

**District: Manikganj**

**In the Supreme Court of Bangladesh**

High Court Division  
(Civil Revisional Jurisdiction)

**Present:-**

**Mr. Justice Md. Zakir Hossain**

**Civil Revision No. 431 of 2023**

Md. Harun Or Rashid and others

... Defendant-Opposite Party-Petitioners  
-Versus-

Komela and others

... Plaintiff-Petitioner-Opposite Parties

Mr. Mohammad Kafil Uddin Khan, Advocate

.....for the petitioners

Mr. Abdur Rahman (Zeebol) Advocate

.....for the opposite party No. 1

**Heard on: 04.01.2024**

**Judgment on: 28.01.2024**

**Md. Zakir Hossain, J:**

Leave is granted to examine the legality and propriety of the judgment and order dated 23.11.2022 passed by the learned Additional District Judge, First Court, Manikganj in Civil Revision No. 02 of 2020 allowing the revision and thereby setting aside the judgment and order dated 27.01.2020 passed by the learned Senior Assistant Judge, Singair, Manikganj in Title Suit No. 17 of 2019.

Facts leading to the issuance of the Rule are *inter alia* that the opposite party No. 1 being plaintiff instituted Title Suit No. 17 of 2019 before the Court of the learned Senior Assistant Judge, Singair, Manikganj for declaration of title and allocating separate saham in respect of 8.5 decimals of land as mentioned in the schedule 'Kha'

appertaining to the land as mentioned in the schedule 'Ka' to the plaint and the plaintiff also prayed for setting aside the preliminary and final decree passed in Title Suit No. 69 of 2001 (Partition). In Title Suit No. 17 of 2019, the plaintiff filed an application for staying the operation of the Execution Case No. 11 of 2018 arising out of the judgment and decree passed in Title Suit No. 69 of 2001. Upon hearing, the learned Senior Assistant Judge rejected the petition.

Challenging the legality and propriety of the judgment and order of the learned Senior Assistant Judge, the plaintiff preferred Revisional Application No. 02 of 2020 before the Court of the learned District Judge, Manikganj. After accepting the Revisional Application, the learned District Judge was pleased to transmit the record of the same to the learned Additional District Judge, First Court, Manikganj for disposal. After hearing, the learned Additional District Judge was pleased to allow the Revisional Application. Impugning the judgment and order of the learned Additional District Judge, the petitioners moved this Court and obtained leave, Rule and stay therewith.

Heard the submissions advanced by the learned Advocates of the parties at length and considered the Revisional Application and counter affidavit filed by the opposite party No. 1 and other materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through in order to reach a just decision.

The learned Senior Assistant Judge rejected the petition for staying the operation of the Execution Case. After considering the facts and circumstances of the judgment and decree passed in Title Suit No. 69 of 2001, the learned Additional District Judge by self-contradictory observation allowed the Revisional Application and thereby stayed the Execution Case No. 11 of 2018 arisen out of the final decree drawn on Title Suit (Partition) No. 69 of 2001. It is admitted position that Komela Begum, the plaintiff-opposite party No. 1, filed Title Suit No. 17 of 2019 challenging the legality and propriety of the preliminary decree dated 17.04.2004 and final decree dated 10.06.2018 passed in the aforesaid Title Suit No. 69 of 2001.

It appears from the record that after passing the preliminary decree, the plaintiffs of the subsequent suit made herself party before final decree is drawn up. It is well settled that the partition suit remains pending till final decree is drawn up but without filing any appeal against the preliminary decree or without praying for any *saham* she unsuccessfully filed Miscellaneous Case for setting aside the final decree. On the basis of the final decree, the Execution Case No. 11 of 2018 was started. Thereafter, the opposite party being plaintiff instituted Title Suit No. 17 of 2019 for declaration of title partition and for cancellation of the earlier decree passed in earlier partition suit and prayed for staying the Execution Case.

