

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

Present:

Mr. Justice Md. Riaz Uddin Khan  
**Civil Revision No. 2134 of 2012**

**IN THE MATTER OF :**

An application under section 115(4) of the  
Code of Civil Procedure

-And-

In the Matter of:

Nur Islam Mir and others

... Petitioners

Versus

A. Hamed and others

...Opposite parties

None

... For the parties

**Heard and Judgment on: 25.02.2024**

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

By this Rule the plaintiff-opposite parties were asked to show cause as to why the impugned judgment and order dated 12.01.2012 passed by the learned Additional District Judge, Patuakhali in Civil Revision No. 18 of 2010, allowing the revision and dismissing the order dated 22.03.2010 passed by the learned Assistant Judge, Kalapara, Patuakhali in Title Suit No. 120 of 2008 shall not be set aside and/or such other or further order or orders passed as to this court may deem fit and appropriate.

At the time of issuance of Rule this Court was pleased to stay operation of the judgment and

order passed by the Additional District Judge, Patuakhali for a period of 6 months which was subsequently extended till disposal of the Rule by order dated 23.01.2013.

No one appears to support or oppose the Rule when the matter was taken up for hearing.

The plaintiff-opposite parties filed Title Suit No. 120 of 2008 against the Government of Bangladesh and others for permanent injunction restraining the defendants from entering into the "ka" scheduled land and from erecting any house or buildings etcetera. Subsequently the present petitioners filed an application before the trial court for addition of parties as defendants against which the petitioner raised objection by filing written objection. After hearing both the parties the learned Assistant Judge, Kalapara, Patuakhali by his order dated 22.03.2010 was pleased to allowing the application for addition of parties of the petitioners as defendant Nos. 18-23.

Against the order of the trial court dated 22.03.2021 the plaintiff filed Civil Revision No. 18 of 2010 before the District Judge, Patuakhali

which was ultimately heard by the Additional District Judge, Patuakhali who after hearing by his judgment and order dated 12.01.2012 allowed the revision and thereby set aside the order passed by the trial court on the finding that the petitioners are not the necessary parties.

Being aggrieved by and dissatisfied with the above judgment and order passed by the learned Additional District Judge, the petitioners filed the instant application under section 115(4) of the Code of Civil Procedure and obtained the Rule and order of stay as stated at the very outset.

It appears that the petitioners filed the application for addition of parties claiming that they are the owners and possessors of some portion of the suit land and if they are not made parties to the instant suit there will be irreparable loss and injury.

Rule-3 of Order-1 of the Code of Civil Procedure (CPC) deals with the provision who may be joined as defendants reads as follows:

All persons may be joined in one suit as defendants against whom any right to relief in respect of or arising out of

the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise.

So, to be a defendant, two conditions are to be fulfilled- (a) the relief sought against several defendants arise out of the same acts or transactions and (b) a common question of law or fact would arise if separate suits are brought against the different defendants. Rule-5 of Order-1 of the CPC states, it shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him. Rule-9 of Order-1 states that no suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Rule-10(2) of Order-1 empowers the Court to strike out or add parties stating that the Court may at any stage of the proceedings,

either upon or without any application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. In deciding whether a person is necessary party or proper party, the above provisions of law has to be read harmoniously by the Court.

Now, in the present suit the petitioners claimed that they are also the owners and possessors of some portion of the land scheduled in the plaint; so they are necessary party. Whether the petitioners are owner and possessors of the scheduled land is a matter of evidence; hence, the learned Additional District Judge is wrong in holding that the petitioners are not the necessary parties. The learned Judge also missed the point that if the petitioners are made parties

it will prevent the multiplicity of suits and nobody is going to be prejudiced. In that view of the matter the learned Judge of the trial court rightly added them as defendants and by interfering in that order the learned Additional District Judge committed error of law resulting in an error in the decision occasioning failure of justice.

In that facts and circumstances of the case, I find substance in the Rule. Hence, the Rule is made absolute.

The impugned judgment and order dated 12.01.2012 passed by the learned Additional District Judge, Patuakhali in Civil Revision No. 18 of 2010 is hereby set aside and the order dated 22.03.2010 passed by the learned Assistant Judge, Kalapara, Patuakhali in Title Suit No. 120 of 2008 is affirmed.

Communicate the judgment and order at once.