

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 09 of 2000

With

Civil Rule No. 23(R) of 2000

IN THE MATTER OF :

An application under section 115 of the Code of Civil Procedure

And

In the Matter of:

Md. Resat Ali

...Plaintiff-Petitioner

-Versus-

Abdul Karim and others

...Defendants-Opposite Parties

(in Civil Revision No.09 of 2000)

-Versus-

Khurshed Alam Bhuiyan and others

...Opposite Parties

(in Civil Rule No. 23(R) of 2000)

Mr. Md. Mubarak Hossain, with

Mr. Rajib Kanthy Aich and

Mr. Md. Enayeat Ullah Nadim, Advocates

...for the Defendant-Opposite Parties

Judgment on: 09.12.2025

Md. Riaz Uddin Khan, J-

Rule was issued in Civil Revision No.09 of 2000 asking the opposite party Nos. 3-7, 38 and 62 to show cause as to why the impugned judgment and decree dated 14.07.1999 (decree signed on 22.07.1999) passed by the Additional District Judge, 1st Court, Cumilla in Title Appeal No. 310 of 1995 dismissing the appeal and thereby affirming the judgment and decree dated 18.11.1995 passed by the Senior Assistant Judge, Muradnagar, Cumilla in Title Suit No. 63 of 1994 rejecting the plaint should not be set aside and/or

such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule the operation of the impugned judgment and decree was stayed.

Thereafter, the petitioner filed an application before this Court for stay of the Execution Case No.06 of 1993 arising out of Partition Suit No.93 of 1973 and by order dated 20.01.2000 a rule, Civil Rule No.23(R) of 2000 was issued asking the opposite parties 1-8 to show cause as to why the Execution Case No.06 of 1993 arising out of Partition Suit No.93 of 1973 should not be stayed and an order of adinterim stay was granted on the same date. Then the opposite parties filed an application for vacating the said order of stay dated 20.01.2000 and upon hearing both the parties a single bench of this Court vide order dated 03.05.2000 was pleased to vacate the interim order of stay.

Both the Rules were taken up for hearing together and disposed of by this single judgment.

Succinct facts for disposal of both the Rules are that the petitioner as plaintiff filed Title Suit NO. 63 of 1994 for declaration that the preliminary decree dated 30.05.1978 and final decree dated 06.07.1993 passed in Partition Suit No. 93 of 1973 is not binding upon him and also for partition praying for separate saham of 27 decimals land from CS plot no.1739 contending *inter alia* that one Gurudas being owner of 27 decimals of land from plot no.1739 by purchase, died leaving behind only wife Hiran Bala who sold the same to Ambar Ali by a kabala dated 30.12.1963. Thereafter, Ambar Ali died leaving behind two sons, the defendant nos.1 & 2. Then the plaintiff got the land by a deed of

exchange dated 13.02.1993 from the defendants 1 & 2. Recently he came to know about the abovementioned preliminary and final decree, where Ambar Ali was not the party, hence the suit.

At one stage of the suit the defendants appeared and on 18.11.1995 defendant Nos. 3-8 and 31 filed an application under Order VII Rule 11 of the Code of Civil Procedure praying for rejection of the plaint of Title Suit No.63 of 1994. Upon hearing both the parties the trial court was pleased to allow the application and rejected the plaint by his judgment and decree dated 18.11.1995. Against the said judgment and decree the plaintiff preferred Title Appeal No. 310 of 1995 before the District Judge which was ultimately heard by the Additional District Judge, 1st Court, Cumilla. Upon hearing the learned Additional District Judge was pleased to dismiss the appeal and thereby affirmed the above mention judgment and decree passed by the trial court by his judgment and decree dated 14.07.1999.

Being aggrieved by and dissatisfied with the said judgments and decrees of the courts below the plaintiff filed this civil revision before this Court and obtained the Rule and order of stay as stated at the very outset.

None appeared for the petitioner though the matter is appearing in the list on 17.11.2025, 19.11.2025, 23.11.2025, 24.11.2025, 02.12.2025 and today.

Mr. Mubarak Hossain along with Mr. Rajib Kanthy Aich and Mr. Md. Enayeat Ullah Nadim, the learned advocate appearing for the opposite party Nos. 1-6 submits that there is a chequered history and background of the instant suit. The present defendant

Nos. 1-9 as plaintiff filed Partition Suit No. 93 of 1973 claiming 93 decimals of land out of 898 decimals of suit property including 27 decimals of the suit plot No. 1739 which was decreed on contest in the preliminary form on 30.05.1978 and the plaintiffs of Partition Suit No. 93 of 1973 got 93 decimals out of that 898 decimals suit land, defendant Nos. 2-5 got 523 decimals and the defendant No. 21 got 54 decimals of land and the rest of the lands including the 27 decimals land of CS plot no.1739 were kept in the residuary Saham. Against the said preliminary decree the defendant Nos. 2-5 preferred Title Appeal No. 168 of 1978 which was dismissed on 05.02.1981. Thereafter the defendant Nos. 2-5 filed Civil Revision No. 844 of 1981 before the High Court Division which was discharged on 20.03.1983. Thereafter, an advocate commissioner was appointed for preparation of final decree who submitted his report on 03.07.1991 against which the defendant Nos. 2-5 filed written objection and ultimately a final decree was drawn up on 06.07.1993. Then the defendant Nos.2-5 preferred Title Appeal No. 158 of 1993 against that final decree which was dismissed on 10.05.1994. Against which the defendant Nos. 2-5 filed Civil Revision No. 2225 of 1994 before the High Court Division and Rule was issued which was ultimately discharged on 14.07.1999. Thereafter, the defendant Nos. 2-5 filed Civil Petition for Leave to Appeal No. 900 of 1999 before the Appellate Division which was ultimately dismissed on 02.12.1999. In the meantime, the plaintiffs of Partition Suit No. 93 of 1973 filed Execution Case No. 06 of 1993 and defendants also prayed for their

possession and accordingly the possession of the plaintiffs and defendant No. 21 was delivered on 23.07.2001 in full but the possession of the defendant Nos. 2-5 was delivered partially and the trial court disposed of the Execution Case with full satisfaction by his order dated 23.01.2002. Thereafter, the defendant Nos. 2-5 filed another Title Execution Case No. 02 of 2003 for getting their possession in respect of their entire land though in earlier execution case they got possession in part of their land and the bailiff of the Court submitted report on 19.04.2004. Against this report submitted in Execution Case No. 02 of 2003 the plaintiffs of Title Suit no.93 of 1973 filed written objection and upon hearing the trial court rejected the report of the bailiff vide order dated 28.02.2006. Thereafter, the defendant Nos. 2-5 of Title Suit no.93 of 1973 filed Civil Revision No. 26 of 2006 before the District Judge, Cumilla who by his judgment and order dated 06.06.2007 dismissed the Civil Revision against which the defendant Nos. 2-5 filed Civil Revision No. 5322 of 2007 before the High Court Division and obtained Rule and upon hearing, the Rule was discharged on contest on 25.05.2025.

Mr. Hossain then submits that the present petitioner as plaintiff filed the instant Title Suit No. 63 of 1994 for declaration of setting aside the preliminary decree dated 30.05.1978 and final decree dated 06.07.1993 passed in Partition Suit No. 93 of 1973. This final decree was upheld up to the Appellate Division but the present petitioner did not take any step to get their land in Title Appeal or Civil Revision. Even before the Appellate Division in Leave

Petition the petitioner could apply for the Saham. The plaintiff could have prayed for the same in Title Execution Case No. 06 of 1993, Title Execution Case No. 02 of 2003, Civil Revision No. 26 of 2006 and Civil Revision No. 5322 of 2007.

The learned advocate next submits that the plaintiff claimed his share from plot No. 1739 but it is evident from the final decree that suit plot no. 1739 is kept in residuary Saham (Saham No. 5) and the present plaintiff can get his land, if he has any, from the said residuary Saham without praying for setting aside the impugned preliminary and final decree. As such there was no necessity for filing the instant suit challenging the impugned preliminary and final decree which was ultimately upheld by the Supreme Court, Appellate Division. Mr. Hossain finally submits that in such facts and circumstances the instant Rule is liable to be discharged as both the courts below rightly rejected the plaint.

I have heard the learned advocate for the opposite parties, perused the revision application, Lower Court Records including plaint, application for rejection of plaint and impugned judgments passed by the courts below along with the relevant documents available in the record.

It appears from record that the final decree in Partition Suit no.93 of 1973 was upheld up to the Appellate Division, Supreme Court and the claim of the present plaintiff in suit plot No. 1739 has not been distributed among the plaintiffs and/or defendants of Partition Suit No. 93 of 1973, rather that land of plot No. 1739 has been kept in residuary Saham. In such view

of the matter the instant Title Suit No. 63 of 1994 is not at all maintainable in its present form. The plaintiff challenged the preliminary and final decree of Partition Suit No. 93 of 1973 as a whole on the ground that his vendors or their father Ambar Ali was not made party to the suit. Trial court held that since Ambar Ali purchased the land from Hiran Bala, a widow, having only life interest which is inferior right or limited right and hence was not a necessary party to earlier suit no.93 of 1973 for which he has no *Locus standi* to file the instant suit. On the other hand the lower appellate court found that there was no defect of parties in the earlier suit no.93 of 1973 which was decreed finally. The plaintiff claimed that he got the land measuring 27 decimals in exchange of only 9 decimals land and no such exchange deed was found in the record. The learned judge further observed that the sale deed of Hiran Bala dated 30.12.1963 was not valid as there was no legal necessity to sale the land on the ground of her personal loan as such the suit was bad from all side. The learned judge of the court of appeal below during hearing the appeal relating to rejection of plaint under order VII Rule 11 of the Code of Civil Procedure should not have passed any comment considering the contents of the sale deed dated 30.12.1963 regarding the legal necessity for transferring the land touching the merit of the suit. Be that as it may, both the courts below observed that the suit was filed to frastrate/destroy the valuable rights of the decree-holders of the original partition suit no.93 of 1973.

The plaintiff claimed that he got the property by a deed of exchange dated 13.02.1993 during the pendency of the partition suit no.93 of 1973, as such it is hit by the doctrine of *lis pendens*. As because, no interest which is created during the pendency of the suit can affect any decree passed in the suit unless it is obtained by practicing fraud upon court. A person, who takes transfer of property which is the subject matter of a suit during its pendency, takes the risk of losing it if the result of the suit goes against the party from whom he takes the transfer. However, it is well settled that a partition suit operates as *lis pendens* with the result that the purchaser of an undivided share pending a suit takes only that property which is allotted on partition to his vendor.

On examination of plaint it is found that the plaintiff paid taka 200/ fixed court fees but according to Court Fees Act he has to pay *ad valorem* court fees in a suit for declaration of title with prayer for partition. In that case the plaint is liable to be rejected if the plaintiff fails to pay the court fees within time as directed by the court. Be that as it may, we have already noticed that the suit land of 27 decimals in CS plot No.1739 has not been allotted to any party to the suit no.93 of 1973 rather that land of plot No. 1739 has been kept in residuary Saham (Saham No. 5) and the present plaintiff could get his land, if he can prove his title, from the said residuary Saham without praying for setting aside the impugned preliminary and final decree as a whole. There was no necessity for filing the instant suit challenging the impugned preliminary and final decree as a whole which

was ultimately upheld by the Supreme Court, Appellate Division. This suit, in my view, cannot be ruled out, has been filed on the wrong conception or ill motive to frustrate the final decree upheld up to the Appellate Division of Supreme Court as observed by both the courts below. In such view of the matter I find no reason to interfere with the impugned judgment and decree as there is no merit in the Rule. Hence, the Rule is liable to be discharged.

In the result the Rule is **discharged** with cost. The interim order passed earlier stands vacated.

The Civil Rule 23(R) of 2000 is also **discharged** in the light of this judgment.

Send down the Lower Court Records at once along with a copy of this judgment.