

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 259 OF 2023

Uzzal Kumar Das and others
Plaintiffs-Decree holders-Petitioners

Versus

The Government of Bangladesh represented by
the Executive Engineer, LGED, Cumilla
Defendant-Judgment Debtor-Opposite-
Party No. 1

Md. Harunur Rashid and others
Third Party Applicants-Opposite Party Nos. 2-5

Mr. Sherder Abul Hossain, Advocate
for the petitioners

Mr. Tabarak Hussain, Senior Advocate with
Mr. Ariful Alam, Advocate
Ms. Shaila Jahan, Advocate
for the (third party applicants)
opposite party Nos. 2-5

Judgment on: 20.7.2023

This Rule was issued calling upon the opposite party Nos. 2-5 to show cause as to why the impugned Judgment and Order dated 02.8.2022 passed by the learned Additional District Judge, 3rd Court, Cumilla in Civil Revision No. 32 of 2022 allowing the same and thereby reversing Judgment and Order dated 25.5.2022 passed by the learned Assistant Judge, Muradnagar, Cumilla in Title Execution Case No. 1 of 2021 rejecting the application for addition

of party should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The present petitioners as plaintiffs-decree holders filed Title Execution Case No. 01 of 2021 for execution of the judgment and decree dated 10.12.2005 under the provision of Order 21 rule 32 of the Code of Civil Procedure against the judgment debtor-opposite party No. 1.

During pendency of the execution case the opposite party Nos. 2-5 as third party applicant filed an application under Section 151 of the Code of Civil Procedure praying for addition of party on 23.05.2022 stating in brief that the decree holders as plaintiffs obtained an ex-parte Judgment and Decree and filed this execution case; actually the decree holders did not make party the actual owners in possessors of the Suit property and the predecessors of the decree holders-plaintiffs lost their subsisting interest in the suit land long ago; the applicants are the owners and possessors of the contiguous land to the suit land; the decree holders are trying to dispossess the applicants on the basis of the said decree; in this circumstances if the Court make the applicants party in this execution case, the Court will find the actual facts as to who are the real owners and possessors of the decretal land.

The learned Assistant Judge, Muradnagar, Cumilla after hearing both the parties rejected the said application for addition of parties on 25.05.2022 and hence the applicants as petitioners preferred Civil Revision No. 32 of 2022 before the Court of learned District Judge, Cumilla which was transferred to the Court of learned Additional District Judge, 3rd Court, Cumilla who allowed the same and thus the plaintiffs-decree holders as petitioners moved this application under Section 115(4) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Sherder Abul Hossain, learned Advocate for the petitioners, submits that the learned Additional District Judge committed error of law in failing to consider that the third party opposite party Nos. 2-5 are not the judgment debtors and they claimed that they are the owners in possessors of Contiguous land to the decretal property. He further submits that the learned Additional District Judge committed error of law in finding that it is necessary to decide as to whether the decree-holders tried to dispossess the third party applicants-opposite party Nos. 2-5 by taking evidence as such they need to be added as defendant (actually there is no defendant in execution case) in execution case in failing to consider that the executing court has no jurisdiction to go beyond the decree and the executing Court has also no

jurisdiction to hold any local investigation or inspection. He further submits that the learned Additional District Judge committed error of law in staying the further proceedings of Title Execution Case No. 1 of 2021 without any reason on 15.06.2022 and then extended the order of stay till disposal of Title Suit No. 263 of 2022 which has been filed on 03.07.2022 by the persons who are not the judgment debtors. He then submits that the learned Additional District Judge committed error of law in failing to consider that there is no provision in the law to be added party in the execution case and the provision of Order 1 rule 10(2) of the Code of Civil Procedure for addition of parties is not applicable in the execution case. He then submits that the Revisional Court committed serious error of law in failing to consider that the opposite party claimed that they are the owners of 16.25 acres of land in B.R.S plot No. 3501 corresponding to S.A. plot No. 868 and they instituted Title Suit No. 263 of 2022 praying for declaration of title in respect of B.R.S. plot No. 3501 and on the other hand the property concerned is of B.R.S. plot No. 3499 which is quite different from the case land, the opposite parties further claimed that they are the owners of contiguous land to the case land as such admittedly they have no interest in the case property. He next submits that the revisional court committed serious error of law in failing to consider that

execution case may be stayed only under Order 21 rule 29 of the Code of Civil Procedure but the claimed property is of B.R.S. Plot No. 3501 instead of 3499 and the parties are not same in both the suit and execution case as such does not comply the condition of law i.e. (i). the subsequent suit is for the same land in execution case, (ii). The parties are same in both the suit and execution case and (iii). Both the suit and execution case are pending in the same court which resulting in an error in the order occasioning failure of justice. He lastly submits that the decree-holder in any way will not take possession of land of any plot other than B.R.S Plot No. 3499 and thereby the revisional Court Committed error of law.

