

**Present:-*****Mr. Justice Mahmudul Hoque*****Civil Revision No. 5518 of 2022**

Mohammad Ali and others

... Petitioners

-Versus-

H.M. Zakir Hossain being dead his legal heirs; 1(Ka) Anwara Begum and others

... Opposite- parties

Mr. Mohammad Ibrahim, Advocate

...For the petitioners

Mr. Md. Azizul Bashir, Advocate

...For the opposite-party Nos.1(Ka)-1(Uma).

**Judgment on 15<sup>th</sup> July, 2025.**

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioners, Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 10.11.2022 passed by the learned Additional District Judge, 8<sup>th</sup> Court, Chattogram in Civil Revision No.312 of 2022 disallowing the same and thereby affirming the judgment and order dated 30.08.2022 passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Chattogram in Other Execution Case No.03 of 2011 rejecting the application for stay execution should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The opposite party No.1, as plaintiff, instituted Other Suit No.593 of 2007 against the opposite party Nos.2-7, as defendants for a decree of Specific Performance of Contract claiming that the schedule property belonged to opposite party Nos.2-7 who entered into an agreement for Sale No.59 dated 08.01.2016 for selling the property to the opposite party No.1. Being failed to execute and register the sale deed, the opposite party No.1 filed Other Suit No.593 of 2007 for a decree of Specific Performance of Contract.

Opposite party Nos.2-7, as defendants, contested the suit by filing written statement. Ultimately the suit was decreed by judgment and decree dated 19.05.2011. Thereafter, decree-holder put the decree in execution by filing Execution Case No.03 of 2011 and obtained Registered Sale Deed No.1909 dated 14.05.2014 through court. On 20.11.2018, a police officer visited the suit property attempting to give possession to the opposite party No.1, the petitioners came to know for the first time about the decree obtained by the opposite party No.1 against opposite party Nos.2-7. Then present petitioners filed Title Suit No.631 of 2018 before the same court for cancellation of

said bainanama and the decree to be nullity in the eye of law, on the ground that the owner of the property appointed one Md. Islam contractor as their constituted attorney who by virtue of power, by 3(three) registered sale deeds all dated 11.08.1999, sold the suit property much earlier than the alleged bainanama dated 08.01.2006 and as such, at the time of execution of bainanama, owner of the property had no right, title and possession in the suit property.

In the suit, the petitioners, as plaintiff, filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction against the opposite party No.1 for restraining him from dispossessing and or taking over possession by execution of decree through court, the application is now pending for disposal before the trial court. The petitioners also filed an application in Other Execution Case No.03 of 2011 praying for stay of the execution proceeding till hearing and disposal of the application for injunction filed in Other Suit No.631 of 2018. The executing court by judgment and order dated 17.02.2019 allowed the application and stayed further proceeding of the execution case till disposal of Other Suit No.631 of 2018.

Being aggrieved by and dissatisfied with the judgment and order of the executing court, the decree-holder defendant No.1 in the instant suit named H.M. Zakir Hossain moved this Court by filing Civil Revision No.981 of 2019 and obtained Rule. This Court after hearing disposed of the Rule in Civil Revision No.981 of 2019 directing the executing court to hear the parties afresh within 30(thirty) days from the date of receipt of the copy of the judgment and order after giving opportunity to the decree-holder to file a written objection and till such disposal of the said application, parties were directed to maintain status-quo in respect of the possession of the suit land. After receipt of the judgment passed by this Court, the executing court took the matter for hearing afresh and after hearing by judgment and order dated 30.08.2022 rejected the application for stay.

Against the order of the executing court, the petitioners moved in revision before the learned District Judge, Chattogram by filing Civil Revision No.312 of 2022. Eventually, said revision was transferred to the court of learned Additional District Judge, 8<sup>th</sup> Court, Chattogram for hearing and disposal, who after hearing by the impugned judgment and order dated 10.11.2022 rejected the revision

maintaining order of the executing court. At this juncture, the petitioners moved this Court by filing this revisional application under Section 115(4) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Mohammad Ibrahim, learned Advocate appearing for the petitioners at the very outset submits that admittedly the property belonged to defendant Nos.1-6 in suit who appointed one Md. Islam contractor as their constituted attorney by a registered deed of power of attorney empowering him to manage, control, possess and sell the suit property. While he was in the management, control and possession of the suit property by virtue of registered Power of Attorney No.203 dated 07.03.1989 representing Jahir Ahmed Chowdhury and 5 others sold the suit property by 3(three) registered deeds dated 11.08.1999 to the petitioners and delivered possession to them who have been possessing the suit property till today by mutating their names in the khatian and paying rents to the government.

