

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 3030 of 2001

Gias Miah

...Petitioners

-Versus-

Government of Bangladesh and others

...Opposite Parties

Ms. Hamida Chowdhury, Advocate

...for the petitioner

Ms. Promila Biswas, D.A.G.

... for Government-Opposite  
Party No.1

Mr. Subhas Chandra Saha, Advocate

...for Opposite Party Nos.2-28

Judgment on 21.11.2011

This Rule, at the instance of a third party, was issued to examine the legality of order dated 11.1.2001 passed by the District Judge, Sunamgonj in Title Appeal No.96 of 1992 rejecting his application for addition of party as co-appellant under Order I rule 10 of the Code of Civil Procedure.

Facts relevant for disposal of the Rule, in brief, are that opposite party Nos.2-28 instituted Title Suit No.62 of 1991 before

the Munsif (now Assistant Judge), Sunamgonj impleading the Government of Bangladesh and four others as defendants for declaration of their title over .63 acres of land, which the Government claimed to be a part of Hatbazar. The Government represented by the Deputy Commissioner, Sunamgonj as defendant No.1 entered appearance and contested the suit by filling a written statement denying the plaintiff's claim of title and asserting the land to be of Hatbazar belonged to the Government. After conclusion of trial, the learned Assistant Judge, Sunamgonj Sadar decreed the suit by his judgment and decree dated 11.7.1992, against which the Government preferred Title Appeal No.96 of 1992 before the District Judge, Sunamgonj. During pendency of the said appeal, the petitioner filed an application on 16.11.2000 for his addition as co-appellant on the ground that he was a lessee in a part of the suit land under the Government. After taking lease from the Government, he went into possession over .03 acres of land and constructed a shop room thereon. Since he had lease hold interest and possession in a portion of the suit land, he was a necessary party. The learned District Judge heard the application and rejected the same by his order dated 11.1.2001. In rejecting the said application the learned Judge observed that the Government-appellant denied any settlement in favour of the petitioner and that the Government itself was sufficient to take care of the appeal. There was no necessity to add the petitioner as co-appellant.

Challenging the said order of rejection, the petitioner moved in this Court with the instant Civil Revision, obtained the Rule and an order staying all further proceedings in the Title Appeal.

Ms. Hamida Chowdhury, learned Advocate appearing for the petitioner submits that the petitioner being a lessee under the Government is in possession over a portion of the suit land and has been running his business thereon and as such he has interest in the suit land and therefore is a necessary party in the suit as well as in the appeal. Although he was not a party in the suit, but being aggrieved by the impugned decree, he can be added as a co-appellant in the appeal.

In support of her contention, Ms. Chowdhury referred to the cases of Subhas Chandra Haldar and another Vs. Abdul Bari and others reported in 44 DLR (AD) 253 and Exports India Vs. Rupashi Garments and others, reported in 11 BLD (HCD) 65.

On the other hand, Ms. Promila Biswas, learned Deputy Attorney General appearing for the Government-Opposite Party submits that the Government did not settle any piece of land in favour of the petitioner and therefore, he had no interest in the suit land and was not a necessary party. The Appellate Court in rejecting his application for addition of party did not commit any error of law calling for interference by this Court.

Mr. Subhas Chandra Saha, learned Advocate appearing for opposite party Nos.2-28 submits that the proposed addition of the

petitioner as co-appellant is misconceived inasmuch as the grounds taken in the present appeal cannot be agitated by any other person except the appellant, who took the grounds. He further submits that since the petitioner was not party in the suit and did not file any written statement, his addition at the appellate stage is meaningless.

I have considered the submissions of the learned Advocates for all the parties, and examined the materials on record including the application for addition of party and the impugned order.

It appears that at the time of filling the application before the lower appellate Court, the petitioner had submitted photocopies of some documents namely, an agreement for license of shopkeeper in name of the petitioner, two duplicate carbon receipts showing payment of license fee by the petitioner in favour of the Government for the period of 1990-1995 and draft proposal of Khatian No.1 etc. The said agreement for license was made between the Upazila Nirbahi Officer, Chattak and the petitioner on 28.11.1983 for one year with a grace period of another one year. According to his application for addition of party, it is not the case of the petitioner that he was a lessee or licensee under the Government at the time of institution of the suit in 1981 or that he continued with his lawful possession over the land on payment of rent/license fee up to 2000, in which year he filed the application for addition of party. It was also not mentioned in his application as to where the original copies of

the said documents were lying. Beside that the Government denied any settlement in his favour and opposed his application. The documents submitted by him do not show that at the time of institution of the suit he was a lessee/licensee in the suit land or in any portion thereof, or that he continued with his possession over the land by paying rent/licensee fee to the Government up to 2000. So, it can not be said that he had any subsisting interest in a portion of the suit land at the time of filling his application for addition of party and as such he was not a necessary party to adjudicate the issue of title over the suit land between the Government of Bangladesh and the plaintiff.

I have also gone through the decisions cited by the learned Advocate for the petitioner. In the case of Subhas Chandra Haldar, the Appellate Division set aside an order of addition of party passed by the High Court Division observing that:

৷ ò A Court may, however, add a party even at the revision stage in a proper case and the minimum that is required to be found in such case is that the presence of such a party is necessary within the meaning of Order I rule 10 (2) CPC or for the ends of justice. The learned Judge upon merely noticing that respondent No.1 claimed to be a lessee in possession of some part of the disputed property allowed his application for being added as a party only on the ground that it would not prejudice either of the party in the case. This is certainly not a legal and fair exercise of

discretion because nothing has been considered which was submitted against the respondent. The impugned order does not show that the presence of the respondent was considered necessary nor has it been found that the ends of justice demanded his presence in the proceeding. It was thus a fanciful order not sanctioned by law nor justified on facts. The impugned order thus cannot be sustained. (emphasis supplied)

In the case of Exports India, the High Court Division added Canara Bank as a respondent in an appeal, wherein the said bank was holder of bills under a letter of credit, upon which injunction was sought for. The added respondent (Canara Bank) thus was a necessary party. In the present case the petitioner wants to be added as co-appellant against the will of the appellant. It has been already discussed that his presence is not necessary for adjudicating the issue of title between the Government and the plaintiff. Therefore, the first case cited above does not help the petitioner in any way and the facts and circumstances of the latter are distinguishable.

In view of the above discussion, I do not find any substance in the Rule. Accordingly, the Rule is discharged. The ad-interim order of stay passed at the time of issuance of the Rule is vacated.

Send down the lower Court records.