

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 689 of 2020

IN THE MATTER OF :

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

-And-

In the Matter of:

Jamal Hossain

... plaintiff-Petitioner

Versus

Mabiya Khatun and others

... Defendant-Opposite parties

Mr. Mizan-Ur-Rashid, Advocate with

Mr. Mohammad Shahidul Alam, Advocate

... For the petitioner

Mr. Farid Uddin Khan, Advocate with

Mr. Gazi Rakibur Rahman, Advocate and

Mr. Md. Zahirul Islam, Advocate

... For the Opposite Parties

Judgment on: 09.09.2026

Md. Riaz Uddin Khan, J:

At the instance of the plaintiff leave was granted by this Court and Rule was issued asking the opposite party no.1 to show cause as to why the order No.30 dated 30.10.2019 passed by the Additional District Judge, 2nd Court, Chattogram in Civil Revision No. 32 of 2017 reversing the order upon setting aside the order No. 17 dated 17.01.2017 passed by the Senior Assistant Judge, Satkania, Chattogram in other Suit No. 114 of 2016 staying the proceedings of Execution Case No. 01 of 2016 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 proper.

At the time of issuance of the Rule all further proceedings of Execution Case No. 01 of 2016 was stayed initially for a period of 06(six) months which was ultimately extended till disposal of the Rule.

Facts for disposal of this Rule in substance are that the present petitioner as plaintiff filed Other Suit No. 114 of 2016 on 14.03.2016 for declaration that the ex parte judgment and decree dated 24.04.2007 (decree signed on 30.04.2007) in Other Suit No. 83 of 2002 was not binding upon the plaintiff stating inter alia that the schedule land actually belonged to Sagor Ali, Abdul Ali, Badiur Rahman who are sons of late Md. Kalu and accordingly R.S khatian was prepared in their names. Abdul Ali died leaving his only son Mohammad Sachi Mia who transferred his land by Sale Deed No. 5564 dated 05.11.1968 to Ochiur Rahman, son of Haider Ali measuring 09 decimals of land. The land was recorded in B.S Khatian in the name of Ochiur Rahman. Ochiur Rahman died leaving his heirs, namely, wife Nachuma Khatun, sons Faruk Ahmed, Rashid Ahmed, Mokhtar Ahmed, Hafez Ahmed, Jashim Uddin and daughter Arefa Begum. Faruk Ahmed and Hafez Ahmed on 18.01.2010 by Sale deed No.265 transferred the land to Abul Hosssain and Jamal Hossain measuring 09 decimals of land. Arefa Begum transferred land by Sale Deed No.1634 dated 16.04.2014 to Jamal Hossain measuring 5.50 decimals of land. Further Ochiur Rahman transferred his land by Gift Deed No. 5566 dated 05.11.1968 to Mostafa Khatun and accordingly B.S Khatian was recorded in the name of Mostafa Khatun. The said Mostafa Khatun by Deed No. 2812 dated 26.11.2007 transferred .5 decimals of land to Mohammad Jamal Hossian. Mostafa Khatun again on

05.05.2008 transferred land measuring .75 decimals to Abul Hossain and Jamal Hossain.

Abdul Ali died leaving Mohammad Sachi and Abdul Monaf @ Abdul Mannan. Abdul Monaf @ Abdul Mannan transferred by Deed No. 4119 dated 03.05.2015 to Guna Mia and Sultan Ahmed measuring 09 decimals of land. Guna Mia transferred 4.50 decimals of land by Deed No. 3685 dated 31.05.1985 to Mokter Ahmed and Shamsul Alom. Mokter Ahmed transferred by Deed No.4293 dated 07.12.2011 and Shamsul Alom transferred by Deed No. 1819 dated 26.04.2012 to Mohammad Hossain. Mohammad Hossain transferred by Deed No.922 dated 06.03.2017 to the plaintiff Jamal Hossain measuring 4.50 decimals of land. In this way plaintiff and Defendant No. 55 owned 20.25 decimals of land and enjoyed the same by erecting houses. The Plaintiff Jamal Hossain after came from abroad knew that Other Suit No. 83 of 2002 was filed and suppressing the summons and misleading the court fraudulently obtained the ex parte decree and judgment which was passed on 24.04.2007 and decree was signed on 30.04.2007. In the aforesaid facts and circumstances the plaintiff filed the present suit.

The present Other Suit No. 114 of 2016 was contested by the defendant-opposite party No.1 by submitting written statement contending inter alia that the Schedule land belonged to Sagor Ali, Abdul Ali and Badiur Rahman who are sons of Mohammad Kalu Mia. R.S khatian was recorded in their names. Abdul Ali and Sagor Ali died leaving their sons Abdul Mannan and Abul Khair respectively. Abul Khair sold land by Deed No. 3592 dated 07.05.1959 to Sultan Ahmed. Sultan Ahmed transferred the land by Deed no.2990 dated 09.05.1967

to Foez Ahmed. Foez Ahmed transferred by Deed No. 5433 dated 03.11.1986 to Mabiya Khatun and Maruam Khatun measuring 17 decimals of land. Maruam Khatun died leaving one daughter Mabiya Khatun. In this way the defendants owned the land measuring 17 decimals and enjoying the same by paying government rents. Abdul Mannan and others were disturbing the defendants in their enjoyment of the land for which the defendants filed Other Suit No. 83 of 2002 for partition of the suit land and since Abdul Mannan and others did not contest the suit hence it was decreed ex parte by judgment and decree dated 24.04.2007 (decree signed on 30.04.2007).

