

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 3042 of 2015

Advocate Md. Bashir Ullah

..... Petitioner

-Versus-

Khorshed Alam and others

..... Opposite-Parties

Mr. Anwar Parves, Advocate

... For the Petitioner

Mr. M.M. Shafiullah, Advocate

... For the Opposite Party No. 2

Judgment on 27.10.2025

In this revision Rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the impugned judgment and order dated 17.06.2025 passed by the learned Additional District Judge, 6th Court, Chattogram in Other Appeal No. 267 of 2021 rejecting the application 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 Revision, in short are that, the Opposite Party Nos.1-4 as plaintiffs, filed Partition Suit No. 96 of 1982 in the court of learned Sub Judge, (now Joint District Judge) 2nd Court, Chattogram against the opposite party Nos. 5-121 and their predecessors praying for a decree of partition of the suit property mentioned in the

plaint claiming saham of $\frac{63}{112}$ th shares. The suit was transferred to the Court of Additional Assistant Judge, 1st Court, Chattogram and renumbered as Partition Suit No. 55 of 1992. Different sets of defendants including defendant Nos. 12-16 contested the suit by filing written statement claiming their saham in the suit property.

The Court of Additional Assistant Judge, 1st Court, Chattogram decreed the suit in part in favour of the plaintiffs vide judgment and decree dated 16.08.2021 (decree signed on 22.08.2021) giving saham of 61.19 decimals to the plaintiffs and 28.83 decimals to the defendant Nos. 12-16 and rest of the properties were allotted to other defendants.

Being aggrieved by and dissatisfied with the judgment and decree of the trial in respect of amount of share the plaintiffs preferred Title Appeal No. 267 of 2021 before the learned District Judge, Chattogram, praying for increasing their portion from 61.19 decimals to 101.28 decimals and the appeal was initially admitted for hearing and was subsequently transferred to the Court of learned Additional District Judge, 6th Court, Chattogram for hearing and disposal.

The Petitioner being applicant on 06.04.2025 filed an application for addition of party as Respondent in the appeal stating inter alia that he has

purchased 4 (four) decimals land from Rokeya Begum vide registered deed of sale No. 1671 dated 12.04.2023, who purchased the property vide registered deed No. 32 dated 08.01.1992 from Bashir Ahmed and Sultan Ahmed, who contested the suit as defendant Nos. 12 and 13.

The Appellants opposed the application filed by the 3rd Party petitioner by filing written objection stating inter alia that the predecessor of the applicant contested the suit and the transfer in question is hit by the doctrine of *lis pendens* and the applicants is not a necessary party for disposal of the appeal. Moreover, the Applicant is not in possession of the property mentioned in the schedule to his deed, rather the same is possessed by the Appellants and Respondent Nos. 33-51.

The Appellate Court below after hearing the application for addition of party by its order dated 17.06.2025 rejected the application filed by the Applicant-petitioner observing inter alia, that the applicant purchased the property during pendency of the suit and as such, he is not a necessary party by operation of doctrine of *lis pendens*. At this juncture, the 3rd party applicant-petitioner moved this Court by filing this application under Section 115 (1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Anwar Parves, learned Advocate appearing for the petitioner submits that the property covered by sale deed No. 1671 dated 12.04.2023 belonged to defendant Nos. 12 and 13 in the suit. The trial court allotted saham to the defendant Nos. 12-16 for 28.83 sataks land out of which during pendency of the suit defendant Nos. 12 and 13 transferred 4 sataks of land by a registered deed No. 32 dated 08.01.1992 to one Rokeya Begum who is also not made party in the suit.

He submits that since the original vendor of Rokeya Begum allotted saham for 13.74 sataks there is no legal impediment to pray for saham by the present petitioner in the instant suit, consequently, he filed an application for addition of party and filed written statement praying for 4 sataks saham to be given in his share. The appellate court ought to have allowed the application for addition of party and allotted saham for 4 sataks to the petitioner, as respondent, from the share of defendant Nos. 12 and 13, but the appellate court unfortunately failed to appreciate that in the event of addition of the petitioner and allotting saham to him as prayed for, the plaintiff-appellant-decree holders have nothing to lose and the decree passed by the trial court will not be affected in any manner. It is also argued that because of refusal by the appellate court to add the

petitioner, as respondent, the petitioner has been put into further litigation and to multiplicity of judicial process, as such, the appellate court has committed error in the decision occasioning failure of justice.

Mr. M.M. Shafiullah, learned Advocate appearing for the opposite party No. 2 submits that this is a suit of the year 1982 and the owner of the property were made party as defendant Nos. 12 and 13 who contested the suit by filing written statement, but at that time they did not transfer any property to Rokeya Begum or Rokeya Begum to the petitioner and they also did not file any additional written statement disclosing the fact of transfer to anybody. Consequently, the plaintiffs had no earthly reason to add any person like the vendor of the petitioner and the petitioner himself who came into scene in the year 2023, during pendency of the appeal.

He submits that the petitioner is entitled to get share from defendant Nos. 12 and 13 not from the property claimed by the plaintiff, where the defendant Nos. 12-16 jointly allotted their saham and they conceded the same and did not prefer any appeal. The present petitioner has ample scope to get his share from defendant Nos. 12-16 from the share allotted to them, as such, he is not necessary party or proper party in the present

appeal. It is also argued that the petitioner purchased the property from one Rokeya Begum who purchased the same from defendant Nos. 12 and 13 with specific boundary and specification possession, therefore, he cannot claim any saham without ejmali possession, as such, the appellate court rightly rejected the application as the petitioner is not at all necessary party who is entitled to get 4 sataks of land from the share of defendant Nos. 12 allotted by the court. Moreover, the deed of the year 1992 and the deed of the year 2023 by which the petitioner and his vendor purchased the land during pendency of the suit and that transfers is hit by Section 52 of the Transfer of Property Act, however, for not making him party in the suit, he will not be deprived of getting his share from defendant Nos. 12 and 13 as they got the same in the suit.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement filed by defendant Nos. 12-16 judgment and decree passed by the trial court, appeal memo, application for addition of party, written statement filed by the petitioner and the impugned judgment and order passed by the appellate court.

It is fact that the opposite parties, as plaintiff, instituted Partition Suit No. 96 of 1982, subsequently renumbered as Partition Suit No. 34 of 1991 and then Partition Suit No. 55 of 1992. This is a long pending the suit. Different sets of defendants contested the suit by filing written statement. Vendors of the present applicant's Vendor also contested as defendant Nos. 12-16 by filing a joint statement. The trial court by judgment and decree dated 16.08.2021 decreed the suit in part giving saham to the plaintiffs for 61.19 sataks instead of 101.28 sataks and also allotted saham to contesting defendants including defendant Nos. 12-16 giving saham for 28.83 sataks jointly, out of which the defendant Nos. 12-13 got 13.74 sataks. The present petitioner claimed that defendant Nos. 12 and 13 while in possession they transferred 4 sataks of land to one Rokeya Begum by registered sale deed No. 32 dated 08.01.1992, during pendency of the suit, but the said fact was not disclosed by them in their written statement before the trial court. Rokeya Begum subsequently transferred the said purchased land measuring 4 sataks to the present petitioner by registered deed No. 1671 dated 12.04.2023 during pendency of the appeal. The petitioner claimed that after purchase he got his name mutated in the

khatian and paid rent to the government and has been possessing the same with specific boundary.

From perusal of judgment of the trial court and the ground set out in the appeal memo, it appears that the plaintiffs decree holder did not claim or challenge the saham allotted to defendant Nos. 12-16, the vendor of the present petitioner. From perusal of sale deed No. 1671 dated 12.04.2023 (annexure-C-1 to the application) in its schedule specified the land by giving a definite boundary bounded by North-government road, South-Khorshed Ara Begum, East-Mofzal Ahmed and West graveyard and claim of the petitioner that after purchase he has been possessing the same with the knowledge of all. If it is so, he has no ejmali possession in the suit property, but his property has been separated by giving a definite boundary and as per his statement he is in possession of the same and is entitled to that quantum of land from defendant Nos. 12-13. Since defendant Nos. 12 and 13 have been allotted saham for 13.74 sataks, the petitioner, as purchaser, is entitled to get his share from the share of defendant Nos. 12 and 13 and for that reason and purchase of the land during pendency of the suit, the present petitioner is not a necessary party to be added in the present appeal. Where, the petitioner himself claimed

that he purchased the land with definite boundary and possession has been delivered to him, accordingly, continuing possession as per his deed, there is no earthly reason to pray for saham in the instant suit by addition of party. The appellate court while rejecting the application for addition of party rightly held that;

“স্বীকৃতমতেই যেহেতু রোকেয়া বেগম এবং এডভোকেট বশির উল্লাহ মামলা চলাকালীন সময় সম্পত্তি ক্রয় করেন সেহেতু *Doctrine of Lispendens* অনুযায়ী তারা মামলার আবশ্যকীয় পক্ষ নয়। রোকেয়া বেগমের বায়া যে সম্পত্তির ছাহাম পেয়েছেন সেখান থেকে রোকেয়া বেগমের দলিলমূলে ভূমি প্রাপ্ত হবেন। পরবর্তীতে তিনি আবার যার নিকট সম্পত্তি বিক্রি করেছেন তিনি রোকেয়া বেগম হতে সম্পত্তি প্রাপ্ত হবেন। এক্ষেত্রে ৩৬নং রেসপনডেন্টকে তাদের প্রাপ্ত ছাহাম থেকে তাদের বিক্রিত ০৪ শতক বাদ দিয়ে আলাদাভাবে ছাহাম দেওয়ার আবেদন অত্র আপীল মামলায় বিবেচনা করার সুযোগ না থাকায় পক্ষভুক্তির আবেদন না-মঞ্জুর করা হলো। তবে দরখাস্তকারীর বাবার বায়া যেহেতু মূল মামলার সাহাম পেয়েছে সেহেতু সেখান হতেই তার ভূমি পাবেন ”

The appellate court rightly held that for the property claimed by the present petitioner he is not required to be added in the appeal, rather, he will be entitled to possess his purchased land from the share of defendant Nos. 12-13 who did not prefer any appeal against the decree passed by the trial court.

In view of the above, I find no merit in the rule as well as in the submissions of the learned Advocate for the petitioner.

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

The appellate court is hereby directed to dispose of the appeal within shortest possible time giving top most priority preferably within 01 (one) month from the date of receipt of this judgment and order.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned at once.