

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

**Civil Revision No. 3551 of 2019.**

Md. Fazle Ali and another

...Petitioners.

-Versus-

Mosammat Chondona Begum and others

....Opposite Parties.

Mr. Nazir Ahmed, Advocate

...For the petitioners.

Mr. Nazmul Karim, Advocate.

...For the opposite party No. 1

**Heard on: 18.12.2023, 11.02.2024 and 18.02.2024.**

**Judgment on: 19.02.2024.**

**Present:**

**Mr. Justice Md. Badruzzaman.**

This Rule was issued calling upon the opposite parties to show cause as to why judgment and order dated 11.09.2019 passed by learned District Judge, Lakshmipur in Miscellaneous Case No. 1 of 2018 rejecting the case filed under section 24 of the Code of Civil Procedure seeking to simultaneous hearing of Title Suit No. 298 of 2016 and Title Execution Case No. 01 of 2016, now pending in the Court of learned Assistant Judge, Raipur, Lakshmipur with Title Suit No. 33 of 2015 and Title Suit No. 251 of 1985, now pending in the 1st Court of Joint District Judge, Lakshmipur should not be set aside.

At the time of issuance of Rule the proceedings of those suits were stayed for a period of 6 (six) months which was then extended till disposal of the Rule.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioners as plaintiffs instituted Title Suit No. 298 of 2016 in the

Court of Assistant Judge, Raipur, Lakshmipur praying for a decree of declaration that judgment and decree dated 28.09.2005 passed in Title Suit No. 83 of 2004 is collusive, illegal and not binding upon the plaintiffs with another decree of confirmation of possession of the suit land. It has contended in Title Suit No. 298 of 2016 that without serving any summons upon the petitioners the decree was obtained collusively in Title Suit No. 83 of 2004 in respect of .12 acre land and other land appertaining to C.S and S.A Plot No. 286 of C.S Khatian No. 287 corresponding to S.A Khatian No. 303. The plaintiffs have been owning and possessing said .12 acre land by constructing semi-pucca dwelling house therein. Said Title Suit No. 298 of 2016 is now pending in the Court of Assistant Judge, Raipur, Lakshmipur.

On the other hand, Brojolal Nath and others as plaintiffs Instituted Title Suit No. 251 of 1985 in 1<sup>st</sup> Court of Joint District Judge, Lakshmipur praying for a degree of declaration of title, partition, recovery of khas possession and cancellation of deeds and the said suit was decreed vide judgment and decree dated 31.03.1991 and challenging said judgment and decree dated 31.03.1991 one Jahangir Hossain and others (Opposite Party Nos. 9- 16 herein) instituted Title Suit No. 33 of 2015 in 1<sup>st</sup> Court of Joint District Judge, Lakshmipur praying for a decree of declaration that the judgment and decree dated 31.03.1991 passed in Title Suit No. 251 of 1985 is null and void and not binding upon the plaintiffs with another decree of confirmation of possession of the suit land. Said Title Suit No. 33 of 2015 is now pending in 1<sup>st</sup> Court of Lakshmipur for disposal. The petitioners herein filed an application in Title Suit No. 33 of 2015 for addition of party which is pending for disposal. On the other hand, for execution of decree passed in Title Suit No. 83 of 2004, the

decree holders filed Title Execution Case No. 1 of 2006 in the Court of Assistant Judge, Raipur, Lakshmipur which is now pending in said Court. When those suits and title execution case were pending for disposal, the petitioners filed Miscellaneous Case No. 1 of 2018 before the learned District Judge, Lakshmipur under section 24 of the Code of Civil Procedure for simultaneous hearing of those suits and the execution proceeding and the learned District Judge, after hearing the parties, dismissed the Miscellaneous Case by judgment dated 11.09.2019.

Being aggrieved by said judgment dated 11.09.2019 the petitioners have preferred this revisional application under section 115(1) of the Code of Civil Procedure and obtained the instant Rule and order of stay, as stated above.

Opposite Party No. 1 has entered appearance by filing Vokatnama to contest the Rule.

