

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision Number 1765 of 2022

Mohammed Mokarram Hossen and two others  
... Petitioners

-Versus-

Alhaj Mohammad Zalal Uddin and others  
... Opposite parties

Mr. Sk. Zulfiqur Bulbul Chowdhury, Advocate  
...for the petitioners

Mr. ASM Kamal Amrohi Chowdhury, Advocate  
... for opposite parties number 1-11

Judgment on 28.04.2025

This rule was issued on an application under Section 115 (4) of the Code of Civil Procedure challenging the legality of judgment and order dated 23.01.2022 passed by the Additional District Judge, Second Court, Chattagram in Civil Revision Number 170 of 2019 allowing the same on reversing order dated 14.07.2019 passed by the Senior Assistant Judge, Third Court, Chattagram in Other Suit Number 93 of 2019 rejecting an application for stay of all further proceedings of Other Execution Case Number 01 of 2007 (arising out of Other Suit Number 75 of 1994).

Facts relevant for disposal of the rule are that opposite parties number 1-11 as plaintiffs instituted Other Suit Number 93 of 2019 for declaration of title over a piece of land as described in the

‘schedule of land’ appended to the plaint with a further declaration that the judgment and decree dated 03.05.2006 (decree signed on 09.05.2006) passed in Other Suit Number 75 of 1994 was collusive, illegal and not binding upon the plaintiffs.

The plaintiff-opposite parties also filed an application for staying the proceedings of Other Execution Case Number 01 of 2007 (arising out of the decree passed in Other Suit Number 75 of 1994) that was pending in the same court. Defendants number 1-3 (petitioners herein) opposed the said application by filing a written objection. Learned Assistant Judge heard the parties and rejected the application by order dated 14.07.2019. Being aggrieved, the plaintiffs filed Civil Revision Number 170 of 2019 in the Court District Judge, Chattogram. Ultimately, the Additional Judge, Second Court, Chattogram heard the revision and allowed the same reversing the order dated 14.07.2009 by judgment and order dated 23.01.2022 giving rise to the instant civil revision.

Mr. Sk. Zulfiquar Bulbul Chowdhury, learned advocate for the defendant-petitioners submits that the plaintiffs had obtained the decree in the previous suit for specific performance of contract, which was instituted in 1994 for enforcement of a sale agreement that was executed on 21.08.1991. The plaintiffs’ predecessor Abdul Jabbar and Abdul Hamid, both sons of late Khalilur Rahman were executants in the sale agreement and were made defendants number 9-10 in the previous suit. Summons in the said suit were duly served

upon all the defendants and defendants number 1-8 appeared therein and filed a written statement admitting execution of the sale agreement, but denying the other allegations made in the plaint. The present petitioners had obtained the decree and put the same in execution by filing Other Execution Case Number 1 of 2007 and got the sale deed registered by the Executing Court on 26.02.2015. The plaintiffs being subsequent purchasers from defendants number 9 and 10 of the previous suit, instituted the present suit only for prolongation of the execution case and causing harassment to the present petitioners. The trial court rightly passed the order, but the revisional court below without considering the legal aspect that the plaintiffs in the present suit stepped into the shoes of the defendants number 9 and 10 of the previous suit and they had not acquired any right, title and interest in the suit land, which was purchased in 1998 during pendency of the previous suit between the present petitioners and the plaintiffs' predecessors. The present suit is apparently barred by the principle of lis pendens. Learned Additional District Judge without considering the principle of lis pendens, passed the impugned judgment and order and thereby committed error of an important question of law, which is liable to be set aside.

Mr. ASM Kamal Amrohi Chowdhury, learned advocate for plaintiff-opposite parties on the other hand submits that the predecessors of the plaintiffs had purchased the suit land in 1935 by a valid sale deed. Therefore, defendants number 1-8 in the previous

suit had no right, title and interest to transfer the suit land to defendants number 1-3 in the present suit. It is a well settled principle of law that in a suit for specific performance of contract, title of the vendor is never decided but the validity and enforceability of the contract. The defendant-petitioners can claim they had valid title over the suit land by way of their sale deed registered through court in execution of the exparte decree passed in the previous suit i. e. Other Suit Number 75 of 1994. The plaintiff-opposite parties are in possession over the suit land and unless the proceeding of the execution case is stayed, the purpose of the present suit will be frustrated. The revisional court below on proper consideration of the scope of a suit for specific performance of contract, rightly allowed the revision and stayed the execution case by its judgment and order. There has been no error of law, and the rule is liable to be discharged.

I have considered the submissions of the learned Advocates and carefully gone through the record. It appears that the plaintiff-opposite parties purchased the suit land in 1998, whereas the defendant-petitioners entered into a sale agreement with 12 persons including Abdul Jabbar, Abdul Hamid, both sons of Khalilur Rahman and Asua Khatun, widow of Khalilur Rahman. It further appears that said Abdul Jabbar and Abdul Hamid, the vendors of the plaintiff-opposite parties were made defendants number 9-10 and their mother Asua Khatun was also made a defendant in the previous

suit i.e. Other Suit Number 75 of 1994. It does not appear that the plaintiffs' vendors namely, Abdul Jabbar and Abdul Hamid being defendants number 9 and 10 took leave from the court to sell the land under the provision of Section 52 of The Transfer of Property Act. The revisional court below without any discussion over the principle of lis pendens allowed the revision and thereby committed error of an important question of law, which is not tenable.

Accordingly, the rule is made absolute. The impugned judgment and order is set aside. The petitioners are directed to file written statement in Other Suit Number 93 of 2019 within two months from receipt of this order and the trial court i.e. the Senior Assistant Judge, Third Court, Chattagram is directed to dispose of the suit within next six months therefrom. Since, the present Civil Revision is an interlocutory one, any observation made by this court will not be finding upon the trial court in disposing of the original suit.