

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

Civil Revision No. 3069 of 2003

IN THE MATTER OF

Chail Miah

.....Plaintiff-petitioner

-Versus-

1. Kaysar Ali and others

.....Defendants-opposite parties

2. Zarina Bibi and others

.....Plaintiffs-opposite parties

No one appears

.....For the petitioner

Mr. Md. Rezbaul Kabir with

Mr. M. Musfiqur Rahman, Advocates

.....For opposite party No. 1

**Heard on 30.03.23, 02.04.23 and
Judgment passed on 14.05.2023**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure,
1908, was issued in the following terms:

*“Let a Rule be issued calling upon opposite party No. 1 to
show cause as to why the impugned judgment and order dated
02.04.2003 passed by the learned Joint District Judge, 2nd Court,*

Sunamgonj in Title Suit No. 04 of 1994 should not be set aside and/ or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, all further proceedings of Title Suit No. 04 of 1994 were stayed.

The present petitioner and others as the plaintiffs filed Title Suit No. 04 of 1994 in the Court of the then Sub-ordinate Judge, Sunamganj for a declaration of their mourashi jote right in the suit land and a declaration that deed No. 3182 which was registered in the Jagannathpur Sub-registered Office in 1967 in the name of the defendants is ineffective and useless, which is not binding upon the plaintiffs.

It has been stated that the summons of the suit was served upon the defendants but they did not contest the suit by filing any written statement for which the suit was decreed ex-parte on 16.04.1995. Thereafter, defendant Nos. 1 and 2 being aggrieved by the ex-parte decree filed Miscellaneous Case No. 12 of 1996 under order 9 rule 13 of the Code of Civil Procedure, 1908 in the Court of learned Subordinate Judge, 2nd Court, Sunamgonj for setting aside the ex-parte decree along with an application under section 5 of the Limitation Act for the condonation of delay of 482 days in filing the miscellaneous case. After

hearing the same the learned Judge allowed the miscellaneous case on 16.11.1997 by setting aside the ex-parte decree and restoring the original Title Suit No. 4 of 1994 to its original file and number. Thereafter, defendant No. 1 contested the suit by filing a written statement. After the conclusion of the trial, the learned Trial Judge by his judgment and decree dated 25.03.1999 dismissed the suit on the contest against defendant No. 1 and ex-parte against the rest. Against which the plaintiff filed an appeal before the learned District Judge, Sunamgonj, and the same was numbered Title Appeal No. 15 of 1999. On transfer, after hearing the appeal the learned Additional District Judge, Sunamgonj by his judgment and decree dated 30.04.2022 allowed the appeal by setting aside the judgment and decree of the Trial Court and sent the case on remand for retrial. During the retrial of the suit by the Court of Learned Joint District Judge, 2nd Court, Sunamgonj the plaintiffs filed an application under order 6 rule 17 of the Code of Civil Procedure praying for amendment of the plaint stating that at the time of filing of the plaint, the plaintiffs did not pray for cancellation of the disputed deed due to inadvertent mistake, rather; they only prayed for a declaration that the deed is illegal. After hearing the same the learned Judge by his judgment

and order dated 02.04.2003 rejected the application for amendment.

Being aggrieved by the same the plaintiff as the petitioner had preferred the instant civil revision before this Court and obtained the present Rule which is before us for consideration.

No one appears for the petitioner to press the Rule when the matter was taken up for hearing.

However, Mr. Md. Rezbaul Kabir, the learned Advocate appearing with Mr. M. Musfiquer Rahman, Advocate on behalf of defendant-opposite party No. 1 submits that the learned Judge of the Court below considering the application and hearing the parties rightly rejected the application for amendment of the plaint and thereby committed no illegality occasioning failure of justice.

Heard the learned Advocate for opposite party No. 1 and perused the materials on record. It appears that the present petitioner and others as the plaintiffs filed the instant suit for a declaration of their mourashi jote right in the suit land along with a prayer that deed No. 3182 registered in 1967 is ineffective, useless, and is not binding upon them. But during the trial, the plaintiffs filed an application praying for amendment of the plaint by inserting the prayer for ‘cancellation of the

deed'. After hearing the same the learned Judge rightly rejected the application for amendment of the plaint holding that “বাদীপক্ষ সত্যপাঠ সহকারে নিযুক্তিয় কৌসুলী এক দরখাস্ত দ্বারা তাহাতে বর্ণিত মতে আরজি সংশোধন হওয়ার আদেশের প্রার্থনা করেন। শুনলাম। বাদীপক্ষ এর আরজির বক্তব্য হইল যে, তাহাদের পূর্ববর্তী বাক্তি কোন কবলা করিয়া দেয় নাই। এক্ষেত্রে কবলা বাতিল চাওয়ার মত কোন material বক্তব্য না থাকায় দরখাস্ত নামঞ্জুর।”and thereby committed no illegality occasioning failure of justice.

In the premises, there is no reason to interfere with the impugned order.

In view of the above, I find substance in the submissions so made by the learned Advocate for opposite party No. 1.

Given the above, I do not find any merit in the Rule. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay vacated.

The impugned judgment and order dated 02.04.2003 passed by the learned Joint District Judge, 2nd Court, Sunamgonj in Title Suit No. 04 of 1994 rejecting the application for amendment of the plaint is hereby affirmed.

Communicate a copy of this judgment to the Court below at once.

(TUHIN BO)