

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5556 OF 2023

In the matter of:

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

And

Md. Abdul Kayum and others

... Petitioners

-Versus-

Mojibur Rahman and others

... Opposite parties

Mr. Humayun Kabir, Advocate

... For the petitioners.

None appears

....For the opposite parties.

Heard and Judgment on 07.07.2025.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 13.06.2023 passed by the Additional District Judge, 1st Court, Gazipur in Civil Revision No.20 of 2022, affirming the order dated 31.05.2022 passed by the learned Senior Assistant Judge, 5th Court, Gazipur in Title Suit No.75 of 2022 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that petitioners as plaintiffs instituted above suit for declaration of title for “Ka” schedule land and for further

declaration that deed of exchange dated 01.11.2004 is forged, ineffective and not binding upon the plaintiff.

In above suit plaintiffs filed a petition on 04.07.2017 for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure for incorporation of registered deed No.6207 dated 29.04.1936 claiming title on the basis of above deed and above petition was allowed and plaint was amended and PW1 Abdul Qayum was recalled and gave evidence as to basis of above deed and reproduced original copy and original deed which was marked as Exhibit No.8. Defendant submitted a petition for keeping above deed (Exhibit No.8) in the safe custody claiming that above deed was a forged document.

The plaintiff filed a petition under Order 6 Rule 16 of the Code of Civil Procedure for striking out above mentioned amended part of the plaint alleging that on erroneous information and advice plaintiff amended above plaint and incorporated above registered deed dated 19.04.1936 (Exhibit No.8).

The learned Senior Assistant Judge rejected above petition of the plaintiffs under Order 6 Rule 16 of the Code of Civil Procedure.

Being aggrieved by above judgment and order of the trial Court above plaintiffs preferred Civil Revision No.20 of 2022 to the District Judge, Gazipur which was heard by the learned Additional District Judge who rejected above Civil Revision and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied with above judgment and order of the learned Additional District Judge above petitioners as petitioners moved to this Court with this revisional application under Section 115(4) of the Code of Civil Procedure and obtained this Rule.

Mr. Humayun Kabir, learned Advocate for the petitioners submits that on erroneous information and advice the petitioners mistakenly submitted a petition for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure and on the basis of above petition the plaint was amended by order dated 23.11.2017. As such the plaintiffs filed a petition under Order 6 Rule 16 of the Code of Civil Procedure for striking out above amended from the plaint. But the learned Additional District Judge utterly failed to appreciate above facts and relevant law properly and most illegally rejected above Civil Revision and affirmed the unlawful judgment and order of the trial Court which is not tenable in law.

No one appears on behalf of the opposite party at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

Admittedly the petitioners as plaintiffs instituted above suit for declaration of title and for further declaration that the deed of exchange dated 01.11.2004 was unlawful and not binding upon the plaintiffs. In above suit plaintiffs filed a suit under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint to incorporate registered

Istafa Deed No.6207 dated 19.04.1936 (Exhibit No.8) which was allowed and evidence of PW1 was recorded on the basis of above deed. Subsequently the defendant claimed that above deed was a forged document and sought to keep above document in safe custody. The plaintiffs filed a petition under Order 6 Rule 16 of the Code of Civil Procedure for striking out above mentioned amended part of the plaint.

A plaintiff can amend his plaint at any point of time under Order 6 Rule 17 of the Code of Civil Procedure but the plaintiff did not file above petition for amendment of the plaint under Order 6r Rule 17 of the Code of Civil Procedure. The plaintiffs filed above petition under Order 6 Rule 16 of the Code of Civil Procedure which is a power of the Court to strike out any part of plaint which seems to be unnecessary and scandalous. Above power of the Court cannot be exercised by the plaintiffs for amendment of the plaint as provided under Order 6 Rule 17 of the Code of Civil Procedure.

In above view of the materials on record I am unable to find any illegality and irregularity in the impugned judgment and order passed by the learned Additional District Judge but the petitioners be at liberty to file a fresh petition for amendment of the plaint under Order 6 Rule 17 of the Code of Civil procedure.

In above view of the materials on record I am unable to find any substance in this Civil Revisional application under Section 115(4) of the

Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER