

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

Present:

**Mr. Justice J.N. Deb Choudhury.**

**Civil Revision No. 6253 of 2002.**

Sreemat Sudarshanananda Puri gurupita  
..... Petitioner.

Vs.

Sree Joy Prakash Mitra Chowdhury and  
others,

..... Opposite-Parties.

Mr. H.S. Deb Brahman, Advocate.

.....For the Petitioner.

Mr. Subrata Saha, Advocate

..... For the Opposite Party Nos. 1 & 2.

Heard on: 08.04.2015 and Judgment on : 09.04.2015

The Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned order dated 03.08.2002 passed by the learned Assistant Judge, Banskali, Satkania Chowkhi, Chittagong in Other Suit No. 178 of 2002, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party Nos. 1 and 2 as plaintiffs filed other Suit No. 178 of 2002, before the Court of Assistant Judge, Banskali Sadar, Satkania, Chittagong for declaration that the registered deed of instrument dated 10.05.2001, appointing Mohontha to be illegal,

collusive, without jurisdiction etc. and not binding upon the plaintiffs and for permanent injunction.

The plaintiffs' case in brief, is that, the plaintiff No. 1 is nephew of Sreemat Swami Adhayatananda Puri Maharaj and both are devotees of Rishidham established by Sreemat Swami Adhayatananda Puri Maharaj. Sreemat Swami Adhayatananda Puri Maharaj bought 6.40 acres of land on 30.12.1950 from R.S. Khatian No. 79/8 and R.S. Plot No. 8 in Certificate Case No. 260/50-51 and constructed Rishidam Ashram thereon and appointed Sree Sadananda Puri (Kamini Palit) as Mohanta/manager of the Ashram and he was acting as a Principal of the Ashram and applied for lease in the name of Swamiji Sadananda Puri in Settlement Case No. 35/60-61; but, unfortunately he died on 2<sup>nd</sup> Baishak, 1373 B.S before settlement of the said land and was buried at Sree Sree Tulushidham. Before his death he was appointed as Mohanta of Sree Sree Tulushidham vide registered deed dated 24.03.1961 by the Mohanta Sree Joy Ram Das. Sree Sadananda Puri made a transfer deed on 18.3.1967 in favour of Sreemat Swami Atchutananda Puri Maharaj who also paid rent. Sreemat Swami Adhayatananda Puri Maharaj was not entitled by deed of appointment of mohanta dated 24.03.1961 by Joyram Das to

appoint next mohanta and Sreemat Swami Adhayatananda Puri Maharaj did not appoint anybody as mohanta. Joyram Das vide registered trust deed dated 08.07.1970 handed over all power of Tuluashidham and conducted ceremony of mohantaship of Sreemat Swami Atchutananda Puri Maharaj. One Satya Ranjan Mohajan as alleged Secretary of Sree Guru Sangha instituted Other Suit No. 17 of 1978 before the Court of 2<sup>nd</sup> Judge, Chittagong which was dismissed on 23.03.1983. One Satya Ranjan Singh as chairman of Sree Guru Sangha filed Other Suit No. 89 of 1979 before the Court of 2<sup>nd</sup> Judge, Chittagong for declaration of title and confirmation of possession. The said suit on transfer renumbered as Other Suit No. 210 of 1984 in the Court of Subordinate Judge, Patiya, Chittagong. Said Satya Ranjan Singh also instituted Other Suit No. 14 of 1985 before the Court of Subordinate Judge, Patiya, Chittagong against the managing committee of Hrishidam and the said suit was dismissed on 31.12.1987. Thereafter, on perusal of the daily Azadi dated the plaintiff came to know that alleged chairman of the Sree Guru Sangha namely Prafulla Ranjan appointed as mohanta of Hrishi Dham and Tulusi Dham performing birthday ceremony of Sreemat Swami Adhayatnanda Puri Maharaj. The plaintiff on 01.06.2002 collected the

certified copy of the registered appointment deed dated 10.05.2001, which was illegal and hence filed the suit.

After filing of the suit the plaintiffs on 22.07.2002 (Annexure-B to the Civil Revision) filed an application for amendment of plaint for deleting the stated status of defendant No. 1 and insertion of a new address of the said defendant No. 1 and for insertion of a schedule of lands to the plaint and for addition of “Upazilla Nirbahi Officer, Bangskhali, Chittagong” as a defendant in the suit. But subsequently, by an application dated 25.07.2002, the plaintiffs prayed for deleting the prayer for addition of party of “Upazilla Nirbahi Officer, Bangskhali, Chittagong”

The defendant No. 1 on 03.08.2002 (Annexure-C to the Civil Revision) filed a written objection against the application for amendment of the plaint and prayed for rejection of the application for amendment of plaint on stating that the defendant No. 1 already appeared and also filed written objection against the application for temporary injunction and also contended that concurring the schedule of land as stated in the application for amendment of plaint, the plaintiffs did not pray any relief and as such, the application for amendment is liable to be rejected.

By the impugned order dated 03.08.2002, the learned Assistant Judge, Banskali, Chittagong, allowed the prayer for amendment of plaint against which the defendant No. 1 filed the present Civil Revision and obtained the instant Rule.

