

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

Present:

**Mr. Justice S. M. Saiful Islam**

**Civil Revision No. 3424 of 2022**

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Sekendar Gazi

---- 3<sup>rd</sup> Party-Applicant-Petitioner.

-versus-

Abul Hossain Mollah

---- Decree Holder-Opposite Party.

Mr. Zakir Hossain Bhuiyan with

Mr. Arifur Rahman, Advocates

---- For the Petitioner.

Mr. Shasti Sarker, Senior Advocate with

Mrs. Lily Rani Saha and

Mr. Laxman Biswas, Advocates

--- For the O.P. No. 1.

**Heard On: 14.01.2026, 18.01.2026 and  
20.01.2026.**

**Date of Judgment: 29.01.2026.**

**S. M. Saiful Islam, J.**

This Rule was issued upon an application under section 115(4) of The Code of Civil Procedure 1908, calling upon the opposite party Nos. 1-2 to show cause as to why the impugned

order being No. 03 dated 30.06.2022 passed by the learned District Judge, Rajbari in Civil Revision 04 of 2022 rejecting the revision and thereby affirming the Order No. 94 dated 19.4.2022 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Rajbari in Title Execution Case No. 03 of 2009 rejecting the application under Order 1 Rule 10 read with section 151 of the Code of Civil Procedure for addition of party shall not be set aside and/or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party No. 1 as plaintiff instituted Title Suit No. 10 of 2009 in the Court of Joint District Judge, 1<sup>st</sup> Court, Rajbari praying for specific performance of contract in respect of 1.065 acres of land as described in schedule to the plaint against opposite party No. 2. That suit was ended in a compromise decree dated 02/07/2009. Thereafter, Title Execution Case No. 03 of 2009 was filed by the plaintiff- decree holder and a sale deed was executed and registered through Court. Thereafter, possession of the suit land was delivered in favor of the decree holder in that execution case. After delivery of possession, the decree holder- opposite party filed two applications for full execution contending that the decree was partially executed and the decree holder did not get possession of the total property. That application was allowed and opposite party No. 2 filed Civil Revision No. 25 of 2013 before the learned District Judge, Rajbari which was rejected. Opposite Party No.2 then filed Civil Revision No. 758 of 2014 in the High Court Division and obtained Rule. That Rule was discharged on 29.09.2021. Thereafter, the execution case was restarted. Present petitioner filed an application under Order 1 Rule 10 and section 151 of the

Code of Civil Procedure in that execution case to add him as judgment debtor on the ground that he is the owner and in possession of 1.28 acre of land including the suit land by virtue of registered deed of *heba* (হেবা) dated 20.04.2011. That application was rejected summarily by the learned Joint District Judge, First Court, Rajbari by Order No. 94, dated 19.04.22. Learned Court held in this regard, “নথি পর্যালোচনায় দেখা যায় অদ্যকার দরখাস্তকারী অত্র দরখাস্ত দীর্ঘ দিন বিলম্বে আনয়ন করিয়াছেন এবং শুধুমাত্র মোকদ্দমার কার্যক্রম বিলম্বিত করার কৌশল (Dilatory tactic) অবলম্বন করিয়াছেন মাত্র। যাহা ন্যায় বিচারের পরিপন্থি এবং মামলা দ্রুত নিষ্পত্তির ক্ষেত্রে অপকৌশল। এমতাবস্থায় দরখাস্তকারী পক্ষের আনীত দরখাস্তটি গুনানী অস্তে সরাসরি না-মঞ্জুর করা হলো।” Against that order petitioner filed Civil Revision No. 25 of 2013 before the learned District Judge, Rajbari which was also rejected by the impugned Order No. 03 dated 30.06.2022. Learned District Judge held in the impugned order, “দরখাস্ত পর্যালোচনায় আরো দেখা যায় স্বীকৃত মতে দেওয়ানী ৫০/২০১১ নং মামলা চলমান থাকাবস্থায় দরখাস্তকারীর অনুকূলে মূল মামলার বিবাদী হেবা দলিল সম্পাদন করে দিয়েছেন। এক্ষেত্রে হেবা দলিল গ্রহীতা উক্ত মামলায় আবশ্যিকীয় পক্ষ নয়। অপরদিকে দরখাস্তকারী পক্ষ দি কোড অব সিভিল প্রসিজিউর এর অর্ডার ১ রুল ১০ মতে দরখাস্ত দাখিল করেছেন। উক্ত বিধান অনুযায়ী মূল মামলায় পক্ষভুক্ত হওয়ার সুযোগ রয়েছে। যেহেতু স্বীকৃত মতেই অত্র দরখাস্তকারী মূল মামলায় বিবাদী শ্রেণীভুক্ত ছিলেন না, সেহেতু সংগত কারণেই জারী মামলায় তার পক্ষভুক্ত হওয়ার সুযোগ নেই। এক্ষেত্রে বিজ্ঞ বিচারিক আদালত যথাযথভাবেই পক্ষ ভুক্তির আবেদন না-মঞ্জুর করেছেন।” In the facts and circumstances, plaintiff- petitioner filed this revisional application and obtained the Rule.

