated 22.08.2008 deserved no considering and the appellate court rightly rejected the application of amendment of the plaint.

Mr. Chowdhury then submits that the predecessor of the petitioners instituted Other Suit No.32 of 1984 subsequently re-numbered as Other Suit No.240 of 2004 arose out of Miscellaneous Case No. 91 of 1977 (inserting date of alleged cause of action on 02.08.1978 and 01.11.1978) narrating a case of their alleged title in paragraph No.1 of the plaint by way of inheritance by Chamuda Begum from her husband Oli Meah, therefore by introducing the alleged date of pattannama tried to establish the self acquired property instead of inheritance which at this stage after 40 years cannot be allowed. The learned advocate next submits that the plaintiffs failed to establish their unlawful, vague, baseless and fraudulent claim of title in the suit land then in appeal they shifted from their original plaint of alleged title "from by way of inheritance of their predecessor vendor to the claim of alleged title by way of self acquired title of their predecessor vendor" which would totally change the basic foundation of the suit, hence the appellate court below rightly rejected

the prayer for amendment of the plaint thus committed no error.

The learned advocate further submits that plaintiffs in the paragraph No.1 of the plaint narrated and asserted that the suit land belonged to Oli Meah and his wife Chamuda Begum along with his children inherited the suit land and Chamuda Begum by amicable partition amongst the heirs, the defendant Nos.18-24, alone got suit land and then the plaintiffs at first developed their case by amendment of plaint vide order No.18 dated 20.11.1986 and then second time further developed their case by amendment of plaint vide order No.114 dated 22.02.2001 and then third time developed their case by amendment of plaint vide order No.118 dated 30.05.2001 and then further forth time developed their case by amendment of plaint vide order No.126 dated 25.11.2001 and then further fifth time developed their case by amendment of plaint vide order No.151 dated 21.11.2002 and then for the sixth time developed their case by amendment of plaint vide order No.262 dated 25.07.2006 but nowhere in the aforesaid applications for amendment of plaint the plaintiffs narrated the alleged afterthought story as claimed in the application dated 22.01.2009 for amendment of plaint of Other Suit No.32 of 1984 filed in the Other Appeal No.380 of 2006. Hence the plaintiffs' notorious, motivated, fraudulent, afterthought, *malafide* attempt for amendment of plaint was rightly rejected by the appellate court

below which called for no interference by this Court in any manner.

Mr. Chowdhury further submits that Ambar Ali, the father of the substituted plaintiff Nos. 1(a)-1(f) along with his wife Sufia Khatun as plaintiff Nos.1-2 filed instant suit and the alleged vendor Chamuda Begum, wife of Oli Meah is defendant No.17 and their children are defendant Nos.18-21 in the suit but neither Chamuda Begum and their children by filing any written statement or by filing any application or by deposing before the trial court asserted any story to the effect that the suit land was acquired by Chamuda Begum, defendant No.17 by way of settlement from R.S recorded owners nor the plaintiff Nos.1-2 by deposing before the trial court asserted to the effect that the suit land was self acquired land of Chamuda Begum by way of settlement. Therefore, the story narrated in the application dated 22.01.2009 for amendment of plaint relating to shifting the alleged story of getting the suit land from by way of inheritance to self acquired land of their predecessor's vendor by the substituted plaintiffs as heirs of original plaintiffs cannot be maintainable in the eye of law. The learned advocate forcefully submits that the suit filed alleging cause of action on 02.08.1978 and 09.11.1978 and this amendment sought for on 22.01.2009 in Other Appeal No.380 of 2006 is beyond the statutory period of limitation of 12 years which is hopelessly barred by limitation.

Mr. Chowdhury lastly submits that the petitioners failed to produce defendant No.17, Chamuda Begum before the trial court and/or before the appellate court below or they were able to examine her on commission. Therefore, pending *sub-judice* matter without examining her before the competent court of law, the subsequent alleged documents in the year of 2007 showing fake Chamuda Begum as executant carries no value in the eye of law rather those were product of fraud and forgery. In support of his contention Mr. Chowdhury cited the decision of M/s. Bangladesh Rubber Industry and another Vs. Begum Lutfunnessa and another reported in 1983 BLD (AD)220; the case of Abdur Rabban (Md) Vs. Aminul Hoque Showdagar and another, 43 DLR (AD) 1991; the case of Abdul Wadud Contractor and another Vs. Nazir Ahmed and others, 1 BLC (AD) 110; the case of Motasim Ali Chowdhury Vs. Md. Ismail 4 BLC (AD) 98 and the case of Government of Bangladesh and another Vs. Shafi A Chowdhury and another reported in 55 DLR 228.

