

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 2139 of 2015

Khandaker Aminul Islam being dead his
heirs: 1(a) Zebunnessa Islam and others
... Petitioners

-Versus-

Md. Abul Bashar Shahin Alam (Babu) and
others

...Opposite-parties

Mr. Sherder Abul Hossain with
Mr. Sonjoy Kumar Kundo, Advocates

...For the petitioners

Mr. Md. Kamal Haider, A.A.G

...For the proforma-opposite-party Nos. 5-9.

Heard on 28.01.2024 and

judgment on 29th January, 2024.

On an application under Section 115(4) of the Code of Civil Procedure, this Rule was issued granting leave to revision to the petitioners calling upon the opposite party Nos. 1-4 to show cause as to why the impugned judgment and order dated 22.06.2015 passed by the learned Additional District Judge, 3rd Court, Dinajpur in Civil Revision No. 99 of 2010 rejecting the said revision and thereby affirming the judgment and order dated 05.04.2010 passed by the learned Senior Assistant Judge, Sadar, Dinajpur in Other Suit No. 138 of 1994 allowing an application filed by the present opposite-party Nos. 1 to 4 under Order I Rule 10 read with Section 151 of the

Code of Civil Procedure for addition of party should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that one Mojibor Rahman, filed Other Suit No. 138 of 1994 in the Court of Senior Assistant Judge, Sadar, Dinajpur against the Government, as defendants, on 15.10.1994 for declaration in the following terms:

“ক) ১নং বিবাদী কর্তৃক ৪১৩/৮/৭০-৭১ নং বিনিময় মোকদ্দমায় ইং ২৭-০৯-৯৪ তারিখের আদেশ বেআইনী, বেদাড়া, এখতিয়ার বিহীন, অকার্যকরী এবং বাদীগণ উহার দ্বারা বাধ্য নহে মর্মে বিবাদীগণ বিরুদ্ধে ঘোষণার ডিক্রি দিতে।”

After filing of the suit by Mojibor Rahman, present petitioners filed an application on 31.01.2000 under Order I Rule 10(2) of the Code praying for addition of party as co-plaintiffs on the ground that before filing of the suit plaintiff Mojibor Rahman transferred the property to the applicant by registered deed of sale dated 21.09.1994. The trial court after hearing allowed the application on 15.05.2000 and made the present petitioners as co-plaintiffs in suit. No objection was raised by original plaintiff Mojibor Rahman. Plaintiff Mojibor Rahman died on 01.03.2003, consequently, the petitioners, as co-

plaintiffs filed an application for striking out the name of Mojibor Rahman from category of plaintiff. Said application was allowed on 26.06.2003 by the trial court.

Thereafter, heirs of Mojibor Rahman came with an application under Order I Rule 10(2) of the Code to be added as plaintiffs in suit on 26.02.2009 denying sale of the property by their father in favour of co-plaintiff Nos. 1 and 2. The application was opposed by the present petitioners. The trial court after hearing by order dated 05.04.2010 allowed the application in modified form adding the heirs of Mojibor Rahman as added defendant Nos. 6-9 instead of adding them as co-plaintiffs because their interest is conflicting with the interest of the present petitioners.

Against the order of the trial court present petitioners filed Civil Revision No. 99 of 2010 before the learned District Judge, Dinajpur. Eventually, the said revision was heard and disposed of by the learned Additional District Judge, 3rd Court, Dinajpur who after hearing by the impugned judgment and order dated 22.06.2015 rejected the same. At this juncture, the petitioners, moved this Court by filing this revisional application under Section 115(4) of the Code

seeking leave to revision and obtained the present Rule and order of stay.

Mr. Sherder Abul Hossain with Mr. Sonjoy Kumar Kundo, learned Advocates appearing for the petitioners submit that the subject matter of the suit is not the property but an Exchange Case No. 413/8/70-71 which is sought to be declared illegal, ineffective, without jurisdiction and not binding upon the plaintiffs. But the heirs of Mojibor Rahman added as defendants denying the transfer made by their predecessor in favour of the petitioners which is totally different from the subject matter of the instant suit. He argued that where any party has no interest in the subject matter of the suit and in no way acquainted with the reliefs sought for, are not entitled to be added either as co-plaintiffs or as defendants in suit. He finally submits that the opposite-party added defendant Nos. 6-9 are neither necessary party nor proper party, but both the courts below failed to appreciate the provisions of law as well as illegally allowed the application adding as defendant Nos. 6-9 in the suit, as such, both the courts below have committed error in law in decision occasioning failure of justice.

None appeared on behalf of the opposite-party Nos. 1-4 to oppose the Rule.