Mr. Tabarak Hussain, learned Advocate for the opposite parties No. 2-5 submits that the predecessor of the petitioners of the instant Civil Revision as plaintiff filed Title Suit No. 50 of 2005 against the opposite party No. 1 (Government of Bangladesh) for permanent injunction. The Title Suit No. 50 of 2005 was decreed *exparte* on 10.12.2005. Thereafter according to the petitioner while the defendant disobeyed the judgment and decree passed by the Court below on 25.2.2021, present petitioners as decree holder filed Title Execution Case No. 1 of 2021 under Order XXI and rule 32 of the Code of Civil Procedure, 1908 against the sole opposite party No. 1. During pendency of Title

Execution Case No. 1 of 2021 the present opposite parties on 23.5.2022 filed an application for addition of party on stating inter alia that the decree holder did not make the party of the actual owner in possession of the suit property and the predecessor of the decree holder lost their title in the suit land long ago. The opposite parties are the owners of the suit land but the petitioner is trying to dispossess the opposite parties on the basis of said decree. In this circumstances if the applicants are added as party in the execution case the Court will get the actual picture relating to the facts as to who are the real owners and possessors of the suit land and he then submits that the execution proceedings itself is non maintainable as because the learned Judge of the Execution Court upon receipt of the prayer for execution under Order 21 rule 32 of the Code of Civil Procedure initiated the proceedings without starting a Miscellaneous Case and notifying the parties to appear and prove the fact of violation or disobedience the decree in question. In a proceeding for execution under Order 21 rule 32 of the Code of Civil Procedure a procedure in that Court is to start a Miscellaneous Case and allow the parties to adduce evidence in order to prove the allegation of disobedience the decree of permanent injunction and in case of decree holder proving the disobedience the Executing Court may put judgment debtor in

Civil Prison and attach the property in question but in the instant case the Assistant Judge directly started execution proceedings and passed an order for delivery of possession which is not contemplated in the law itself. He then submits that the opposite party Nos. 2-5 along with others filed a Title Suit No. 263 of 2022 dated 03.7.2022 before the Court of Assistant Judge, Muradnagar, Cumilla praying for declaration of title and setting aside the judgment and decree of Title Suit No. 50 of 2005 and the judgment and order of Title Execution Case No. 1 of 2021 against the petitioners. He next submits that the opposite party Nos. 2-5 along with other persons as plaintiffs filed a Title Suit No. 233 of 2022 against the petitioners for permanent injunction and subsequently filed an application for injunction and after hearing both the parties and perusing the prayer of injunction the learned Assistant Judge passed an order to maintain status-quo till disposal of Title Suit No. 233 of 2022.

He further submits that on 21.8.2022 the petitioners as opposite party Nos. 1-3 filed a written statement in Title Suit No. 263 of 2022 stating that they obtained the judgment and decree of permanent injunction in respect of 15 decimals of land appertaining to previous Dag No. 868 and present Dag No. 3499 and subsequently filed a Title Execution Case No. 1 of 2021 upon

the same property; that 3501 and 3499 is two different and distinct Dag and as such it is evident from the written statement that it is necessary to determine the title and possession of the suit land and thus proper adjudication all further proceedings of the execution case may kindly be stayed till disposal of the Title Suit No. 263 of 2022. He then submits that the established principle of law that in an exceptional circumstances on an application by the third party an Execution Case can be stayed and accordingly there is nothing wrong committed by the Revisional Court below while staying the Execution Case No. 1 of 2021 till disposal of the Title Suit No. 263 of 2022 and Title Suit No. 233 of 2022 and in that view of the matter the Rule is liable to be discharged and the order of stay need to be maintained. He next submits that admittedly the Execution Case has been started on 18.2.2021 but the land mentioned in the schedule of the execution application owned by Pani Unnoyon Board, Cumilla and the same was recorded in the BS Khatian and thus the decree holder upon suppression and misrepresentation of facts obtained the decree and now they are trying to dispossess the instant opposite parties from their land by using the aforesaid decree and as such opposite parties cannot be dispossessed from their land without bearing them and as such the learned Additional District Judge, 3rd Court, Cumilla did not commit any error in law

passing the impugned order. He next submits that there is a dispute regarding R.S. and S.A. plots. The plaintiffs obtained decree in respect of S.A. Plot No. 868 but they have imaginary inserted R.S. Plot No. 3499 in the Execution Case which was not in the decree and attempted to take possession of the land of answering opposite parties in Plot No. 3501 and take possession of the property. That the decree did not contain R.S. Plot No. 3499 and it is settled law that an Executing Court cannot travel beyond the decree and as such Execution Case is required to be stayed until the matter is adjudicated upon in the Title Suit No. 263 of 2022 filed by the instant opposite parties. He also submits that it is the case of the plaintiffs is that the decree holder claimed in the application for execution dated 18.2.021 Annexure-D that the judgment debtor constructed a 95 feet length and 55 feet breadth road on 06.6.2020 in the decretal land and also constructed house in the two sides of that road although the judgment debtor is the Executive Engineer of LGED Department and from the statement of the decree holder it is clear that they have aimed at the structure standing on the Plot No. 3501 belonging to the present opposite parties. He lastly submits that where the proceedings from its initiation is proceeded in unlawful manner a court of law cannot shut its eyes and allow this proceedings to continue where

illegality is apparent and as such the instant Civil Revision is liable to be dismissed and the Rule liable to be discharged.

Heard the learned Advocates for both the sides and perused the record.

It appears that the Civil Court Commissioner on 23.3.2023 submitted his report mentioning that there is 9.51 decimals of land in B.R.S. Plot No. 3499. Now both the parties mutually agreed that as per judgment and decree, the decree holder will be allowed to take possession in B.R.S plot No. 3499. . The decree-holder will not be allowed to take possession in any other land other than the aforesaid 9.51 decimals of land in B.R.S. Plot No. 3499 and the third party applicant opposite party Nos. 2-5 will not be dispossessed by the decree-holder from B.R.S. Plot No. 3501.

Accordingly, the Rule is disposed of.

The interim order of stay granted earlier by this Court is hereby vacated.

Communicate this judgment to the Court below at once.