

In the Supreme Court of Bangladesh

High Court Division
(Civil Revision Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

Civil Revision No. 750 of 2013

In the matter of :

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

And

In the matter of :

Ismat Ara Begum

.....petitioner

-Versus-

Mahmuda Islam and others

.....Opposite Parties

No one appear

.....for the petitioner

Mr. Golam Kibria, Advocate

.....for the opposite parties

Judgment on 18.11.2020

By order dated 14.03.2013 this Court issued a Rule calling upon the opposite party Nos. 01-04 to show cause as to why the impugned judgment and order dated 08.11.2012 passed by the learned Additional District Judge, 1st Court, Dhaka, in Civil Revision No. 10 of 2012, reversing those dated 22.11.2011, passed by the learned Assistant Judge, 3rd Court, Dhaka in Title Suit No. 159 of 2010 should not be set aside.

At the time of issuance of the Rule, this Court stayed the operation of the impugned judgment and order dated 08.11.2012 till disposal of the Rule.

Facts, relevant for disposal of the Rule, in a nutshell are that the opposite party Nos. 1-4 as plaintiffs filed Title Suit No. 159 of 2010 before the Assistant Judge, 3rd Court, Dhaka claiming that the possessory right of the suit-shop described in 'Ka' schedule in the plaint, was possessed by the plaintiff's predecessor Nazrul Islam Swapan through his father Abdul Awal. As Nazrul Islam was in America the sale document was made in the name of his father Abdul Awal. On his return to the country from abroad Abdul Awal released the property in favour of his son Nazrul Islam Swapan who started doing regular business in the shop shown in the Schedule "Ka".

Thereafter, Nazrul Islam Swapan let out the shop to one Lalu Bepari at a monthly rent of Tk. 10000/- and handed over all documents of the shop to Lalu Bepari, who was his relative. In such a situation Nazrul Islam died leaving the plaintiffs and his mother as legal heirs. Though, the mother of Nazrul Islam was made defendant in the plaint but subsequently her name was struck off as she died in the meantime.

Thereafter, defendant No. 01 [opposite party No. 05] namely Md. Selim Ahmed fraudulently created a 'ongikarnama' and got his name mutated in the market register and started realizing rent from the monthly tenant. Having received the information of fraudulent document the plaintiffs filed the suit before the 3rd Court of Assistant Judge, Dhaka as noted above.

During pendency of the Suit one Ismat Ara Begum claiming as 2nd wife of late Abdul Awal filed an application under Order I Rule 10(2) of the Code of Civil Procedure for addition of party in the suit. On 22.11.2011 the said application was allowed by the trial court. Against which the plaintiffs filed Civil Revision No. 10 of 2012 before the learned District Judge, Dhaka. Eventually, the learned

Additional Sessions Judge, 1st Court, Dhaka allowed the Civil Revision upon hearing both the parties by his judgment and order dated 08.11.2012.

Being aggrieved by and dissatisfied with the impugned judgment and order, the petitioner filed an application before this Court under section 115(4) of the Code of Civil Procedure and obtained the present Rule with an order of stay till disposal of the Rule. Although this matter has been appeared in the daily cause list from 15.11.2020 to 18.11.2020 but none has come forward to support the Rule when it is taken up for hearing.

On the other hand, Mr. Golam Kibria, learned Advocate appearing for the opposite party Nos. 1-4 contends that Ayesha Begum, wife of late Abdul Awal was made party in the suit plaint as defendant No. 2 but she was removed as defendant from the suit on the application of the plaintiffs filed on 28.09.2011 because she died in the meantime and was not involved in any way in the fraudulent document. Learned Advocate further submits by citing decisions reported in 55 DLR (AD)56 and 11 MLR (AD) 81 that the present petitioner is not at all necessary party in the present suit. The present petitioner also is not involved in the fraudulent making document and the suit is filed not for declaration of title. The plaintiffs have only challenged the forged document made by the defendant No. 01 in respect of the suit shop. But the trial court without hearing from the side of the plaintiffs allowed the application of the present petitioner, which has been elaborately discussed by the learned Judge of the revisional court in the impugned judgment and order. So the Ismath Ara should not be allowed to be added as party in the suit.

Heard the contention of the learned Advocate for the opposite party Nos. 1-4, perused the judgment and order of the courts below and the connected documents on record wherefrom it transpires that the present opposite party

Nos.1-4 as plaintiffs filed a suit for cancellation of forged documents allegedly made by opposite party No. 05, namely Md. Selim Ahmed.

