

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

**Present:**

Mr. Justice Md. Khairul Alam

**Civil Revision No. 8375 of 1991**

Shahabuddin and others.

..... -Petitioners.

-Versus-

Rezia Begum and others.

..... Opposite parties.

No one appears

..... For the petitioners.

No one appears

..... For the opposite parties.

Heard on: 29.05.2025 and

**Judgment on: 11.08.2025.**

This Rule was issued calling upon the opposite parties No. 1 to 11 to show cause as to why the order dated 09.12.1986 passed by the learned Munsif, Sadar, Noakhali in Other Class Suit No. 767 of 1983 rejecting an application filed by the petitioners under section 151 of the Code of Civil Procedure, praying for vacating the order dated 27.09.1986 passed allowing amendment of the plaint and also for recording an order that the suit had abated due to non-substitution of defendant No. 2 within time, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule are that one Ruhul Amin, predecessor-in-interest of the present opposite parties, instituted Other Class Suit No. 767 of 1983 in the First Court Munsif, Sadar, Noakhali, impleading the present petitioners and others as defendants, praying for declaration of title in respect of the suit property and also for a declaration that the settlement of the suit land in favour of defendant No. 2 on the basis of Settlement Case No. 2866 of 1967-68 of the Noakhali Collectorate was illegal, improper, without jurisdiction and ineffective.

During pendency of the suit, defendant No. 2 died on 07.06.1984. On 03.03.1985, the plaintiffs filed an application under Order VI, Rule 17 of the Code of Civil Procedure for amendment of the plaint by deleting the name of defendant No. 2 and including 8 new defendants, including the legal heirs of the deceased defendant No. 2. The learned trial Court, by order dated 27.09.1986, allowed the said application and accordingly amended the plaint.

Against the said order, so far as it relates to deleting the name of defendant No. 2 and adding his heirs as defendants, the petitioners filed an application under section 151 of the Code of Civil Procedure praying for vacating the said order and for recording that the suit had abated, contending, inter alia, that defendant No. 2 had died on 07.06.1984, which fact was informed to the plaintiffs on 24.09.1984, but the plaintiffs filed the substitution application after two years. The learned trial Court, by the impugned order dated 09.12.1986, rejected the said application holding, inter alia, that the defendants could challenge the order dated 27.09.1986 before the higher forum and that the application was not properly verified.

Being aggrieved thereby, the petitioners moved before this Hon'ble Court and obtained the Rule and order of stay.

No one appears to contest the Rule.

Perused the revisional application and other materials on record including the impugned order.

It appears that the plaintiff instituted the suit, inter alia, for declaration of title. During pendency of the suit, defendant No. 2 died, and thereafter, the plaintiff filed an application to substitute his legal heirs. The application was allowed, and the heirs of defendant No. 2 were brought on record. Without challenging the said order in the higher forum, the petitioners filed an application under section 151 of the Code of Civil Procedure, praying for vacating the same on the ground that the suit had abated. The trial Court rejected the application holding, inter alia, that the petitioners could have moved to the higher forum.

The provision for abatement of a suit for non-substitution of legal heirs has been provided in Order XXII, Rules 3, 4 and 9 of the Code of Civil Procedure. Under Rule 9, if it is proved that the plaintiff was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal and the provisions of sections 4 and 5 of the Limitation Act, 1908 shall apply for such setting aside of the abatement.

Moreover, once the trial Court allowed the amendment of the plaint by bringing the heirs of the deceased defendant on record, the proper course for the aggrieved party was to challenge that order before the higher forum. Filing an application under section 151 CPC before the same Court to vacate its own order was misconceived.

On perusal of the record, I do not find any error of law resulting in an error in the decision to interfere with the impugned order of the Court below.

Accordingly, the Rule is discharged without any order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Let the lower Court record along with a copy of this judgment and order be sent down at once

Kashem, B.O