Mr. Md. Kamal Haider, learned Assistant Attorney General appearing for the proforma-opposite-party Nos. 5-9 Government submits that when a dispute raised by the heirs of original plaintiff Mojibor Rahman challenging the claim of the co-plaintiffs they are necessary party to the suit, in their absence the matter in dispute cannot be effectually adjudicated upon. He further submits that the trial court while allowing the application in modified form rightly observed that in the event of conflict of interest between the existing plaintiffs and the person wanted to be added as co-plaintiffs the proper course to allow the application making the applicants defendants in suit. Accordingly, the trial court legally passed the order as well as the revisional court rightly affirmed the order passed by the trial court. There is no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocate for the petitioners and the learned Assistant Attorney General for proforma opposite-party government, have gone through the revisional application, plaint in suit,

application for addition of party and the impugned judgment and order passed by both the courts below.

It is fact that one Mojibor Rahman filed Other Suit No. 138 of 1994 for a declaration to the effect that Exchange Case No. 413/8/70-71 and the order passed therein dated 27.09.1994 to be illegal and without jurisdiction along with declaration of his title by way of exchange. Before filing of the suit Mojibor Rahman transferred the suit property to present petitioners Khandaker Aminul Islam and Md. Amirul Islam by a registered deed dated 21.09.1994 but in the plaint said fact has not been disclosed. The petitioners after coming to know about filing of the suit by their vendor Mojibor Rahman, filed an application on 31.01.2000 under Order I Rule 10(2) of the Code for addition of party as co-plaintiffs. Said application was not opposed by Mojibor Rahman. Consequently, the trial court after hearing, by its judgment and order dated 15.05.2000 allowed the application and added the present petitioners, as co-plaintiff Nos. 2 and 3 in suit.

During pendency of the suit Mojibor Rahman died on 01.03.2003. Thereafter, present petitioners, as co-plaintiffs filed an

application for striking out the name of Mojibor Rahman from category of plaintiff. The trial court by its order dated 26.06.2003 allowed the same and struck out the name of Mojibor Rahman. After long time, heirs of Mojibor Rahman came with an application under Order I Rule 10(2) of the Code on 26.02.2009 praying for adding them as co-plaintiffs with the petitioners, but in the application the heirs of Mojibor Rahman denied transfer of property by their predecessor Mojibor Rahman in favour of co-plaintiff Nos. 2 and 3, resultantly, there arises a conflict of interest between the co-plaintiffs and the heirs of Mojibor Rahman. The petitioners, as co-plaintiffs opposed the application. The trial court after hearing allowed the application in modified form adding the heirs of Mojibor Rahman as added defendant Nos. 6-9 observing that where there is conflict of interest between the co-plaintiffs and the heirs of Mojibor Rahman they cannot be added as co-plaintiffs but they have right to be added as defendants in suit and added them by order dated 05.04.2010. Against the order, present petitioners moved before the learned District Judge in revision which was heard by the learned Additional District Judge, 3rd Court, Dinajpur who after hearing by

the impugned judgment and order dated 22.06.2015 rejected the revision affirming the order of the trial court. Thereafter, the petitioners moved this Court by filing this application seeking leave to revision.

To appreciate the grounds and submissions made by the learned Advocate for the petitioner, I have gone through the application under Order I Rule 10(2) of the Code filed by the heirs of Mojibor Rahman wherein they claimed that they were not in the know of filing of the suit by their predecessor Mojibor Rahman and claimed that they had interest in the suit property and in their absence, if the suit is disposed of they will be highly prejudiced and the matter in dispute cannot be effectually adjudicated upon and also claimed that the co-plaintiffs in connivance with each other created a sale deed in the name of their predecessor Mojibor Rahman. Whether Mojibor Rahman transferred the property in question to the present petitioner co-plaintiffs or whether the deed in question is forged and fabricated or Mojibor Rahman during his life time as plaintiff No. 1 did not oppose existing of sale deed alleged to

have been executed by him in favour of the co-plaintiffs are all matters of evidence to be decided at the time of hearing of the suit.

Admittedly, the added defendant Nos. 6-9 are heirs of Mojibor Rahman and Mojibor Rahman is the person who filed the instant suit at first. The petitioners subsequently added as co-plaintiffs in the suit claiming purchase of the land from Mojibor Rahman. When heirs of Mojibor Rahman took stand against the sale deed claimed by the co-plaintiffs there is conflict of interest between the applicant and the plaintiffs. Law does not permit them to be added as co-plaintiffs, but they can be added as defendants in suit. Accordingly, the trial court rightly allowed the prayer of the heirs of Mojibor Rahman making them added defendants in suit, relying on a judgment passed in *Md. Idris alias Shelim and aothers Vs. Bazal Ahmed and others case* reported in *40 DLR (HCD) 317*.

From the order passed by the trial court, I find that the trial court rightly allowed the application in modified form making the heirs of Mojibor Rahman, as defendants and the revisional court while rejecting the revision rightly held that the applicants being heirs of Mojibor Rahman, the original plaintiff in suit, are entitled to

be added in the suit as defendants. There is no illegality in the decision, resulting an error in the decision occasioning failure of justice calling for interference.

In the result, the Rule is discharged, however, without any order as to costs.

The trial court is hereby directed to dispose of the suit within shortest possible time preferably within 06(six) months from the date of receipt of this judgment and order.

Order of *stay* granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.