

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

Present:

Mr. Justice Md. Emdadul Huq

Civil Revision No.2526 of 2013.

In the matter of:

Md. Adam Ali @ Adam Ali

.....Petitioner.

Versus.

Md. Abdul Ali and others.

.....Opposite
parties.

Mr. Md. Kamal Hossain, Advocate.

..... For the petitioner.

Mr.Md. Haroo-Ar- Rashid, Advocate.

..... For the opposite
parties.

Heard on: 01-12-2014.

Judgment on: 03-12-2014.

Leave was granted and Rule was issued in this Civil Revision under section 115(4) of the Code of Civil Procedure, 1908 (**shortly the Code, 1908**) about sustainability of the judgment and order dated 20.06.2013 by which the learned District Judge, Manikganj summarily rejected Civil Revision No.13 of 2013 and thereby affirmed the order dated 22.05.2013 passed by the learned Senior Assistant Judge, Sadar, Manikgonj in Title Suit No.24 of 2012 rejecting an application filed by the petitioner (defendant) for amendment of his written statement.

The opposite party Nos.1-5 filed the above noted suit for declaration of their title to 23 decimals out of 46 decimals of land as described in the schedule to the plaint and also for a

declaration that the R.S. record prepared in respect of that land was wrong and not binding upon the plaintiffs.

Plaintiffs claim that the suit plot measuring 46 decimals belonged to Nasimuddin and Alim Uddin and that plaintiffs inherited the share of Nasimuddin i.e. the suit land. But the R-S record has been wrongly prepared excluding them.

The defendant No.1, in his written statement, claims that the C. S. recorded tenant Nasimuddin, by a kabala executed in 1950, sold his 23 decimals to one Mohan Banshi. But the S.A. record was wrongly prepared in the name of Nasimuddin and the three sons of the other C.S. tenant Alimuddin. However during the R.S. operation the survey personnel in consideration of the relevant title documents and possession on the ground prepared the R.S. record in the names of Mohan Basi for 8 annas and his sons for the remaining 8 annas. This Mohan Basi has sold his share of 23 decimals by kabala dated 20.5.1980 to defendant No.1 and accordingly he is in possession of, and obtained mutation, for the suit land.

At the trial both sides produced oral and documentary evidence in support of their respective claims. The suit was fixed on 22.5.2013 for argument. But on that date the defendant filed an application under Order 6 rule 17 of the Code, 1908 for amendment of their written statement.

After hearing both sides the trial court rejected the application. Against that rejection order the defendant petitioner filed the above noted Civil Revision and the learned District Judge summarily rejected the Revision.

At the hearing of this Revision Mr.Md. Kamal Hossain, the learned Advocate for the petitioner, submits that the

Courts below committed an error of law, because the amendment sought for by the defendant is necessary and it can be allowed at any stage of the proceeding.

In reply Mr. Md. Haroon-Ar-Rashid, the learned Advocate for the opposite parties, submits that the defendant has been trying to drag the proceeding and filed the application for amendment on a flimsy ground at the argument stage of the suit and therefore no interference is necessary in this Revision.

On perusal of the materials on record namely the orders of the Courts below and the plaint and written statement it appears that the dispute between the parties is about title and possession.

In the amendment application the defendant petitioner has prayed for inclusion of the following statements.

“১। জবাবের ২য় পাতার ১৬ লাইনে “করিয়া আসিতেছি”। এরপর “বাদী এই বিবাদীসহ অন্যান্য দের বিরুদ্ধে বিগনত ইং ২৩-০১-২০১৩ তারিখে বিজ্ঞ সিনিয়ার ম্যাজিস্ট্রেট আদালত নং-৩ মানিকগঞ্জ এ দঃ বিঃ ৩৪/১৩৪/৪৪৭/৪৪৮/৩৭৯ এবং ৫০৬(২) ধারার বিধানমতে ২৩(মা)/১৩ নং এক পিটিশন মোকদ্দমা আনয়ন করে। অত্র পিটিশন ে মোকদ্দমায় বিজ্ঞ আদালত তদন্ত করিয়া প্রতিবেদন দাখিলের জন্য মানিকগঞ্জ সদর থানাকে নির্দেশ প্রদান করিলে মানিকগঞ্জ সদর থানার সাব-ইন্সপেক্টর মোঃ রহমত আলী মামলার তদন্ত ভার গ্রহণ করিয়া তদন্তপূর্বক মামলার তদন্ত রিপোর্ট দাখিল করেন। তদন্ত রিপোর্টে মামলাটি মিথ্যা প্রমানিত হয়” ।

It is evident that the statements sought to be included in the written statements do not contain any reference to title of the suit land or any averment about possession of any of the parties. It simply refers to the police report about a criminal case which the police allegedly found to be false.

Even if the proposed amendment has any remote relevance to the suit land the police report by itself would not help adjudicate the dispute between the parties until and

unless the relevant witnesses are examined on oath in civil court.

The proposed amendment is totally silent about the decision of the concerned Criminal Court with regard to possession of any of the parties.

In view of the above, I hold that the amendment sought for by the defendant is not at all necessary for adjudication of the dispute raised in the instant Civil Suit.

The Rule has no merit.

In the result, the Rule is discharged.

The stay order granted earlier stands vacated.

The learned Senior Assistant Judge is directed to proceed with Title Suit No.24 of 2012 and to dispose of the same in accordance with law.

No order as to costs.

Send at once a copy of the judgment and order to the same trial.

B.Hossain.