Mr. H.S. Deb Brahman, the learned advocate appearing for the petitioner submits that the plaintiffs in the cause title of the plaint admitted the status of defendant No. 1 as “শ্রীমৎ সুদর্শনানন্দ পুরী ধর্মীয় গুরু, পিতা- শ্রীমৎ স্বামী অদ্বৈতানন্দ পুরী মহারাজ” which also admitted in other paragraphs of the plaint and such admission cannot be deleted by way of amendment. He next submits that by the proposed amendment the plaintiffs prayed for insertion of some lands against which plaintiffs did not pray any relief. In support of his submission he relied upon the decision in the case of Abdul Wadud Contractor and another Vs. Nazir Ahmed and others, reported in 1 MLR (AD) 233, wherein their Lordships held that,

*“the introduction of certain new facts and subsequent cause of action different from those made in the plaint will change the nature and character of the suit”*

Mr. Deb Borman also relied upon a decision in the case of Akitullah and others Vs. Zafala Begum and others, reported in 10BLT (AD)132, wherein their Lordships held that,

*“Before allowing any amendment to the plaint the Court must come to a finding that such amendment is necessary for determining the real question in controversy between the parties and that the same shall not change the nature and character of the suit.”*

And accordingly, he prayed for making the Rule absolute.

On the other hand, Mr. Subrata Saha, the learned advocate appearing for the plaintiffs-opposite party Nos. 1 and 2 contested the Rule by filing counter affidavit and submits that by the proposed amendment the plaintiffs only prayed for changing the address of the defendant No. 1 and the schedule of land as stated in the application for amendment are the land of the registered instrument dated 10.05.2001 under challenge and the nature and character of the suit by the proposed amendment and further submits that the trial court on proper consideration of the plaint, application for amendment of plaint and other documents rightly allowed the application for amendment of plaint and accordingly, he prayed for discharging the Rule.

In order to appreciate the submissions made by the learned Advocates for the parties, I have gone through the Revisional application, impugned order and other materials on record very carefully.

Now, the question calls for consideration whether the learned Judge of the Trial Court below committed any error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order.

It appears that in the proposed amendment there are two parts, one relating to change of status and address of the defendant No. 1 of the suit and the second part for insertion of some lands in the plaint. It appears that while filed the suit the plaintiffs prayed for declaration of the registered instrument dated 10.05.2001 to be illegal, collusive and without jurisdiction; but, did not give any schedule of the land of that registered instrument dated 10.05.2001 in the plaint, though the plaintiffs filed an application for temporary injunction and according to the learned advocate for plaintiff-opposite parties, the same is still pending before the Trial Court.

Be that as it may, by the first part of the application for amendment the plaintiffs admitted the status of the defendant No. 1 as

“श्रीमं सुदर्शनानन्द पुरी धर्मीय गुरु, पिता- श्रीमं स्वामी अद्वैतानन्द पुरी महाराज” and the defendant No. 1 already appeared in the suit. The plaintiffs in the application for amendment also did not state any cause and reason for changing the status of the defendant No. 1.

It is an establish principle of law that any admission made in the pleading by any of the parties to the suit, gave a right to the other side and the admission as made by the respective parties regarding status specially in this case as made by the plaintiffs with the name of the defendant No. 1 as “श्रीमं सुदर्शनानन्द पुरी धर्मीय गुरु, पिता- श्रीमं स्वामी अद्वैतानन्द पुरी महाराज” cannot be allowed to omit or delete by way of amendment.

In view of such facts, so far the first part of the application for amendment concerning change of status of defendant No. 1 cannot be allowed as the admission of the plaintiff in the plaint given a right to the defendant No. 1 which cannot be taken away.

So far the second part of the proposed amendment of the plaint concerning insertion of some land as schedule to the plaint, appears to be cogent and reasonable and such insertion do not change the nature and character of the suit and those are necessary for proper adjudication of the dispute in the suit.



The decisions cited by the learned Advocate for the petitioner as reported in 1 MLR (AD) 233 and 10 BLT (AD) 133 are not relevant in the facts and circumstances of the present case in as much as the plaintiffs are not inserting any new facts or any subsequent cause of action or the second part of the proposed amendment did not change the nature and character of the suit.

In a case of M/s. Modi Spinning & Weaving Mills Limited and another Vs. Ladha Ram & Company, reported in AIR 1977 (SC) 680, it has been held by the Indian Supreme Court that,

*“It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court.”*

In view of the discussions and observations made above this Court is of the view that deleting or omitting the admission by way of amendment, cannot be allowed as in this case admission regarding status of the defendant No. 1 as prayed for in the first part of the proposed amendment cannot be allowed by way of amendment; but, the second part of the proposed amendment inserting a schedule of land are liable to be allowed.

Accordingly, the Rule is made absolute in part by rejecting the first part of the proposed amendment regarding status and address of the defendant No. 1 and allow the second part of the proposed amendment regarding insertion of a schedule of lands in the suit as prayed by the plaintiffs vide application for amendment dated 22.07.2002.

Since, the suit is of the year 2002, the Trial Court is hereby directed to dispose of the suit within 6(six) months from the date of receipt of this judgment.

However, there will be no order as to costs.

The order of stay granted earlier by this Court stands vacated.

Communicate the order to the court below at-once.