In the meantime the plaintiff of the Other Suit No. 83 of 2002 filed Execution Case No. 01 of 2016 to execute the decree. In such circumstances the petitioner filed an application on 07.08.2016 before the Court of Senior Assistant Judge, Satkania, Chattogram for staying the proceedings of Execution Case No. 01 of 2016 but it was not heard for which the petitioner again on 01.11.2016 filed an application for hearing of the said application dated 07.08.2016. After hearing the said application the learned Senior Assistant Judge by order No.17 dated 17.01.2017 was pleased to stay the proceedings of the Execution Case No. 01 of 2016.

Against the said order dated 17.01.2017 passed by the Senior Assistant Judge the defendant opposite party preferred the Civil Revision No.32 of 2017 before the District Judge, Chattogram which was ultimately heard by the Additional District Judge, 2nd Court, Chattogram who by his order dated 30.10.2019 allowed

the revision and set aside the order passed by the Senior Assistant Judge.

Being aggrieved by and dissatisfied with the judgment and order dated 30.08.2019 passed by the Additional District Judge, 2nd Court, Chattogram in Civil Revision No.32 of 2017 the plaintiff-petitioner filed this Civil Revision before this Court and obtained the Rule and interim order of stay as stated at the very outset.

Mr. Mizan-Ur-Rashid, the learned advocate appearing for the plaintiff-petitioner submits that the lower revisional court failed to taking into consideration that the subject matter of the present suit and the subject matter of the Execution Case No.1 of 2016 which arises out of Other Suit No.83 of 2002 are same and if the Execution proceedings is completed during pendency of the present suit then it will become infructuous and the present petitioner will be prejudiced seriously and as such the impugned order is liable to be set aside.

The learned advocate next submits that lower revisional court committed error in holding that "অন্যদিকে অপর ১১৪/১৬ নং মামলার অপর ৮৩/০২ নং মামলার তফশিল বর্ণিত জমি বাবদ স্বত্ব ঘোষণা বা চিরস্থায়ী নিষেধাজ্ঞা বা বিভাগ বণ্টনের প্রার্থনা করেননি, শুধুমাত্র ২৪.০৪.০৭ খ্রিঃ তারিখের একতরফা আদেশ ও ৩০/০৪/০৭ খ্রিঃ তারিখের ডিক্রি যোগসাজশী, Malafide এবং উহার দ্বারা বাদী বাধ্য নয় মর্মে ঘোষণার প্রার্থনা করেছেন। ফলে ০১/১৬ নং জারী মামলাটি চলমান থাকলেও অপর ১১৪/১৬ নং মামলার বাদীর আইগত ক্ষতির কারণ নেই" and as such the impugned order is liable to be set aside.

The learned advocate finally submits that the plaintiff-petitioner is in possession by mutating his name in the suit land. Hence, the interim order passed

by this Court should continue till disposal of the instant Title Suit No. 114 of 2016.

On the other hand Mr. Farid Uddin Khan, the learned advocate appearing for the defendant-opposite party No.1 submits that the present petitioner as per his plaint case purchased the suit land during pendency of the Other Suit No. 83 of 2002 which was decreed ex parte wherein he was not the party. Though the defendants of that suit filed Miscellaneous Case No.76 of 2003 for setting aside the ex parte decree which was allowed but thereafter they did not contest the suit hence again the suit was decreed ex parte. Now, when the opposite party No.1, the decree holder of Other Suit No. 83 of 2002 filed the Execution Case No. 01 of 2016, the present plaintiff filed the instant suit contending that the decree was not binding upon him and prayed for stay of the Execution Case. But since the plaintiff-petitioner claimed the suit land from the judgment debtor of earlier suit for which the application for stay of the Execution Case is not maintainable.

Mr. Khan then submits that the trial court on misconception of law and facts stayed the Execution Case while the lower revisional court by a well-reasoned judgment reversed the trial court's order clearly finding that since the present plaintiff did not claim any title of suit land or injunction hence there is no bar to continue the present Execution Case.

I have heard the learned advocates for both the parties, perused the revision application along with the documents annexed therewith. I have gone through the order passed by the trial court as well as the

judgment and order passed by the court of revision below.

It is well settled position of law that in a revision under section 115(4) of the Code of Civil Procedure this Court can only examine if there is an error on an important question of law which occasioned ultimate failure of justice. In the present case it appears from the impugned judgment and order that the present petitioner claimed the suit land from the judgment debtor of the earlier suit during pendency of earlier suit and he has not claimed title of the suit land rather sought only a declaration that the decree passed earlier is not binding upon him. In such state of affairs, I find that the lower revisional court rightly rejected the application for stay of the Execution Case. The petitioner failed to raise any error of law, not to speak of any important question of law, committed by the lower revision court. I find no merit in the instant Rule which is liable to be discharged having no substance.

In the result the Rule is **discharged**. There will be no order as to cost.

The interim order passed earlier by this Court stands vacated.

Communicate the judgment and order at once.