Mr. Md. Osman Goni learned Advocate appearing for the petitioners submits that the suit property of Title Suit No. 298 of 2016 corresponds to suit property of Title Suit No. 33 of 2015 as well as Title Suit No. 251 of 1985 and as such, if those suits are disposed of by different Courts in different proceedings, conflicting decisions may come by different Courts and for avoiding such complications and convenience of the parties those suits should be disposed of by one Court simultaneously. Learned Advocate further submits that learned District Judge without taking into consideration of above aspect of the matter illegally dismissed the miscellaneous case and as such, committed an error of law resulting in an error in the decision occasioning failure of justice.

As against the above contention, Mr. Nazmul Karim learned Advocate appearing for opposite party No. 1 (defendant No. 1 of Title Suit No. 298 of 2016 and plaintiff of Title Suit No. 83 of 2004) submits that the parties of partition suit (Partition Suit No. 251 of 1985) and Title Suit No. 33 of 2015 are different and Issues involves in those suits are also different and as such, there is no necessity to try those suits simultaneously and as such, learned District Judge committed no illegality in dismissing the miscellaneous case in refusing to pass any order directing to simultaneous hearing of those suits and as such, interference is not called for by this Court.

I have heard the learned Advocates as well as perused the complaints of Title Suit No. 298 of 2016, Title Suit No. 83 of 2004 and Title Suit No. 33 of 2015 as well as the decree passed in Title Suit No. 251 of 1985 from which it reveals that said Title Suit No. 251 of 1985 was filed by Sree Brojolal Nath and two others for a decree of partition along with other relief, wherein .12 acre land of C.S and S.A plot No. 286 was included with other land as suit property. On the other hand, opposite party Nos. 9-16 have challenged the decree dated 31.03.1991 passed in Title Suit No. 251 of 1985 in Title Suit No. 33 of 2015. It appears from the complaint of Title Suit No. 298 of 2016 it appears that the petitioners herein instituted that suit for a decree of confirmation of possession and declaration in respect of .12 acre land of C.S and S.A Plot No. 287. In said Title Suit No. 298 of 2016 the petitioner also challenged the judgment and decree dated 28.09.2005 passed in Title Suit No. 83 of 2004 from which Title Execution Case No. 01 of 2006 arose. It further appears that all those suits being Title Suit No. 298 of 2016, Title Suit No. 33 of 2015 and Title Suit No. 251 of 1985 are still pending for disposal. Since .12 acre

of land of C.S and S.A plot No. 286 is common suit property of all those suits and the plaintiffs of Title Suit No. 298 of 2016 is claiming title and possession of said property, I am of the view that if those suits are not disposed of simultaneously by one Court the parties of the suits may be prejudiced because of the fact that if those suits are being tried by different Courts conflicting decisions may come from different Courts. But since the decree passed in Title Suit No. 83 of 2004 has been challenged in Title Suit No. 298 of 2016 and the execution proceeding has filed to execute the decree passed in Title Suit No. 83 of 2004, there is no necessity to dispose of Title Execution Case No. 01 of 2006 along with the title suits because the plaintiffs of Title Suit No. 298 of 2016 have remedy elsewhere in the Code of Civil Procedure, against the execution proceeding.

Considering the facts and circumstances of the case, I am of the view that the pending title suits should be tried simultaneously by one Court for convenience of the parties and avoiding conflicting decisions by different Courts and in that view of the matter, I am of the view that the learned District Judge committed an illegality in dismissing the transfer miscellaneous case and accordingly, interference is called for by this Court.

Accordingly, I find partial merit in this Rule.

In the result, the Rule is made absolute in-part. Let Title Suit No. 298 of 2016, now pending in the Court of Assistant Judge, Raipur, Lakshmipur be withdrawn from that Court and be transferred to 1<sup>st</sup> Court of Joint District Judge, Lakshmipur for disposal.

The 1<sup>st</sup> Court of Joint District Judge, Lakshmipur is directed to dispose of Title Suit No. 251 of 1985 and Title Suit No. 33 of 2015 now pending before it simultaneously with Title Suit No. 298 of 2016 in accordance with law.

The order of stay granted earlier is hereby vacated.

Let a copy of this judgment be communicated to :

(1) Learned Assistant Judge Raipur, Lakshmipur

(2) 1<sup>st</sup> Court of Joint District Judge, Lakshmipur.

**(Justice Md. Badruzzaman)**