

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

**Mr. Justice Md. Emdadul Huq**

**Civil Revision No.3169 of 2013.**

**In the matter of:**

Abdur Rab.

.....Petitioner.

Versus.

Md. Abul Kalam Azad.

.....Opposite party.

Mr. Khair Ezaz Maswood, Advocate.

..... For the petitioner.

Mr.Syed Mohammad Javed Parvaz, Advocate.

..... For the opposite party.

**Heard on:** 23.11.14 and 1.12.2014.

**Judgment on:** 14-12-2014.

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 05.05.2013 by which the learned District Judge, Noakhali rejected Civil Revision No.8 of 2013 and thereby affirmed the order dated 06.03.2013 passed by the learned Assistant Judge, Chatkhil, in Title Suit No.10 of 2008 allowing amendment of the plaint.

The opposite party filed the above noted Title Suit for permanent injunction for protection of his possession over the suit land as described in the schedule to the plaint. He claims that the defendants on 28.11.2008 threatened his possession. He has also narrated the manner of acquisition of his tile to the suit land.

The defendant Nos.1-3 filed a written statement denying plaintiff's title and possession and the alleged threat.

The suit was fixed for peremptory hearing and 2 witnesses of the plaintiff were examined-in-chief. Thereafter on 15.1.2012 plaintiff filed an application for amendment of the plaint stating that, during the Civil Court vacation in December he had been dispossessed by the defendants on 02-12-2011. So plaintiff prayed for inclusion in the plaint the fact of his dispossession along with the new relieves namely declaration of title and recovery of possession instead of permanent injunction.

The trial Court heard both sides and allowed the application by order dated 06.03.2013. Against that order, the defendants filed the above noted Civil Revision which was summarily rejected by the learned District Judge by the impugned judgment.

At the hearing of this Revision Mr. Khair Ezaz Maswood, the learned Advocate for defendant petitioners, submits that the amendment allowed by the Courts below would change the nature of the suit in relation to the new relieves and the issues involved.

Mr. Maswood, the learned Advocate, draws my attention to the statement made in paragraph 2 of the plaint that “ উক্ত ” and submits that in contradiction to the said averment the amended plaint states about dispossession and such contradiction renders the suit without any cause of action.

Mr. Maswood, the learned Advocate next submits that the plaintiff was never in possession and, in apprehension of his failure in obtaining a decree of permanent injunction, he sought for the amendment only to fill in the lacuna by way of stating the new allegation of dispossession.

In reply Mr. Syed Mohammad Javed Pervez, the learned Advocate for the opposite party plaintiff, submits that plaintiff has not introduced any new fact about his title and possession and that since the dispossession took place during pendency of the suit, the amendment is unavoidable and plaintiff has only sought for the appropriate remedy in the changed circumstances.

Mr. Parvez, the learned Advocate next submits that the original plaint states the position at the time of filing the suit and the amendments state the subsequent development with reference to dates, so there is no contradiction. .

**Findings and decision in Revision.**

From the certified copies of the original plaint and written statement, it appears that both the parties claim title and possession.

In the amendment application the plaintiff has basically prayed for two amendments, the first one being a statement that he has been dispossessed from the suit land and the second one being the new relieves of declaration of his title and recovery of khas possession instead of the initial relief of permanent injunction.

The other amendments as stated in the application are consequential to the above noted main amendments. These are new valuation of the suit and the new cause of action. .

The dispute between the parties is with regard to title, possession and dispossession. These are questions of fact and subject to proof evidence.

From the materials on record it appears that the peremptory hearing of the suit has just commenced, and only two witnesses were examined in chief and not even cross-

examined. So it can not be said that the plaintiff brought in this amendment to fill in the lacuna of any evidence adduced by him.

The settled principle of law is that amendment of the pleadings may be allowed at any stage of a proceeding for proper adjudication of the dispute.

The dispossession allegedly took place during pendency of suit and it is necessary to be brought into the picture for proper adjudication. The amendment will not change the nature of the suit.

In consideration of the above I hold that, in allowing the amendment the courts below did not commit any error of law occasioning failure of Justice. However the defendants should have been given an opportunity to file additional written statement if any.

I find no merit in the Rule.

In the result, the Rule is discharged.

The stay order granted earlier stands vacated.

The trial Court is directed to proceed with Title Suit No. 110 of 2008 and to dispose of the same in accordance with law. In doing so the trial court shall allow the defendants a reasonable opportunity to file additional written statement in respect of the amendment of the plaint.

No order as to costs.

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

B.Hossain.