I have heard the submissions advanced at the bar, perused the application, supplementary affidavit, counter affidavit, supplementary counter affidavit and its reply along with the annexure. I have examined the impugned order.

The predecessors of the instant petitioners Ambar Ali and Sufia Khatun filed a pauper suit being No.91 of 1978 which was re-numbered as Title Suit no.32 of 1984 and at present renumbered as

240 of 2004 contending *inter alia* that the plaintiffs purchased the suit land by four registered deeds from Chamuda Begum, wife of Oli Meah who got the property by inheritance as heir of Oli Meah by amicable settlement amongst other heirs of Oli Meah. Thereafter the plaintiffs at least for 6 (six) times amended the plaint developing their case one after another. In one of the amendments the plaintiffs completely shifted their claims that Chamuda Begum not by inheritance but by her own took settlement of the suit land in the year of 1938/39 A.D. Now, the instant application for amendment has been filed at the appellate stage of the suit for the 7<sup>th</sup> time when their suit was dismissed by the trial court and sought amendment claiming that said Chamuda Begum got settlement of the land from the R.S. recorded tenants on 06.09.1938 and further claimed that the plaintiffs recently recovered the said unregistered pattannama dated 06.09.1938 in a partially burned position in office-file of their predecessor Ambar Ali who was the original plaintiff. The plaintiffs further claimed that in the purchased deed Nos.11736, 11737, 11738 all dated 14.10.1977 and deed No.9959 dated 19.08.1977 wherein in the contents of the deeds inadvertently it was written that Chamuda Begum got the property by inheritance as heir of Oli Meah and when in the year 2007 that was brought into the notice of Chamuda Begum she made declaration to that effect by declaration deed No. 2949 dated 20.03.2007 against Kabala deed No. 11738 dated 14.10.1977 and

declaration No. 2952 dated 20.03.2007 against kabala deed No. 11736 dated 14.10.1977 and deed of declaration No. 2950 dated 20.03.2007 against kabala deed No. 11737 dated 14.10.1977 and deed of declaration No. 2951 dated 20.03.2007 against kabala No. 9959 dated 19.08.1977 respectively admitting the wrong averment of kabala as above. But the original plaintiffs Ambar Ali and Sufia Khatun claimed that they purchased the property from Chamuda Begum who got the property by inheritance from her husband Oli Meah and in the recitation of their purchased deeds that was clearly written.

The principle of amendment of plaint has been settled by a catena of decisions of this sub-continent including our Supreme Court. In the reported case of 26 BLT (supra) our apex court quoted from a judgment of Indian jurisdiction wherein it is observed: *“All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. .... But I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this*

*general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit has become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side, or can it not?"*

In the light of the principle settled above let us consider the present case. I also refrain from citing further authorities as referred by the learned advocates of the respective parties, as, in my opinion, they all lay down precisely the same doctrine.

In the present case the plaintiff-petitioners specifically claimed that date of the cause of action arose in the year 1978 and long after 34 years they have sought amendment during pendency of the appeal by introduction of some declaratory deeds changing the contents of the original deeds which change the basic claim earlier asserted by the original plaintiffs and by laps of time the defendants acquired valid right as their claim is that they got decree of the suit land from competent civil court and were put into possession through execution case No.03 of 1976 and as such the proposed amendment is barred by limitation; to allow it would be to cause the defendants an injury which could not be

compensated in costs by depriving them of a good defence to their claim. Because, it will create a new cause of action changing the earlier claim of their predecessors, the original plaintiffs, in the suit land as purchased land from Chamuda Begum as heir of Oli Meah while in the subsequent proposed amendment they are claiming the suit land by Chamuda Begum at her own self acquired property by introducing declaratory deeds to that effect.

It appears that in the original suit the plaintiffs claimed that their vendor Chamuda Begum got the suit land as heir of Oli Meah and subsequently amended the plaint saying that not Oli Meah but Chamuda Begum got settlement of the suit land in the year either in 1938 or 1939. Now, they are claiming that they have found an unregistered deed of settlement dated 09.06.1998 in the office file of Ambar Ali but Ambar Ali never claimed of existence of such unregistered deed of settlement dated 09.06.1938. In my view the proposed amendment as sought to be inducted as paragraph No. 9 will totally change the fundamental character of the suit which would deprive the defendants of a good defence to their claims and cannot be compensated in costs. Hence the learned Additional District Judge rightly rejected the application for proposed amendment.

