

District-Kishoregonj.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4145 of 2014.

Md. Alauddin.

----- Plaintiff-Petitioner.

-Versus-

Noorjahan alias Bulur Maa and others.

----- Defendants-Opposite Parties.

Mr. ATM Mizanur Rahman, Advocate

----- For the Plaintiff-Petitioner.

Mr. Suvra Chakravorty, Advocate with

Mr. Nabil Ahmed Khan, Advocate

----- For the Defendants-Opposite Parties.

Heard On: 14th and 21st Days of July 2025.

And

Judgment Delivered On: 22nd Day of July 2025.

Md. Toufiq Inam, J.

Upon granting leave under Section 115(4) of the Code of Civil Procedure (CPC), this Rule was issued at the instance of the plaintiff-petitioner, calling upon Opposite Party No. 1 to show cause as to why the impugned order dated 13.04.2014 passed by the learned District Judge, Kishoregonj, in Civil Revision No. 15 of 2014, allowing the revision and thereby setting aside the order dated 10.02.2014 passed by the learned Senior Assistant Judge, Bajitpur, Kishoregonj, in Partition Suit No. 177 of 2007, should not be set aside.

The plaintiff-petitioner instituted a suit for partition, claiming a share in the suit property. Opposite Party No. 1 (defendant No. 1) filed a written statement on 28.05.2008, categorically denying the plaintiff's entitlement to any saham. On 03.09.2013, defendant No. 1 filed an application before the trial court praying for separate saham. This application was accompanied by a statement that reiterated and re-emphasized his prior denial of the plaintiff's title. The plaintiff filed an objection against the same.

The trial court treated the accompanying statement as an additional written statement and rejected the application on the ground that such a pleading, filed without leave under Order VIII Rule 9 CPC, was not maintainable. The court observed that a defendant seeking separate saham necessarily implies acknowledgment of the plaintiff's claim. Therefore, the simultaneous filing of a statement reasserting denial of title was procedurally impermissible. The trial court further held that the statement went beyond a mere prayer for saham and amounted to a substantive additional pleading.

Aggrieved thereby, defendant No. 1 preferred a revision before the learned District Judge, also praying for dispensing with notice upon certain non-contesting parties. By order dated 31.03.2014, the revisional court noted that required notices had been put in by the Defendant No.1 (applicant) for serving upon the Respondent Nos. 1,

2, and 15–22 and that a prayer had been made to dispense with notice upon Respondent Nos. 3–14 and 23–37. The court fixed 13.04.2014 for hearing on the maintainability of the revision and on the prayer for dispensing with notice.

However, on 13.04.2014, the learned District Judge proceeded to admit and allow the revision on merit, holding that a defendant is entitled to deny the plaintiff's title and simultaneously claim saham for himself. The revisional order was passed without recording any finding that notice upon the plaintiff had been duly served, nor any observation that the plaintiff had appeared or defaulted. Crucially, the prayer for dispensing with notice was neither considered nor disposed of by any reasoned order.

Against the order dated 13.04.2014 passed by the learned District Judge, admitting and allowing the revision on merit, the plaintiff obtained the present Rule.

Mr. ATM Mizanur Rahman, learned Advocate for the plaintiff-petitioner, submits that under Order VIII Rule 9 CPC, no pleading subsequent to the written statement can be filed by a defendant except with the leave of court. The purpose of this rule is to preserve the finality of pleadings and to prevent piecemeal litigation strategies. In support, he refers to the decision reported in *17 BLC (HCD) 198*.

On the other hand, Mr. Suvra Chakravorty, appearing with Mr. Nabil Ahmed Khan, learned Advocates for Opposite Party No. 1, submits that the statement filed along with the saham application was not in substance an additional written statement but rather a terminological mischaracterization. He argues that any denial therein merely repeated the contents of the earlier written statement filed in 2008. Relying on 64 DLR (AD) 17, he contends that in a partition suit, the defendant may plead alternative grounds and is entitled to file additional pleadings at any stage.

Having heard the learned Advocates and perused the record, it is clear that the revisional court, despite ensuring issuance of notice to the plaintiff on 31.03.2014, proceeded to dispose of the revision on 13.04.2014 without:

- i) Recording that notice upon the plaintiff had been duly served;
- ii) Recording the plaintiff's appearance or absence;
- iii) Passing any judicial order on the prayer for dispensing with notice.

Once notice is submitted to be issued, the court is duty-bound to either confirm service or pass a reasoned order dispensing with such service. Proceeding to decide the matter on merit without fulfilling either condition amounts to a breach of the fundamental principle of *audi alteram partem*. Such lapse vitiates the proceedings and renders the

order vulnerable to interference on grounds of procedural impropriety and denial of natural justice.

Further, the revisional court failed to engage with or address the trial court's reasoning on the following essential questions:

1. Whether the application dated 03.09.2013, along with the accompanying statement as indicated in its heading, constituted an "additional pleading" within the meaning of Order VIII Rule 9 CPC, and if so, whether prior leave was required;
2. Whether the accompanying statement merely reiterated earlier denials and sought saham as an alternative relief.

The central issue before the revisional court was not whether the defendant was substantively entitled to claim saham, but rather whether the accompanying statement merely reiterated earlier denials and sought saham as an alternative relief, or whether it amounted to an "additional pleading" within the meaning of Order VIII Rule 9 of the CPC. However, the revisional court proceeded to dispose of the revision without recording that notice had been duly served, without noting the plaintiff's appearance or absence, and without passing any judicial order on the pending prayer for dispensing with notice. As a result, the court failed to apply its judicial mind to these procedural

questions and did not engage with the operative reasoning of the trial court.

However, it transpires that the trial court record that acting upon the impugned order dated 13.04.2014 passed by the learned District Judge in Civil Revision No.15 of 2014, it has already accepted the application for saham filed by Defendant No. 1 by its order No. 48 dated 09.06.2014. Pursuant thereto, the plaintiff's application for amendment of the plaint and a separate application filed by Defendant Nos. 2 and 15–22 for amendment of saham were also allowed. These developments indicate that the plaintiff, having acted upon and obtained relief pursuant to the impugned revisional order, acquiesced in its operative effect.

In such circumstances, where the plaintiff has participated in further proceedings and invoked the jurisdiction of the trial court consistent with the impugned revisional order, this Court is disinclined to interfere under Section 115(4) CPC, which is a discretionary jurisdiction. Permitting the plaintiff to simultaneously act upon and yet challenge the very same order would amount to approbation and reprobation at the same time, which is not permissible in law.

Accordingly, **the Rule is discharged.**

However, this shall not preclude the trial court from addressing, at the appropriate stage, any legal questions that may arise regarding the

nature or admissibility of subsequent pleadings, if raised by either party, and to decide the matter finally on merit in accordance with law.

Let a copy of this order be sent to the learned trial court for information and further proceedings.

(Justice Md. Toufiq Inam)

Ashraf /ABO.