During pendency of the suit the present petitioner filed an application under order I Rule 10 of the Code of Civil Procedure for addition of party in the suit. She stated in her application that she was 2nd wife of late Abdul Awal who was the father of late Nazrul Islam Swapan. It appears from plaint of the case that the plaintiffs made Ayesha Begum, wife of late Abdul Awal, as defendant No. 02. In the plaint the plaintiffs stated that the document in question was fraudulently made by defendant No. 01 in collusion with defendant Nos. 3-5. There has been no allegation against late Ayesha Begum or anybody else that they made fraudulent documents in favour of defendant No. 01 but the trial court without assigning any such assertion allowed the application of the petitioner to be added as party in the suit. It appears that the order of addition of party seems to be non-speaking which has also been remarked by the Judge of the revisional court in the impugned judgment and order.

It also appears from the documents in question that there is no signature of other beneficiary. Even then the plaintiffs [opposite party Nos. 1-4] did not bring any allegation against the present petitioner in any way. It is not a suit for declaration of title wherein the petitioner may have interest or not. It is absolutely a litigation created by defendant No. 01 [opposite party No. 5] in collusion with defendant Nos. 3-5. For better understanding let some portion of paragraph 11 of the plaint be reproduced as follows:

“.....১নং বিবাদী ১নং বাদিনীর স্বাক্ষর জ্বাল করিয়া নালিশী ক তপসিল বর্ণিত দোকান ও দোকানের ভাড়ার টাকা হইতে বাদীগণকে বঞ্চিত করিয়া নিজে একক ভাবে তাহা আত্মসাৎ করার অসৎ উদ্দেশ্যে ৩-৫ নং বিবাদীগণের যোগসাজসে নালিশী খ তপসিল বর্ণিত অঙ্গীকার নামাটি সৃজন করায় ক তপসিল বর্ণিত সম্পত্তির নিমিত্তে সৃজিত খ তপসিল বর্ণিত নালিশী অঙ্গীকার নামাটি জ্বাল-জালিয়াতি ও তথ্যকতাপূর্ণ, বানোয়াট, অকার্যকর ও

বাতিল এবং তাহা বাদীগণের উপর কার্যকর ও বাধ্যকর নহে মর্মে ঘোষনামূলক এবং বাদীগণের নামে ক তপসিল বর্নিত দোকানের জমিদারী ভাড়ার দাখিলা প্রদান করার জন্য ৪নং বিবাদীর প্রতি আদেশাত্মক নিষেধাজ্ঞার ডিক্রির প্রার্থনায় বাদীপক্ষ মাননীয় আদালতে অত্র মোকদ্দমা দায়ের করিতে বাধ্য হইলেন। ”

It is very much clear from a plain reading of the aforesaid portion of the suit-plaint that the plaintiffs filed the suit for cancellation of forged documents allegedly made by opposite party No. 05, namely Mr. Selim Ahamed in collusion with defendant-opposite party Nos. 6-8. There has been no allegation in the plaint against the present petitioner in any way.

In the case of Zyta Garments Ltd –Vs Union Bank Ltd. and another reported in 55 DLR (AD)56 it was held that letters of credit were established between the issuing Bank and the negotiating bank and the obligation had to be done following the agreement made between them. Neither the seller nor the buyer had any privity to that agreement. Therefore, petitioner’s prayer to be added as a party was rejected stating that if it was made a party being buyer or seller it would create unnecessary complications in the disposal of the suit. Similarly, in the case of Md. Abdur Rahim –Vs- Bengal Bricks Industries Ltd. and another, reported in 11 MLR(AD)81 the Appellate Division opined that, the petitioner was an unauthorized occupant under a monthly tenant. As the petitioner had no right and little over the suit property, he was not a necessary party to the suit for eviction of the monthly tenant. The present case finds strong support from both the opinions of the Appellate Division passed in the aforesaid two cases to the effect that no one should unnecessarily be allowed to be a party in the suit, who is not, at all involved in the issue in question.

In the case in hand, the petitioner may have had relationship with late Abdul Awal, the father of plaintiffs’s predecessor but fact remains that the petitioner had no connection or any obligation over the documents as allegedly

made fraudulently by the defendant opposite party No.05 in collusion with defendant opposite party Nos.6 to 8. The present petitioner is simply a stranger in the document in question.

So the petitioner does not deserve any order to be added as a party in the suit. The presence of the petitioner is not at all necessary for proper adjudication of the suit.

Considering the above submission, discussion as well as findings this Court finds no merit in the Rule and as such there is no reason to interfere with the impugned judgment and order of the learned Additional District Judge.

Accordingly, the Rule, issued by this Court, is hereby discharged without any order as to cost. The order of stay granted earlier by this Court stands vacated.

Let a copy of this judgment and order be communicated at once.

[Jahangir Hossain,J]