

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No.5441 of 1991

Abdul Salam

... Petitioner

-Versus-

Sunil Kanti Biswas and others

... Opposite Parties

No one appears for either of the parties

Judgment on 29.3.2011

This Rule at the instance of an added defendant, was issued on an application under section 115 of the Code of Civil Procedure to examine the legality of judgment and order dated 28.3.1984 passed by the Additional District Judge, Third Court, Chittagong in Civil Revision No.29 of 1983 allowing the same and reversing order dated 6.3.1982 passed by the Munsif, First Court, Chittagong Sadar in Other Suit No. 116 of 1980.

It appears from the order book that this Rule was issued on 29.5.1985 and initially it was numbered as Civil Revision No.116 of 1984. Subsequently it was renumbered as Civil Revision No.5441 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 names of the learned Advocates and is called for hearing, but no one appears for either of the parties. In view of long

pendency of the matter for nearly twenty-seven years, it is taken up for disposal.

Facts leading to this civil revision, in short, are that opposite party Nos.1-2 instituted Other Class Suit No.116 of 1980 before the Munsif, First Court, Chittagong Sadar for a declaration that order dated 29.3.1980 passed by the Additional Deputy Commissioner (Rev) and Assistant Custodian of Vested Property, Chittagong in V.P. Case No.7 of 77-78 was illegal, without jurisdiction and not binding upon them.

The Government-defendants entered into appearance and were contesting the suit by filing a written statement denying their title and claiming the land to be a vested property. The present petitioner and opposite party No.9 filed an application under Order I rule 10 of the Code of Civil Procedure for addition of party proposing inclusion of their names as defendants in the suit. The plaintiffs opposed the said application by filing a written objection. The learned Munsif heard the application and allowed the same by his order dated 6.3.1982 adding them as defendants in the suit. The plaintiffs filed Civil Revision No.29 of 1983 before the District Judge, Chittagong against the said order of addition of party. The learned Additional District Judge, Third Court, Chittagong ultimately heard the civil revision and allowed the same by his judgment and order

dated 28.3.1984, which has been impugned in the instant civil revision by one of the added defendants.

I have gone through the orders of the Courts below and perused the revisional application. It appears that the present petitioner along with opposite party No.9 filed the application for addition of party claiming themselves as lessees under the Government. It further appears that the learned Munsif allowed the said application for addition of party by a non-speaking order. On the other hand, the learned Additional District Judge allowed the civil revision on the grounds amongst other that the lessees were not necessary parties in the suit. In passing the impugned order the learned Judge relied upon a decision reported in 31 DLR 107 (Saifuddin Ahmed Siddiqui v The Deputy Custodian, Enemy Property Management Board). The said case is fully identical with the present one, wherein the High Court Division held:

*“... When the lessors, the Enemy Property Authorities are contesting the suit, I do not consider the presence of the lessees in any way necessary in order to effectively adjudicate upon and settle the questions involved in the suit. I, therefore, find that opposite parties No.6-11 who were added as defendants in the suit are not necessary or proper parties for the purpose of effective and complete adjudication of the issues involved in the suit and as such, the impugned order cannot be sustained in law.”*

I also find the case of Md. Ayub v Bangladesh represented by the Secretary, Ministry of Works and others reported in 39 DLR (AD) 111. In this case the Appellate Division set aside an order of addition of an allottee of the Government as a party in a writ petition, on the reason, that his "*continuance in the premises as allottee of Government depends on as long as the property was abandoned property, but when such continuance cannot be prolonged after the declaration is given that the property was no more an abandoned property, respondent No. 7 would have to vacate....The addition of respondent No. 7 does not, however, seem to be justified*".

In the present case the petitioner had no independent right over the subject matter in the suit. Admittedly he was a lessee in a vested property, and will rise and fall with the Government. Since Bangladesh represent by the Deputy Commissioner, Chittagong and the Additional Deputy Commissioner (Rev) and Assistant Custodian of Vested Property, Chittagong were made defendants and they were contesting the suit, the present petitioner was not necessary party. Therefore I do not find any substance in the Rule.

In the result, the Rule is discharged without any order as to costs. The stay granted at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment.