

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

**CIVIL REVISION NO. 982 OF 2020**

In the matter of:

An application under Section 115(1) of the Code of Civil  
Procedure.

AND

In the matter of:

Nurul Alam Ladu

.... Petitioners

-Versus-

Meah Mohammad Elias and others

....Opposite-parties

Mr. Sk.Md. Jahangir Alam, Advocate

... For the petitioner

Mr. Ranjit Kumar Dhar, Advocate

....For the opposite party no. 1

**Heard on 15.01.2024 16.01.2024 24.01.2024**

**and Judgment on 24.01.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

**Md. Mozibur Rahman Miah, J:**

At the instance of the 3<sup>rd</sup> party namely, Nurul Alam Ladu, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the judgment and order dated 19.08.2019 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chattogram in Other Execution Case No. 17 of

2007 rejecting an application filed under Order 31 Rule 29, 100, 101 read with Section 151 of the Code of Civil Procedure, 1908 for staying the further proceeding of the said Execution Case No. 17 of 2007 filed by the applicant-petitioner should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

The short facts leading to issuance of the instant rule are:

The present opposite party no. 1 as plaintiffs originally filed a suit being Other Class Suit No. 51 of 2000 dated 25.04.2000 for Specific Performance of Contract against the present opposite party no. 2 for the suit land measuring an area of 19 decimals in respect of RS plot no. 21052 corresponding to BS plot no. 6669. The opposite party no. 1 as defendant contested the said suit by filing written statement denying all the material averment so made in the plaint and finally prayed for dismissing the suit. The learned Joint District Judge, 1<sup>st</sup> court, Chattogram after framing as many as three different issues and examining witnesses of the parties vide judgment and decree dated 19.08.2007 decreed the suit on contest against the defendant nos. 1,3 and 19 directing the defendant no. 1 to execute and register a sale deed in respect of the suit land within a period of 30 days. Since the defendant no. 1 did not come forward to execute and register the deed, the plaintiff then got and sale deed executed and registered through court on 29.09.2013 and in order to execute the decree by taking possession of the said land the plaintiff as a decree holder then initiated other class Execution Case No. 17 of 2007. In course of the said execution case, the present petitioner as third party filed an application under Order 21 Rule 29 as well as 100 and 101 of the Code of Civil Procedure for staying all

further proceedings of the said execution case stating that, the decree holder-opposite parties was trying to take possession of his purchased land in BS khatian no. 6669. Against that application, the opposite party-decree holder filed a written objection denying all the material averment so made in the application contending that, the opposite party-decree holder has been enjoying title and possession from the separate portion of the suit plot for from the possession of the petitioner. That very application as well as written objection was taken up for hearing by the learned judge and vide impugned order observing that:

“দরখাস্তকারী পক্ষে দাবীকৃত বি,এস, ৬৬৬৯নং দাগসহ ডিক্রিডার তথা ডিক্রিদার পক্ষে কবলা প্রাপ্ত ভূমির তপশীল বর্ণিত ভূমিতে ডিক্রিদার প্রতিকার চায় এবং বিজ্ঞ এডভোকেট কমিশনার কর্তৃক কমিশন প্রতিবেদনে তপশীল বর্হিত্ত কোন দাগ খতিয়ান অর্ন্তভুক্ত না হওয়ার বিষয়টি দরখাস্তকারী পক্ষ কর্তৃকও স্বীকৃত।”

The learned judge also observed that,

‘ডিক্রিদারের জমির দাবী হচ্ছে বি,এস, ৯৪৮ নং খতিয়ানের ৬৬৬৯ দাগের আন্দর ১৯ শতক অপরদিকে প্রার্থীকের দাবী হচ্ছে বি,এস, ৯৪৮নং খতিয়ানের বি,এস দাগ নং ৬৬৬৯ এবং বি,এস, দামজারী খতিয়ান নং ৯৪৮/৭ মূলে ৪.২৫ শতাংশ।’

It is at that stage, the third party as petitioner came before this court and obtained the instant rule.

Mr. Sk. Md. Jahangir Alam, the learned counsel appearing for the petitioner upon taking us to the impugned judgment and order at the very outset submits that, though the predecessor of the opposite party no. 1 Nazma Begum, got 25 decimals of land as one of the co-sharers of three

sisters but she already sold out more land that of the suit land, so the decree holder has not acquired any title and possession over that very 19 decimals of land.

The learned counsel further contends that, since by virtue of the decree the decree holder is going to dispossess the present petitioner from his 4.25 decimals of land so until and unless an order of status quo is granted, the present petitioner would be highly prejudiced and there has been every apprehension for the petitioner of being dispossessed from his purchased land by the decree-holder. When we pose a question to the learned counsel for the petitioner as regards to maintainability of the application filed under Order 21 Rule 29, 100 and 101 of the Code of Civil Procedure, the learned counsel frankly admits that, for the wrong advice of the learned counsel conducting the case before the trial court, the said application has been filed instead of an application supposed to be filed under Order 21 Rule 58 of the Code of Civil Procedure yet a direction may be given by this Hon'ble court so that the petitioner could file an appropriate application before the trial court and till that date an order of status quo may be maintained even though the learned counsel finally prays for making the rule absolute on setting aside the impugned order.

On the contrary, Mr. Ranjit Kumar Dhar, the learned counsel appearing for the plaintiff-decree holder opposite party no. 1 by filing a counter-affidavit annexing the relevant documents namely the plaint, impugned judgment, as well as the order dismissing the suit so filed by the present petitioner contends that, the schedule so have been provided in the plaint of the suit filed by the present petitioner and that of the suit so filed

by the present opposite party, there has been clear distinction with regard to holding possession of the respective portion by the parties having no scope to encroach the land of the petitioner by the decree-holder opposite party no. 1.

The learned counsel further contends that, since the present decree holder opposite party no. 1 was given possession in respect of 19 decimals of land of RS plot no. 21052 that corresponds BS plot no. 6669 so there would have no inconvenience for the present petitioner to hold on possession in respect of his 4.25 decimals of land.

The learned counsel also contends that, the learned judge has rightly passed the impugned order which calls for no interference by this Hon'ble court. However, in support of his submission, the learned counsel has placed his reliance in the decision reported in 3 ADC 291 and read out paragraph no. 8 thereof and submits that, the *ratio* so have been settled in the decision is equally applicable in the facts and circumstances of the instant case because in that very cited decision, the Hon'ble Appellate Division came to a finding the following with regard to holding the provision of Order 21 Rule 29 of the Code of Civil Procedure: "*Executing Court having stayed the Execution Case at the instance of third party and it violated the very maxim that the execution Court cannot go behind the decree*" and finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioner and that of the opposite party no. 1. We have also gone through the impugned judgment and order and document so annexed with the revisional application and that of the counter-affidavit and

supplementary affidavit so filed by the petitioner and affidavit-in-reply thereof. We have also very carefully gone through the application so filed under Order 21 Rule 29, 100 and 101 of the Code of Civil Procedure and we have very carefully gone through the provision. It has been frankly admitted by the learned counsel for the petitioner that, those very provision is inapplicable for staying the further proceedings of the execution case no. 17 of 2007 since the petitioner is not any judgment debtor nor the petitioner has ever been dispossessed from his own land so very essentially the provision of Order 21 Rule 29 100 and 101 of the Code of Civil Procedure is not applicable here. Furthermore, we are of the same view that, the application on which the petitioner sought for staying further proceedings of the execution case was not maintainable from its very inception. So for obvious reason, the said application was not maintainable even though the learned judge of the executing court was so oblivious that he did not bother to go through he provision under which the application was filed. However, on going through the impugned order we also find that, the learned judge has clearly found that though both the decree-holder opposite party as well as the petitioner claimed respective portion from BS plot no. 6669 but the petitioner by way of mutating his name got mutation khatian no. 948/7 in respect of 4.25 decimals of land so it construe that, there has been no reason for any apprehension for the petitioner to be dispossess by the decree holder. Furthermore since in the meantime the decree holder got a sale deed registered through court by virtue of the execution case so the executing court cannot go beyond the decree which is a settled proposition of law and decision cited above. Regardless of those

very facts, if the petitioner has got any apprehension of being dispossessed by the decree-holder opposite party he could invoke other legal avenue to get redress but under the settled proposition of law the application so filed, cannot be maintained and in that regard, the learned judge has cited a decision stated herein above is squarely applicable in the facts and circumstances of the instant case.

Given the above facts, circumstances and statutory provision we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

Accordingly, the rule is discharged however without any order as to cost.

Let a copy of this judgment and order be communicated to the court concerned forthwith.

**Mohi Uddin Shamim, J:**

I agree.

Kawsar /A.B.O