

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.169 OF 2021**

In the matter of:

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

And

Md. Mohiuddin Bishwas

... Petitioner

-Versus-

Md. Abdul Goni Bishwas and others

... Opposite parties

None appears

... For the petitioner.

Mr. Meridul Karmakar, Advocate

... For the opposite party Nos.1-22.

**Heard and Judgment on 21.06.2023**

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite Nos.1-22 to show cause as to why the impugned order being No.7 dated 01.10.2020 passed by the learned Senior District Judge, Khulna in Civil Revision No.03 of 2020 rejecting the civil revisional application and affirming the order dated 11.11.2019 passed by the learned Assistant Judge, Terokhada, Khulna in Title Suit No.56 of 2012 should not be set aside.

Facts in short are that the opposite parties as plaintiff filed Title Suit No.56 of 2012 in the Court of Assistant Judge, Terokhada, Khulna for declaration that the judgment and decree passed by the learned Assistant Judge, Terokhada, Khulna in Title Suit No.1455 of 2008 is fraudulent, unlawful and not binding upon the plaintiffs alleging that

the predecessor of the plaintiffs filed Title Suit No.66 of 1963 in the Court of Sub-judge, Khulna and petitioner was defendant No.2 in above suit and above suit was decreed on compromise between the parties. Suppressing above facts the petitioner as plaintiff filed Title Suit No.1455 of 2008 for partition including some land of decree of Title Suit No.66 of 1963 but the opposite party was not made a defendant in above suit. In Title Suit No.56 of 2012 the petitioner was defendant No.1 and contested the suit by filing written statement. In above suit evidence for both sides were closed and the suit was fixed for arguments hearing. At this stage the defendant No.1 of above suit filed a petition under Section 10 of Code of Civil Procedure for staying further proceeding of the suit till disposal of the Title Suit No.215 of 2019 filed by the petitioner as plaintiff challenging the legality and propriety of decree of Title Suit No.66 of 1963. After hearing the learned for respective parties and on consideration of materials on record the learned Senior Assistant Judge rejected above petition.

Being aggrieved by above judgment and order of the learned Senior Assistant Judge the defendant preferred Civil Revision No.03 of 2020 to the learned District Judge, Khulna who on consideration of the submissions made by the learned Advocate for the respective parties and materials on record rejected the revision and affirmed the judgment and order passed by the learned Senior Assistant Judge.

Being aggrieved by above judgment and order of the learned District Judge, Khulna petitioner moved to this Court and obtained the Rule.

No one appears on behalf of the petitioner when the Civil Revision was taken up for hearing although it appeared in the list for hearing today.

Mr. Meridul Karmakar, learned Advocate for the opposite party Nos.1-22 submits that the opposite party as plaintiff filed Title Suit No.56 of 2012 challenging the legality and propriety of the judgment and decree dated 19.01.2011 passed by the learned Assistant Judge, Terokhada, Khulna in Title Suit No.1455 of 2008 since the opposite party was not made a party in the above suit but his land was incorporated in the above suit. The petitioner was defendant No.1 in above suit and he contested the same and the suit was fixed for arguments hearing after conclusion of evidence for both sides. The petitioner filed above petition under Order 10 of the Code of Civil Procedure for stay of proceedings of Title Suit No.56 of 2012 until disposal of the Title Suit No.215 of 2019 who is a latter suit filed by the petitioner as plaintiff challenging the legality of decree of Title Suit No.63 of 1966. On consideration of above materials on record the learned Judges of both the Courts below have rightly and concurrently dismissed above petition holding that the proceedings of a previous

suit cannot be stayed at the instance of the plaintiff of a latter suit which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party and carefully examined all materials on record.

Section 10 of the Code of Civil Procedure provides for staying the proceedings of a latter suit until the disposal of the earlier filed suit if both the suits are between the same parties and involve identical question of facts and laws. Undisputedly the Title Suit No.56 of 2012 filed by the opposite party as plaintiff is an earlier suit in which petitioner is defendant No.1 and he contested the suit and the same is fixed for arguments hearing. On the other hand Title Suit No.215 of 2019 which was filed by the petitioner as plaintiff is a latter suit. As such there is no legal opportunity for staying of the proceedings of an earlier filed the suit for disposal of a latter or subsequently filed suit under Section 10 of the Code of Civil Procedure.

In above view of the materials on record I am unable to find any illegality or impropriety in the impugned judgment and order passed by the learned District Judge, Khulna and the Rule issued in this connection is devoid of any substance.

In the result, the Rule is discharged. The order of stay granted at the time of issuance of the Rule is hereby recall and vacated.

However, there is not order as to costs.