At the time of issuance of the Rule the parties were directed to maintain *status quo* in respect of possession and position of the suit land for a period of eight weeks and lastly it was extended on 27/10/2025 for a period of one year.

Learned Advocate Mr. Zakir Hossain along with learned Advocate Mr. Arifur Rahman appearing on behalf of the

petitioner, submits that both the courts below committed an error of law resulting in an error in the decision occasioning failure of justice in rejecting the application for addition of party without properly appreciating the facts and circumstances of the case. The petitioner as a *bonafide* transferee of the suit land is a necessary party in the execution case. Learned Court below rejected the application for addition of party on account of mere delay without entering into the merit of the case. But according to the provisions of law, such an application can be entertained at any stage of the proceeding. Both the Courts below failed to appreciate that the petitioner was necessary party to the execution proceeding for proper and effectual adjudication of the dispute between the parties and to prevent multiplicity of suits. Learned Courts below failed to appreciate that the decree was executed to the full satisfaction by delivering physical possession to the suit land in favour of the decree holder and the second application for re-execution was not maintainable. For these reasons, petitioner prayed for making the Rule absolute by setting aside the impugned order. In support of his contention learned Advocate refers to the case of *Nurul Islam -Vs- Jamila Khatun* [53 DLR (AD) 45], *Zaker Sukani -Vs- Mustanser* [12 DLR 566].

On the other hand, Mr. Shasti Sarker, learned Senior Advocate along with Mrs. Lily Rani Saha and Laxman Biswas appearing on behalf of the opposite party No. 1 submits that the learned Court below has rightly rejected the application for addition of party in the execution proceeding. Petitioner was not a party in the original suit. So, he is not a necessary party to the execution proceeding. He filed the application only to delay the execution proceeding. For these reasons, learned Advocate for the opposite party prayed for discharging of the Rule.

Heard the learned Advocates for both the parties. Perused the Revisional application along with the documents filed therewith.

On perusal of records, it appears that the petitioner filed an application praying for adding himself as party to the Execution Case No. 03 of 2009. Admittedly, this Execution Case originated from the decree dated 02/07/2009 in Title Suit No. 10 of 2009 in which the petitioner was not a party. As he was not a party to the original suit, he does not seem to be a necessary party to the execution case originated from that suit. The petitioner claims that he got the suit land by virtue of a registered deed of *heba* (হেবা) dated 20.04.2011 executed by the judgment debtor. But it is admitted that the judgment debtor (opposite party No. 2) himself contested in the execution case up to the High Court Division in Civil Revision No. 758 of 2014 in which Rule was discharged on 29.09.2021. Thus, it appears that when the judgment debtor failed to get relief in the Civil Revision No. 758 of 2014, then the petitioner, who is a brother of the judgment debtor opposite party No. 2, filed the application for addition of party in the execution case. Though the petitioner claims that he was not aware of the suit between the decree holder and judgment debtor, but the judgment debtor opposite party is his full brother and the petitioner claims the land by virtue of gift from him and in such a case there was no reason for not being aware of the suit. Admittedly, the respondent opposite party No. 1 got the decree of specific performance of contract regarding the suit land on 02.07.2009. But the petitioner claims that he got the land by deed of *heba* (হেবা) dated 20.04.2011 which is long after the decree. The Petitioner claims that the decree was executed to the full satisfaction by giving physical possession to the decree holder in the suit land. But at the same time he claims that he is still in

possession in the suit land which is self contradictory. Such claim of the petitioner implies that the decree was not executed to the full satisfaction of the decree holder.

Learned Advocate for the petitioner referred to the case of *Nurul Islam -Vs- Jamila Khatun* [53 DLR (AD) 45] in which it was held that in a suit for specific performance of contract for sale of immovable property, a trespasser in the suit property is liable to be impleaded in the suit and evicted from the suit property to give effective relief to the plaintiff. But that case is related to the addition of trespasser as a party in the suit and not in execution case. Learned Advocate for the petitioner also referred to the case of *Zaker Sukani -Vs- Mustanser* [12 DLR 566] where it was held that writ of delivery of possession showing actual delivery of possession in execution of a decree is *prima facie* evidence to show that the person authorized to get delivery of possession of property had duly entered into possession thereof. But the petitioner himself claims that he is in possession in the suit land. So the claim of the petitioner proves that the decree holder did not get possession of the full property and the decree was not executed to the full satisfaction of the decree holder.

Considering the above facts and circumstances, I am of the opinion that the learned District Judge, Rajbari has rightly rejected the revisional application affirming the order of the executing court. The impugned judgment and order does not suffer from any legal infirmity, illegality or impropriety and it has not occasioned any failure of justice. Therefore, it does not call for any interference.

In the facts and circumstances, I find no merit in the Rule. So, the Rule is liable to be discharged.

In the result, the Rule is discharged without any order as to costs.

Order of *status quo* passed earlier by this Court is hereby vacated.

Communicate this judgment and order to the concerned court below at once.