Upon hearing, the learned Senior Assistant Judge rightly allowed the petition for staying the Execution Case though she did not state

elaborate reasons, but the penultimate decision of the learned Senior Assistant Judge is absolutely lawful. Unfortunately, the learned Additional District Judge by her judgment made contradictory statement and without any positive reason allowed the Revisional Application and with a stroke of the pen stayed the Execution Case which was obtained incurring huge time, money and energy in the presence of the plaintiff of the subsequent suit.

It transpires from the record that the application for staying the Execution Proceedings is absolutely *mala fide* act on the part of the plaintiff-opposite party of the subsequent suit and it is a device to prolong the litigation so that the decree holder cannot enjoy the fruits of the long cherished decree. If the Execution Proceedings is stayed without sufficient cause and without exercising judicial discretion, the confidence of the people as to the sanctity of the solemn decree of the court will be disparaged in the estimation of the society. It appears to this Court that the application is not *bona fide* and the only attempt is to delay the Execution Proceeding.

In the Case reported in 29 DLR (SC) 282, the Apex Court rightly observed:

*“The authority which has been given to a Court under Order 21, rule 29 of the Code, to stay an execution proceeding is no doubt, discretionary and there are no express provisions in the rule making the use of such authority subject to certain positive conditions, as have been made in Order 41, rule 5 of the Code, but the condition in Order 21, rule 29, that the order of stay is to be made on*

*such terms as to security or otherwise as the Court thinks fit makes it abundantly clear that the Court shall have to apply its judicial mind in making the order of stay for the purpose of protecting the interests of the decree-holder. Moreover, it is a settled principle, that the discretion of a court, the exercise of which is likely to affect a valuable right of a person acquired under the law of the country, must be exercised judicially and for the said purpose, the Court must be satisfied that there are very good reasons for withholding from the holder of the decree the fruits thereof, even though for a temporary period. The fundamental consideration is that the mandate of the Court as contained in a decree must not be lightly ignored or evaded to the prejudice of its holder. But if from the facts of the case the Court is satisfied that there are good reasons to suppose that the judgment- debtor is likely to succeed in his suit and that in case of such success the execution of the decree against him may result in multiplicity of litigations, entailing costs and harassment to the parties concerned, the Court may, as the Rule provides, stay the execution of the decree, on such terms as to security or otherwise, as the court thinks fit till the decision in the said suit. In the case of a proceeding under Order 33 of the Code, which has not as yet ripened into a suit, the same principle may be followed by the court for the purpose of staying an execution proceeding in exercise of its inherent powers.”*

(Underlines supplied)

It cannot be denied that in our subcontinent, the actual sufferings of the decree holder starts after obtaining decree. Hence, the Executing Court should be vigilant in disposing of the execution case. The Executing Court should not go behind the decree. It should execute the decree as it is save few exceptions:

- (i) *If the decree is obtained by practicing fraud which is apparent.*
- (ii) *If the decree is nullity i.e the decree was made against the dead man.*
- (iii) *If the decree is passed by the Court having no jurisdiction.*

On close scrutiny of the facts and circumstances of the case, it reveals that the opposite party No. 1 with an oblique mind has been trying with her might and main to deprive the decree holder to enjoy the fruit of decree without any lawful or sufficient cause.

Mere filing a subsequent suit shall not *ipso facto* stay the operation of the execution case started on the basis of the decree passed in the earlier suit. The Court should not stay the execution proceeding as a matter of course or luxury if so the long cherished decree of the competent court shall fall through and to be useless.

Having regard to the facts and circumstances of the case, I am of the view that the impugned judgment and order of the learned Additional District Judge is not a proper judgment of reversal and without applying her judicial mind, she allowed the revisional application and thereby committed an illegality in staying the execution proceeding. Hence, this

Court finds substance in the Rule and accordingly, the impugned judgment and order is liable to be turned down to secure the ends of justice.

In the result, the Rule is made absolute, however, without passing any order as to costs. The impugned judgment and order passed by the learned Additional District Judge, First Court, Manikganj is hereby set aside and the judgment and order passed by the learned Senior Assistant Judge, Singair, Manikganj is maintained.

The earlier of order of stay granted by this Court thus stands recalled and vacated.

Let a copy of the judgment be sent down to the Courts below at once.

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**Md. Zakir Hossain, J**

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