He submits that the opposite party Nos.2-7 knowing fully well that the property already sold in the year 1999 to the petitioners with

mala fide intention and for illegal gain executed a bairanama in favour of opposite party No.1 without knowledge of the petitioners. The opposite party No.1 also in connivance with opposite party Nos.2-7 filed Other Suit No.593 of 2007 and collusively obtained a decree of Specific Performance of Contract. In the said suit the present petitioners were not made party. In Execution Case No.03 of 2011, opposite party No.1, as decree-holder managed to obtain sale deed through court and took step for taking possession of the property evicting the petitioners. He submits that the decree so obtained by the opposite party No.1 in earlier suit is not at all binding upon the present petitioners, as such, they filed Other Suit No.631 of 2018 challenging that decree. During pendency of the suit challenging the decree in question if the possession of the petitioners taken over by the opposite party No.1 by executing the decree the petitioners will be highly prejudiced and shall suffer irreparable loss, moreover, there will be multiplicity of judicial proceedings. Considering consequences of the decree and execution thereto, the plaintiff-petitioners, filed an application praying for injunction against the opposite party as decree-holder for restraining him from taking possession of the suit property

which is now pending for disposal. For urgency of the matter the petitioners filed an application before the executing court for stay further proceeding of the execution till hearing of the application for injunction. The executing court though at the first instance allowed the application and stayed proceeding in execution case, but ultimately after hearing the matter on remand as directed by this Court rejected the application for stay.

He submits that admittedly, the petitioners were not party to the earlier suit and judgment-debtor, but both the parties i.e. decree-holder in Other Suit No.593 of 2007 and the petitioners are claiming the property through same persons who earlier sold the property to the petitioners before execution of alleged bairanama in favour of decree-holder, when they had no title in the suit property, as such, the executing court ought to have allowed the application and stayed further proceeding of the execution case staying delivery of possession of the property.

Mr. Md. Azizul Bashir, learned Advocate appearing for the opposite party Nos.1(Ka)-1(Uma) submits that Power of Attorney No.203 dated 07.03.1989 was revoked and cancelled by the principal,

opposite party Nos.2-7 by a subsequent deed of revocation dated 23.07.1990. After cancellation and revocation of power of attorney Md. Islam contractor had no authority to sell the property or execute and register any sale deed in favour of petitioners in the year 1999. Therefore, whatever, sale deed executed and registered by the alleged attorney without authority and power had no basis at all and by the said deed the petitioners acquired no title in the property. He submits that owner of the property as defendant Nos.1-6 contested the suit by filing written statement and after contested hearing the court decreed the suit for Specific Performance of Contract. In usual course the decree has been put in execution in Execution Case No.03 of 2011 in which the court duly executed and registered the sale deed in favour of the decree-holder. When the decree-holder applied for delivery of possession of the suit property present petitioners claiming themselves as 3<sup>rd</sup> party not judgment-debtors filed an independent suit challenging the decree passed in Other Suit No.593 of 2007 which is now pending.

He submits that execution of decree may be stayed if the judgment-debtors challenged the decree by filing an independent suit till disposal of that suit. The plaintiffs of the instant suit were not party

to the earlier suit and they are not judgment-debtors, as such, under Order 21 Rule 29 of the Code of Civil Procedure the application praying for stay execution proceeding is not tenable in law. Therefore, the executing court as well as the revisional court rightly rejected the application filed by the petitioners for stay further proceedings of the execution case and by rejecting the application both the courts below committed no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in Other Suit No.631 of 2018, application for stay, written objection thereto, judgment in earlier Civil Revision No.981 of 2019 passed by this Court and the impugned judgment and order of both the courts below along with all the annexures annexed to the application.

Fact of the case need not be repeated. The opposite party, filed Other Suit No.593 of 2007 for a decree of Specific Performance of Contract claiming that the defendant Nos.1-6 entered into a contract for sale with him upon, received consideration for the property. Subsequently, when they refused to execute and register the deed filed

suit for Specific Performance of Contract which was ultimately decreed, he put the decree in execution and obtained the sale deed through court. When waiting for delivery of possession present petitioners, filed Other Suit No.631 of 2018 challenging the decree passed in favour of the opposite party No.1 in Other Suit No.593 of 2007. The petitioners filed an application under Order 39 Rules 1 and 2 praying for temporary injunction against the present opposite party No.1, as defendant No.1 in suit. The application is still pending. Side by side the petitioners filed an application before the executing court praying for stay further proceeding on the ground that they filed an independent suit challenging the decree and in the said suit filed an application praying for temporary injunction against the decree-holder and till disposal of that application, proceeding in execution case be stayed. The executing court stayed further proceedings till disposal of the suit. The order was challenged by the decree-holder filing Civil Revision No.981 of 2019 before this Court, wherein, Rule was disposed of directing the executing court to hear and dispose of the matter afresh giving opportunity to the decree-holder to file written

objection, directing both the parties to maintain status-quo in respect of the possession of the suit property.

