

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3225 OF 2014

In the matter of:

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

And

Mohammad Mojammel Hoque

.... Petitioner

-Versus-

Mohammad Hosan and others

.... Opposite parties

None appears... For both the sides.

Heard on 12.01.2026.

Judgment on 13.01.2026.

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-26 to show cause as to why the impugned judgment and order dated 18.06.2014 passed by the learned Additional District Judge, Cox's Bazar in Civil Revision No.33 of 2009 allowing the revision and setting aside the judgment and order dated 01.07.2009 passed by the learned Assistant Judge, Cox's Bazar in Other Class Suit No.205 of 2007 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 in short are that the petitioners as plaintiffs instituted above suit on 17.06.2007 for recovery of possession of the disputed land under

Section 9 of the Specific Relief Act, 1877 alleging that the plaintiffs were in lawful possession in above land by way of inheritance and purchase and they have been dispossessed from the same by the defendants without their consent or due process. Defendants entered appearance and contested above suit by filing written statements wherein they denied all material claims and allegations as set out in the plaint and alleged that the defendants were owning and possessing above land and plaintiffs were never in possession of above property nor the defendants dispossessed the plaintiffs from above land.

In above suit plaintiffs filed a petition on 01.07.2009 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint alleging that plaintiff No.2 had transferred $13\frac{1}{3}$ decimal land out of schedule No.1 to defendant No.3 by registered a kabala deed dated 26.12.2005 but erroneously above $13\frac{1}{3}$ decimal land has been incorporated in above schedule as disputed land which needs to be from above schedule.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Senior Assistant Judge rejected above petition holding that by the proposed amendment if allowed would enhance the quantity of the disputed land which is not permissible after two years of institution of above in suit under Section 9 of the Specific Relief Act, 1877.

Being aggrieved by and dissatisfied with above judgment and order of the trial Court above plaintiffs as petitioners preferred Civil Revision No.33 of 2009 to the District Judge, Cox's Bazar under Section 115(2) of the Code of Civil Procedure, 1908 which was heard by the learned Additional District Judge who allowed above revision and set aside the judgment and order of the trial Court and allowed above amendment of the plaint.

Being aggrieved by and dissatisfied with above judgment and order of the Court of revision below above opposite parties as petitioners moved to this Court with this petition under Section 115(4) of the Code of Civil Procedure, 1908 and obtained this Rule with leave.

No one appears on behalf of the petitioners or opposite parties at the time of hearing of this Rule although this matter appeared in the list for hearing yesterday.

I have carefully examined the order passed by the learned Assistant Judge on 01.07.2009 and impugned judgment and order dated 18.06.2014 passed by the learned Additional District Judge, the petition of the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint and other materials on record.

It is admitted that the opposite parties as plaintiffs instituted above suit under Section 9 of the Specific Relief Act, 1877 for recovery of possession of the disputed property and defendants contested above suit by filing written statement and after about two years plaintiffs filed a petition for amendment of the plaint alleging that plaintiff No.2 had

transferred $13\frac{1}{3}$ decimal land to defendant No.3 by registered kabala deed dated 26.12.2005 but erroneously plaintiff has included above land in schedule No.2 and sought recovery of possession of above land which needs to be excluded from above schedule of the plaint.

The learned Assistant Judge rejected above petition for amendment of the plaint on an erroneous perception that if above amendment was allowed the same would result into increase of the total disputed land. In fact by the proposed amendment plaintiffs admitted that they had transferred disputed $13\frac{1}{3}$ decimal land to defendant No.3 by registered kabala deed dated 26.2.2005 but above land has been erroneously included in schedule No.2 and plaintiffs sought to exclude above $13\frac{1}{3}$ decimal land from the plaint.

Section 9 of the Specific Relief Act, 1877 provides a summary procedure for recovery of possession of immovable property without taking into account the question of title provided the suit has been filed within six months from the date of alleged dispossession. In such a suit the plaintiff is required to prove that he was in possession and he has been dispossessed without consent or lawful process. The question of possession of the disputed property is the only issue of consideration in such a suit.

The Code of Civil Procedure, 1908 is liberal about amendment of the plaint and Order 6 Rule 17 of the Code of Civil Procedure, 1908

provides for amendment of the plaint at any stage of the proceedings. In this regard there is only one exception which disentitles a plaintiff from amendment of the plaint. The Court shall disallow such a petition amendment of the plaint if it finds that the proposed amendment of the plaint shall take away any right already accrued in favour of the defendants.

There was no claim from the defendants that if above amendment was allowed any right which has already accrued in their favour would be defeated. Allowing an amendment of the plaint does not mean that the amended facts have been accepted as true or proved. The plaintiff shall be required to prove the new facts brought into the plaint by amendment of the plaint by legal evidence and a defendant always gets an opportunity to submit an additional written statement to counter the claims incorporated by the amendment of the plaint.

In above view of the facts and circumstances of the case and materials on record I am unable find any irregularity or illegality in the impugned judgment and order passed by the learned Judge of the Court of revision below nor I find any substance in this Civil Revisional application and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

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

The learned Assistant Judge is directed to conclude the trial of above suit within six months from the date of receipt of this order.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER