

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1693 of 2010

IN THE MATTER OF :

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

-And-

In the Matter of:

Sultan Ahmed and others

.....Petitioners

Versus

Abdul Khaleque and others

.....Opposite parties

None appears

Heard and Judgment on: 14.08.2022.

Md. Riaz Uddin Khan, J-

Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned order dated 10.02.2010 passed by the learned Special District Judge, Comilla in Civil Revision No. 03 of 2009 upholding the order dated 04.11.2008 passed by the learned Senior Assistant Judge, Chandina, Comilla in partition Suit No. 67 of 2001 should not be set aside and or such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of Rule this court stayed all further proceedings of partition Suit No. 67 of 2001 for a period of 03 months which was extended time to time.

It appears from the order dated 29.06.2001 that on the death of opposite party Nos. 1 & 2 their heirs were substituted and with a no objection certificate Mr. Md. Masud Parvez appeared for the substituted opposite parties.

When this matter was taken up for hearing today no one appears in support or to oppose the Rule.

It turns out from record that the Assistant Judge Chandina, Comilla on 04.11.2008 stayed the further proceedings of Title Suit No. 67 of 2001 for a limited period that is up to 31.12.2008 on the prayer of the Defendant-Petitioners on the contention of submitting papers in relation to Civil Revision Case No. 6148 of 2001 pending before the High Court Division. Surprisingly the Defendant-Petitioner filed Civil Revision No. 03 of 2009 before the Special District Judge, Comilla against the said order dated 04.11.2008 passed by the Assistant Judge, Chandina, Comilla. The Special District Judge after hearing the above Civil Revision No. 03 of 2009 vide his impugned judgment and order dated 10.02.2010 dismissed the Civil Revision upholding the order passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and order the Defendant-Petitioners filed the instant Civil Revision before this court and obtained the Rule and order of stay as stated above.

It appears from record that the Defendants filed an application before the trial court seeking adjournment on the contention to submit relevant papers of Civil Revision No. 6148 of 2001 pending before this court. That application was allowed by the trial court on appreciation of the contention of the Defendant-petitioners. The lower revisional court upheld the order passed by the trial court on the finding that by allowing the application for stay filed by the defendant-petitioners what wrong or error was committed by the trial is not understandable.

The defendant-petitioners would submit that with the self same scheduled properties earlier Title Suit No.85 of 1994 was filed by the defendants against the present plaintiffs for permanent injunction and on appeal being Title Suit No.187 of 1999 got decree against which Civil Revision No.6148 of 2001 is pending before this court filed by the plaintiffs for which the proceeding of present Title Suit no.67 of 2001 should be stayed.

Section 10 of the Code of Civil Procedure provides that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. But in the case in hand the relevant documents in connection with the previously instituted suit were not submitted before the trial court for which the trial court rightly stayed the proceeding for a limited period on the condition to submit the relevant papers of Civil Revision No. 6148 of 2001. I also find there is no such paper annexed before this court at the present Civil Revision. Before passing order of stay of suit under section 10 of the Code of Civil Procedure, the Court must be satisfied that the matter in issue in previously instituted suit and in the present suit is also directly and substantially is/are the same between the same parties, or between parties under whom they or any of them claim litigating under the same title. When it is the legal position, the defendant-petitioners should have submitted the relevant documents before the trial court as ordered. Without submitting the relevant documents of the previously instituted suit as claimed by them the defendant-petitioners should not have filed the revision before the Special District Judge as well as this court. In such view of the matter I do not find any illegality

or error committed by the lower revisional court in passing the impugned judgment and order dated 10.02.2010 upholding the order dated 4.11.2008 passed by the trial court directing the petitioners to submit relevant documents. Since there is no merit in the instant Civil Revision it is destined to fail.

In the result, the **Rule is discharged**, however, without any order as to cost. The order of stay earlier passed by this court is hereby recalled and vacated.

Communicate the judgment and order at once to the trial court.

Zia B.O