The executing court heard the application afresh and rejected the same, against which, present petitioners moved before the learned District Judge, Chattogram in revision, which was rejected and then the present Rule. The petitioners claimed that they purchased the suit property in the year 1999 by 3(three) registered sale deeds executed and registered by constituted attorney of the owner, defendant Nos.2-6. On the other hand, the opposite party No.1 claimed that the power of attorney executed and registered in favour of Md. Islam contractor in the year 1999, subsequently, revoked and cancelled by a deed of revocation in the year 1990. Therefore, Md. Islam contractor had no authority or power to sell the property in favour of the petitioners by executing or registering the sale deed. Those deeds though have been executed and registered by a person having no authority are nullity in the eye of law and by those sale deeds acquired no title in the suit property.

Conversely the petitioners further claimed that though defendant Nos.2-6 claimed that the power of attorney was cancelled

and revoked, but it was not duly communicated and informed to the attorney in accordance with law and as such, the power of attorney was not legally cancelled and revoked. Petitioners tried to impress upon the court by arguing that whether cancellation of the power of attorney was valid or invalid is a matter to be seen at the time of hearing of the suit and whether the opposite party Nos.2-7 had any authority or right to enter into an agreement for sale with the opposite party No.1 is also matter to be scrutinized at the time of trial on evidence. In this situation if in execution of the decree, the petitioners ousted from their possession they will be highly prejudiced and suffer irreparable loss.

The opposite party submits that in the event of decreeing the suit setting aside the decree of the opposite party, the petitioners will be entitled to get back the possession of the property through court, but a legally obtained decree and its execution cannot be stayed merely on the ground that some persons filed an independent suit challenging that decree where result of the suit is far remote. For uncertain period there is no reasonable ground to wait a decree-holder, having a lawful decree passed by the court in his favour. Therefore,

the petitioners are not entitled to get stay of the execution merely on the ground of filing of the suit. It is true that the petitioners are not judgment-debtors in the instant case, though, they are also claiming title through same vendor whose purchase is much earlier than the decree passed in Other Suit No.593 of 2007, but Order 21 Rule 29 provides that stay of execution can be sought for by the judgment-debtors who filed an independent suit challenging the decree. Here, the petitioners though filed an independent suit for declaration against the decree passed in favour of the opposite party, they are not judgment-debtors and as such, they cannot file application in execution case praying for stay execution.

In the instant case, the petitioners rightly filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure in the suit praying for temporary injunction against the defendant No.1 (present opposite party No.1) for restraining him from dispossessing the plaintiff and take over possession through court which is now pending for disposal, I failed to understand why for about 7(seven) years the petition for injunction is not disposed of by the trial court. If a suit filed by 3<sup>rd</sup> party challenging any decree is pending before any

court, the plaintiffs are entitled to seek injunction against the defendant decree-holder not by filing an application praying for stay in the execution proceeding.

From perusal of application for stay, it appears that the petitioners filed the application before the executing court praying for stay execution proceeding till disposal of the injunction application filed in Other Suit No.631 of 2018. The executing court at the first instance instead of granting stay till disposal of the application for injunction stayed the entire execution proceeding till disposal of the suit for which it was not prayed for. This Court while disposing the Rule in Civil Revision No.981 of 2019 keeping a mind directed both the parties to maintain status-quo in respect of the suit property till hearing of the stay application by the executing court.

Here, I am also inclined to observe and hold that the injunction application waiting for disposal before the trial court. The petitioners ought to have taken positive steps to get the application for injunction heard and disposed of as early as possible. Where proceeding in Other Suit No.631 of 2018 is not stayed by any court, the trial court is to dispose of the said application filed by the petitioners.

In view of the observations made hereinabove, I find that the application filed by the petitioners in execution case is incompetent but the application filed in Other Suit No.631 of 2018 for injunction deserves consideration. Since the petitioners as purchaser of the property earlier to the alleged baidanama rightly or wrongly, pending decision of the court below they can maintain possession.

Accordingly, the trial court is hereby directed to hear and dispose of the application for injunction filed by the petitioners under Order 39 Rules 1 and 2 giving sufficient opportunity to the opposite party to file written objection and contest the same within shortest possible time preferably within 2(two) months from the date of receipt of the judgment and order of this court. To ensure justice till such disposal of the said application in aforesaid manner within a period of 2(two) months, parties are directed to maintain status-quo in respect of possession of the suit land.

Taking into consideration the above, the Rule is disposed of, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.

*Helal/ABO*