I have already mentioned that the plaintiffs before the present application for amendment earlier amended their plaint for 06(six) times and the suit was filed in the year 1978

against a decree which has been executed in Title Suit No.29 of 1959 and the plaintiffs of that suit (present defendants-opposite parties) got possession through court in Title Execution No.03 of 1976 in the year 2008 and the plaintiffs as last-ditch attempt filed this application for amendment appears to me just to prolong the suit proposing amendment which would fundamentally change the nature and character of the suit, the basis of the claim which cannot be allowed. There is no doubt that Rule-17 of Order-VI of the Code of Civil Procedure permits the parties for seeking amendment at any stage of the suit but it must be only to resolve the real issue and controversy between the parties. If the plaintiff by amending the plaint one after another shift the position of claim like shifting the bar then the defendants cannot take defence properly and must be prejudiced to defend their cause. Because, amendment should be refused where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs and the proposed amendment is the glaring example of it. In my view, the present amendment is just to fulfill the lacuna of their earlier stand which they failed to prove primarily before the trial court and of course to delay the course of justice. Mr. Azim Khair heavily relied upon the judgment reported in 26 BLT (Supra) wherein speaking for the Court Mr. Justice SK Sinha observed, "*A litigant has no*

*knowledge about the intricacies of pleadings. On perusal of the pleadings and the documents, if the lawyer finds defect in the pleadings, he advises his client to amend the pleadings. This defect may be detected at the appellate forum when a senior lawyer conducting the appeal finds the defect. Now under such circumstances how the Court will form opinion that in spite of due diligence, the plaintiff or the defendant has not rectified the defect before the commencement of trial? If the lawyer is competent one, he will make proper amendment at the preliminary stage of the suit after the filing of the written statement. Even if no such advice to amendment is given due to oversight or mistake he may suggest to his client to make amendment showing reasons that his client has not brought amendment despite his due diligence in prosecuting the matter, but if a lawyer is weak in drafting pleadings naturally is not expected to him to explain that reason for the delay properly.”* From the above observation by our Supreme Court, Appellate Division, it appears that the Apex Court was concerned about the drafting of the plaint but in the present proposed amendment it has nothing to do with the mastery of drafting of the plaint. It is mentionable here that in the reported case the proposed amendment was only to add a consequential relief by way of cancellation of a deed of Revocation of Power of Attorney which was allowed by both the Divisions of our Supreme Court with a cost of Tk-50,000/-. Be that as it may, the lawyer drafts the plaint on the basis of

the documents and the information given by the client. In the present proposed amendment it is a mere information based on documents whether Chamuda Begum got the property by inheritance or by her own account and the subsequent declaratory deeds in this connection and it is immaterial whether the plaint is drafted by a senior lawyer or by a novice lawyer, it's mere information based on documents given by the plaintiffs. So, the above observations made in the cited case in no way applicable in the present case. In the aforesaid decision the apex court further observed that the object for the amendment of the Order-VI, Rule-17 of the Code of Civil Procedure is obvious - it is with a view to preventing frivolous applications which are filed to delay the disposal of the proceedings finally.

In the above facts and circumstances as discussed above it is crystal clear that the present suit was filed in the year of 1978 for declaration of title along with further declaration that the decree passed in Title Suit No.29 of 1959 and proceeding of the Title Execution Case No.03 of 1976 is not binding upon the plaintiffs and now in the year 2012 the substituted plaintiffs are seeking amendment for the plaint in a appellate stage shifting their earlier position of the claim and meanwhile the plaintiffs at least six times amended the plaint. The litigation must come to an end. So, in my view, this application is filed not only to fulfill the lacuna but also to delay the

proceedings and it is very unfortunate that Rule was issued in the year 2012 and it has been pending before this Court for more than 12 years and though there was no order of stay of the proceeding of the appeal but the appeal is still pending.

In the facts and circumstances of the case and the position of law as discussed above I am constrained to discharge the Rule as being devoid of merit destined to fail.

In the result, the Rule is **discharged**. However, there will be no order as to cost.

The order of stay earlier passed by this Court stands vacated. The court of appeal below is directed to dispose of the appeal on merit as early as practicable.

Communicate the judgment and order at once.