

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 812 of 2015

Abdul Karim

Petitioner

-Versus-

Md. Mominul Hoque Badshah being dead his legal heirs Ferdous Begum and others

Opposite parties

Mr. Mohammad Ziaul Hoque, Advocate

...For the petitioner

Mr. Md. Khurshid Alam Khan, Senior Advocate with
Mr. Titus Hillol Rema, Advocate

... For the opposite party No. 1

Heard on: 27.08.2024 and 09.02.2025

Judgment on: 23.02.2025

Plaintiff is the petitioner in the instant revision. The plaintiff filed Other Suit No. 4 of 2005 impleading the predecessor of the present opposite party No. 1 and others as defendants in the Court of Assistant Judge, Boalkhali, Chattogram praying for cancellation of the agreement dated 30.05.2001 entered into between the defendant No. 1 and defendant No. 3 and for declaration that the Memo No. উ,নি,অঃ/বোয়াল/চট্ট/১১-৭-০৫-২৪ dated 05.01.2005 issued by the defendant No. 3 Upazilla Nirbahi Officer, Boalkhali, Chattogram directing the

plaintiff to handover the possession of shop No. 13 of Upazilla Parisahd is void, ineffective and not binding upon the plaintiff. The suit was dismissed on contest, vide judgment and decree dated 20.11.2011 (decree signed on 27.11.2011). Challenging the same, the plaintiff filed Other Appeal No. 27 of 2012 before the Court of District Judge, Chattogram. The appeal was transferred to the Court of Additional District Judge, Chattogram for disposal. In the said appeal, the plaintiff filed an application for sending exhibit-Kha(1) which is a deed dated 20.12.1986 alleged to have been executed by the plaintiff in favour of the defendant No. 1 to the handwriting expert to examine the purported signature of the plaintiff contained therein. The appellate Court below, vide judgment and order dated 19.11.1914 rejected the said application. Challenging the same, the plaintiff-appellant filed the instant revision and obtained Rule.

The opposite party No. 1 (defendant No. 1) has entered appearance in the Rule.

When the Rule was taken up for hearing, the learned Advocate appearing for the plaintiff-appellant-petitioner filed an application under Order 6 rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the plaint and submits that some important facts were not stated in the plaint and that the prayer portion of the plaint requires amendment. The proposed amendment runs as follows:

১। আরজির ৬ নং দফায় “void ab initio বটে” এর পর “১ নম্বর বিবাদীর কথিত ২০.১২.১৯৮৬ তারিখের চুক্তিনামা প্রতারণাপূর্ণ এবং সম্পূর্ণরূপে সৃজিত, কেননা বাদী কখনোই ১ নম্বর বিবাদীর সাথে উক্তরূপ চুক্তিনামা সম্পাদন করেননি। বাদী কখনোই বিক্রির উদ্দেশ্যে ১ নম্বর বিবাদীর সাথে উক্ত কথিত বিক্রি রশিদ সম্পাদন করেনি। কথিত বিক্রয় চুক্তিতে প্রদর্শিত সহি বা স্বাক্ষর বাদীর নয় যা খালি চোখে তুলনা করা মাত্রই পরিষ্কার হইয়া যাইবে।” কথাগুলি সংযোজিত হইবে।

২। আরজির প্রার্থনায় ১০(খ) নং দফায় “দখল হস্তান্তর নামা” ও “১ নং বিবাদী” শব্দের মধ্যে “এবং বাদীর নামাকরণে বাদী ও ১ নং বিবাদীর ২০.১২.১৯৮৬ তারিখের কথিত বিক্রয় রশীদ পত্র জাল, যোগসাজসী, তপ্পক, বাতিল এবং বাদীর উপর বাধ্যকর নহে এবং ” কথাগুলি সংযোজিত হইবে।

The learned Advocate for the plaintiff submits that the proposed amendment would not alter the nature and character of the suit and the same is necessary for the purpose of determining the real questions in controversy between the parties.

Mr. Khurshid Alam Khan, the learned Senior Advocate appearing for the defendant-opposite party No. 1 opposes the application for amendment. Mr. Khan submits that the application has been filed to delay the proceedings and the same would change the nature and character of the suit. Mr. Khan lastly submits that since the appeal is pending before the appellate Court below, the instant application ought to have been filed before the appellate Court, not in the instant revision.

I have perused the plaint, written statement, judgment and decree passed by the trial Court and the impugned order passed by the appellate Court below. In my view, the proposed amendment would

not change the nature and character of the suit and same is necessary for the purpose of determining the real questions in controversy between the parties. I am further satisfied that in spite of due diligence, the plaintiff could not raise the matter before the trial Court. It is settled law that the revisional Court has the power to entertain and adjudicate an application for amendment of the pleadings. Therefore, for speedy disposal of the appeal I am inclined to allow the application for amendment.

At this juncture, Mr. Khan appearing for the defendant-opposite party No. 1 submits that in view of the amendment of the plaint, the defendant No. 1 is required to file additional written statement, otherwise, the defendant No. 1 shall be prejudiced. I find force in the submission. At this juncture, the learned Advocates of both sides submit that the parties may require to give additional evidence in the appeal.

If parties propose to produce additional evidence, the appellate Court below shall decide the matter in accordance with law. Since the plaintiff's application for amendment of the plaint has been allowed, the impugned order does not require any deliberation and the same is upheld. However, the plaintiff-appellant is at liberty to file fresh application at an appropriate stage of the proceeding for handwriting expert, if so advised. Accordingly, the Rule is disposed of in the following terms:

The impugned order dated 19.11.2024 is upheld. The application for amendment of the plaint filed by the plaintiff in the instant revision is allowed. The defendant-opposite party No. 1 is at liberty to file additional written statement in the appellate Court below, if so required. The parties are at liberty to adduce additional evidence in the appellate Court below. The appellate Court below shall decide the matter regarding additional evidence in accordance with law. The plaintiff-appellant is at liberty to file fresh application for handwriting expert at an appropriate stage of the proceeding, if so advised. If such application is filed, the Court concern shall decide the matter in accordance with law. The appellate Court below is directed to dispose of the appeal expeditiously. The order of stay granted earlier is vacated.