

Present :

Mr. Justice Ashish Ranjan Das.

**Civil Revision No. 2524 of 2007.**

**In the matter of:**

Md. Shamsuddin

.....Petitioner

-Versus-

Monir uddin and others.

.....Opposite parties.

Mr. Surojit Bhattacharjee, Advocate.

....For the petitioner.

Mr. Md. Mainul Islam, Advocate

.....For the opposite party No.1.

**Heard on: 06.11.2019**

**Judgment on: 04.12.2019**

**Ashish Ranjan Das, J:**

This has been a civil revisional application under section 115(4) of the Code of Civil Procedure. The opposite party defendant in the trial court brought an application for amendment of the written statement which the trial court upon hearing rejected. The defendant applicant moved a civil revisional application under section 115(1) of the Code of Civil Procedure being No.12 of 2006 before the court of learned District Judge, Sunamganj. The revisional application was allowed in part and the learned trial court was directed to proceed after incorporating the proposed amendment of the defendant by his order dated 08.03.2007. The plaintiff opposite party preferred this revisional application with the leave of the court

under section 115(4) of the Code of Civil Procedure.

Short facts are that a declaratory suit being no.02 of 1987 was pending before the Court of Assistant Judge, Chattak, District Sunamganj. The opposite party defendant was contesting the suit by filing written statement. The matter reached the stage of preemptory hearing and for the plaintiff the P.W. 1 was being examined. At this stage contesting defendant brought an amendment under Order 6 Rule 17 of the Code of Civil Procedure for amendment and better statement of the written statement.

It appears from the application for amendment annexure –C that the defendant appellant merely gave a further description of the suit land in his amendment application wherein it is said that within the suit land there is a pacca grave yard of the opposite persons bounded by walls, some trees and kachcha semi pacca and pacca houses of several persons. This description should be added to written statement.

I have heard the learned Advocates of both the parties, although today I see the learned advocate for the applicant absent although the matter has been partly heard and occurring continuously in the daily cause list. The matter is old enough, I have gone through the materials annexed to the file.

Of course there was description of the suit land both in the plaint and written statement. It is true that the defendant brought this

additional description by an application of amendment rather belated. The learned first revisional court rightly observed that on merit, he ought to have not refused the amendment however he could impose a cost for the belated move which he did not.

In the proposed amendment merely the description of the suit land for things are situated there have been added. The learned Assistant Judge refused the proposed amendment saying that if such amendment is allowed it will cause injury to the plaintiff. In cases of such amendment the issue of injury of a particular party is not of prime consideration. The thing to be considered is whether it would be lawful and justified to allow such amendment by adding a description of the suit land. The defendant seems to have not changed the nature and character of the suit nor it cuts away any benefit which by this time has been accrued lawfully to the plaintiff. The examination of the P.W.1 is not over. In the situation the proposed amendment application ought to have been allowed and the learned District Judge within his jurisdiction under section 115(1) of the Code of Civil Procedure appears to have rightly allowed the revisional application that requires no interference by this court under section 115(4) of the Code of Civil Procedure.

Accordingly the order of the learned District Judge dated 08.03.2007 is hereby upheld and the Rule is discharged. No order as to cost.

The trial court is instructed to proceed and expeditiously decide the suit on merit considering the long pendency and he is further directed to dispose of the suit within 6 (six) months from the date of receipt of a copy of this order without giving unnecessary adjournment to the parties and rather giving equal opportunities to both the parties.

The report of the said disposal of the suit should reach this court thorough the Registrar of the High Court Division.

The office is directed to communicate this judgment and order to the court below, at once.

Send down the Lower Court Record at once.

(Justice Ashish Ranjan Das)