

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.1834 of 2015

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure

- AND -

IN THE MATTER OF:

Bikash Ranjan Roy

... Petitioner

-Versus –

Profullo Chandra Roy and others

... Opposite Parties

No one appears

.... For the petitioner

Mr. Dipankar Debnath, Advocate with

Mr. Md. Mesbahul Islam, Advocate

...For the Opposite Parties

**Heard on 16.10.2023 and
Judgment on 18.10.2023**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, the leave was granted and this Rule was issued calling upon the opposite parties to show cause as to why the impugned order No.78 dated 10.08.2014 passed by the learned Joint District Judge, 2nd Court, Sunamganj in Title Suit No.7 of 2009 rejecting the application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of

the plaint should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed all further proceeding of Title Suit No.7 of 2009, now pending in the 2nd Court of Joint District Judge, Sunamganj for a period of 04(four) months from date.

Facts necessary for disposal of the Rule, in short, are that the petitioner as plaintiff on 08.04.2009 filed Title Suit No.07 of 2009 against the opposite parties in the Court of learned Joint District Judge, 2nd Court, Sunamganj for partition, recovery of khas possession and declaration that two sale deeds are illegal, collusive and not bindings upon the plaintiff. Thereafter, on 10.08.2014 the plaintiff filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amending their plaint. The learned joint District Judge, 2nd Court, Sunamganj after hearing both the parties rejected the application for amending of plaint dated 10.08.2014 without touching the merit of the application by his impugned order No.78 dated 10.08.2014.

Being aggrieved by and dissatisfied with the Order No.78 dated 10.08.2014 passed by the Joint District Judge, 2nd Court, Sunamganj in Title Suit No.07 of 2009, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

When the matter was taken up for hearing, no one appears for the petitioner, although it appears in the daily cause list several times.

Mr. Md. Mesbahul Islam, the learned Advocate appearing on behalf of the opposite parties submits that No credible reason has been mentioned

in the application to support the amendment after a long time. At present, the testimony of the plaintiff in the Title Suit is over. The date has been fixed for the taking of the evidence of the defendants and the defendants have produced witnesses. In such circumstances, granting the plaintiff's application shall again afford the plaintiff an opportunity to present evidence. If granted this long-delayed application filed by the plaintiff will prolong the trial of the Title Suit No.07 of 2009 and the defendant-opposite parties will suffer and there is a possibility of obstruction of justice. Accordingly, he prays for discharging the Rule.

I have heard the submission of the learned Advocate for the opposite parties, perused the revisional application, the impugned order of the Court's below, the papers and documents as available on the record.

It appears from the application for amendment of plaint dated 10.08.2014 filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure that, in view of the written reply dated 20.09.2010 filed by the defendants No. 17-20, 1.03 acres of land of Nalisha Dag Nos.1677, 1801 and 1800, Sukendra Lal Roy, the previous owner of the plaintiffs, as per Registry Kobala deed No. 3486 dated 09.10.1967 he did not sale it, which is fake, illegal and void. Therefore, the plaintiff prayed for amendment of the plaint as mentioned above. The defendants No. 17-20 have filed a written reply about 4 years ago as per the petition of the plaintiff. No credible reason has been mentioned in the application to support the amendment after a long time. At present, the testimony of the plaintiff in the Title Suit is over. The date has been fixed for the taking of the evidence of the defendants and the defendants have produced

witnesses. In such circumstances, granting the plaintiff's application shall again afford the plaintiff an opportunity to fill up the lacuna of the evidence and it will prolong the trial of the Title Suit No.07 of 2009 and the defendant-opposite parties will suffer and there is a possibility of obstruction of justice.

Considering the above facts and circumstances and materials on record, I think that the learned Joint District Judge, 2nd Court, Sunamganj rightly passed the Order No.78 dated 10.08.2014 is maintainable in the eye of law and I do not find any substance to interference into the said order No.78 dated 10.08.2014.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged on merit.

The Order No.78 dated 10.08.2014 passed by the learned Joint District Judge, 2nd Court, Sunamganj in Title Suit No.07 of 2009 rejecting the application dated 10.08.2014 filed under Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint is hereby upheld and confirmed.

Further, it appears that, it is an old case, filed in the year of 2009. Therefore, the trial Court is also directed to dispose of the Title Suit No.07 of 2009 expeditiously, preferably within 06(six) months from the date of receipt of this judgment and order of this Court.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment and order be communicated to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer