

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 5562 of 1991

Didarul Alam

... Petitioner

-Versus-

Nazir Ahmed

... Opposite Party

No one appears for either of the parties

Judgment on 30.3.2011

This Rule at the instance of a plaintiff, was issued on an application under section 115(1) of the Code of Civil Procedure to examine the legality of order dated 30.4.1986 passed by the Munsif, (now Assistant Judge) Hathazari Upazila Munsif Court, Chittagong in Other Suit No.47 of 1975 rejecting an application for amendment of plaint.

It appears from the order book that the Rule was issued on 26.5.1986 and initially it was numbered as Civil Revision No.191 of 1986. Subsequently, it was renumbered as Civil Revision No.5562 of 1991, possibly on transfer from Chittagong Bench, although the reason of such renumbering is not recorded. Today it is posted in the cause list with name of the learned Advocate for the petitioner and is called for hearing, but no one appears. In view of long pendency of the matter for nearly twenty-five years, it is taken up for disposal.

Facts relevant for disposal of the Rule, as it appears from the record, are that the petitioner instituted Other Suit No.47 of 1975 before the Munsif, Fourth Court, Chittagong Sadar for perpetual injunction against the opposite party and another as principal defendants and three others including the Government as proforma defendants. Plaintiff's case, in short, is that the suit land originally belonged to one Sadar Ali, who died leaving behind his three sons namely, Hashmat Ali, Amjad Ali and Raham Ali and one daughter Shonajan. The R. S. Khatian in respect of the suit land was published in names of the said three brothers, and their only sister was wrongly excluded. Thereafter, the said Raham Ali died leaving behind his two daughters Patennessa and Hazera Khatun, while the said Amjad Ali died leaving behind his two sons and one daughter namely, Abul Khayer, Nazir Ahmed (herein opposite party) and Seraja khatun. The said Hashmat Ali died leaving behind his two daughters named Mahfuza Khatun and Nazma Khataun and his widow Afazunnessa. The heirs of late Sadar Ali got their shares separated by a registered partition deed dated 10.12.1937 and the suit land fell in the share of Hashmat Ali. After his death, his daughter the said Mahfuza Khatun got the suit land exclusively in her share by an amicable settlement with her co-sharers. While in peaceful possession and enjoyment over the same, she (Mahfuza Khatun) sold it to the plaintiff by two registered sale deeds dated 2.10.72 and 7.10.72 for valuable consideration, and delivered the possession thereof to him. Since then the plaintiff has been in possession of the suit land. The opposite party had approached the plaintiff to cultivate the suit land as a "*bargadar*" and being refused

threatened to dispossess him from the suit land. Hence the plaintiff was constrained to institute the suit.

Defendant No.1 (herein opposite party) entered into appearance and was contesting the suit by filing a written statement contending *inter alia*, that the right, title and interest of the plaintiff's vendor over the suit land had been extinguished by a decree passed in Rent Suit No.953 of 1945 of the Fourt Court of Munsif, Chittagong Sadar. The said decree was executed in Rent Execution Case No.39 of 1946 by auction sale of the suit land. The opposite party purchased the same from the successive purchaser of the auction purchaser named Osman Gani. The plaintiff's vendor had no sellable right in the suit land.

After introduction of Upazila system, the Court was shifted to the concerned Upazila. At that stage the plaintiff filed an application for amendment of the plaint on 30.4.1986. The learned Munsif heard the application and rejected the same by his order dated 30.4.1986. The petitioner moved in this Court against the said order, obtained the Rule and an order staying all further proceedings of the suit for a period of three months. But subsequently he did not take any step to get the stay extended.

I have gone through the impugned order and the application for amendment of plaint annexed with the revisional application. It appears that the plaintiff also proposed amendment of the prayer portion of the plaint adding three more prayers seeking declaration of his title over the suit land

with a further declaration of the decree passed in Rent Suit No.953 of 1945, and the auction sale of suit land in execution of the decree to be void, illegal, collusive and without jurisdiction, and also for confirmation of his possession.

If the proposed amendment is allowed, the nature and character of the “suit for perpetual injunction” will be changed to a “suit for declaration of title, confirmation of possession and perpetual injunction”. Moreover, the complicated question of title cannot be an issue in a suit for perpetual injunction. Therefore, the proposed amendment is not necessary to decide the point of controversy in the present suit. The plaintiff, if so advised, can maintain a separate suit for determination of title of the suit land.

It appears from the impugned order that the learned Munsif observed that the application for amendment was filed long after eleven years from institution of the suit, and he rejected the same on the ground that it would change the nature and character of the suit. The learned Munsif committed no error of law resulting in an error in the decision occasioning failure of justice. I do not find any substance, in the Rule.

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

Send down the lower Court records at once.