

District: Mymensingh

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 1076 of 2023

In the matter of :

Md. Abdur Rashid and others

... Petitioners

-Versus-

Md. Dulal Mia

...Opposite party

Ms. Nahid Yesmin, Advocate

...For the petitioners

Mr. Mohammad Mehdi Hasan, Advocate

...For the opposite party

Heard on: 23.10.2024 and 13.11.2024

Judgment on: 20.11.2024

Rule was issued on leave, calling upon the opposite party to show cause as to why the judgment and order dated 07.11.2022 passed by the Senior District Judge, Mymensingh in Civil Revision No. 41 of 2021 rejecting the revision, affirming the order No. 48 dated 02.11.2021 passed by the Senior Assistant Judge, Ishwargonj, Mymensingh in Other Execution Case No. 14 of 2015 rejecting the application filed under Order XXI, rule 29 read with

section 151 of the Code of Civil Procedure to stay all further proceedings of Other Execution Case No. 14 of 2015 pending disposal of the Title Suit No. 167 of 2021 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party No. 1 as plaintiff filed Other Class Suit No. 177 of 2010 before the Court of Assistant Judge, Ishwargonj, Mymensingh for permanent injunction in respect of the scheduled property impleading the present petitioners. Ultimately, the suit was decreed on compromise on 26.01.2011 and it was declared that the deed of compromise shall be treated as part of the decree. The conditions of compromise is as follows:

“আপোষনামার শর্তাবলীঃ

- (ক) নালিশী তপসিল বর্ণিত ২০ শতাংশ ভূমি বাদী প্রাপ্ত হইবেন এবং উহাতে বিবাদীগণের কোনরূপ দাবী দাবা স্বত্ব দখল রহিল না।
- (খ) এবং বিবাদীগণ নালিশী ভূমির পরিবর্তে বাদীর নিকট হইতে ৬৫,০০০/- (পয়ষড়ি) হাজার টাকা প্রাপ্ত হইবেন।
- (গ) অত্র আপোষনামা মূলে ডিক্রি হইবেন এবং উক্ত আপোষনামা ডিক্রীর একাংশ বলিয়া গণ্য হইবেন।
- (ঘ) আপোষনামার ব্যয়ভার নিজ নিজ পক্ষগণ বহন করিবেন।”

In the decree schedule of the property has been described as follows:

“তপছিল

জেলা ময়মনসিংহের, উপজেলা- ঈশ্বরগঞ্জ, মৌজা- বড় ডাঙ্গুরী মধ্যেঃ-

প্রজাই খং নং	হোল্ডিং খং নং	দাগ নং	শ্রেণী	পরিমান
২৩৯	৬৬১	৫৫৬	কান্দা	অত্র দাগের পূর্বাংশে $৩৩\frac{1}{2}$ বাদে তৎলাগ দক্ষিণ পশ্চিম কোণে ২০ শতাংশ দাবীর ভূমি বটে।

চৌহদ্দিঃ-উত্তরে- কাশেম, দক্ষিণে- সাদেক, পূর্বে- ইদ্রিস আলী, পশ্চিমে- আঃ রশিদ।”

Thereafter, the plaintiff of the said suit filed an execution case being Other Class Execution Case No. 14 of 2015 claiming himself as decree-holder and in the said execution case he filed an application under Order XXI, rule 32 (1) and (5) read with section 151 of the Code of Civil Procedure sought for an order directing the defendant-opposite party to vacate $14\frac{1}{2}$ decimals of land in favour of the plaintiff-decree-holder together with an order confining the defendant-opposite party into civil jail and to order for appropriate compensation against the said defendants-opposite parties. The defendant-opposite party Nos. 1 and 2 appeared in the execution proceeding and filed written objection stating that there

are more properties other than the decreed .20 decimals of land in the schedule of the suit as well as of the decree and the defendants from their 'Ascendant' got $.14\frac{1}{2}$ decimals of land and are enjoying the said property by erecting homestead and planting trees; the said ancestral $.14\frac{1}{2}$ decimals of land was duly recorded in the B.R.S. Khatian No. 309 in the name of their father.

Upon believing the claim of plaintiff-decree-holder that he has been dispossessed by the defendants from $.14\frac{1}{2}$ decimals of land, learned Judge of the Executing Court by his order No. 16 dated 20.03.2016 allowed the application filed by the plaintiff-decree-holder directing the defendant-opposite parties to vacate the possession of the case land (regarding $.14\frac{1}{2}$ decimals of land) with a direction that in default the plaintiff-petitioner may get possession through the Court like a decree for recovery of possession and also directing to confining the opposite parties in civil imprisonment for 3(three) months with a penal fine of Tk.30,000/- each. Against which the defendant-opposite parties filed Miscellaneous Appeal No. 27 of 2016 before the District

Judge, but the said miscellaneous appeal was dismissed for default on 13.09.2017. The defendant-appellants filed Miscellaneous Case No. 10 of 2018 for setting aside the dismissal order dated 13.09.2017 and to restore the miscellaneous appeal in its original file and number. The appellate Court below by its order dated 15.01.2019 dismissed the miscellaneous case and on being further aggrieved by the said dismissal order, the defendant-appellants filed First Miscellaneous Appeal No. 213 of 2019 before the High Court Division and after hearing a Single Bench of this Division by its judgment and order dated 01.03.2021 dismissed the appeal.

Having been aggrieved by the judgment and order of the High Court Division dated 01.03.2021, the defendant-opposite parties filed Civil Petition for Leave to Appeal No. 1672 of 2023, which is pending before the Apex Court.

The defendant-petitioner also filed Title Suit No. 167 of 2021 before the Court of Assistant Judge, Ishwarganj, Mymensingh sought for a declaration of title in the scheduled property measuring an area of .47 decimals and for further declaration that the defendant (plaintiff of Other Class Suit No. 77

of 2010) did not acquire any right, title in the scheduled property of said .47 decimals on the strength of the decree of Title Suit No.177 of 2010.

After dismissal of the first miscellaneous appeal by the High Court Division, the plaintiff of Other Class Suit No. 177 of 2010, took initiative to proceed with the Execution Case No. 14 of 2015. In the said case, the defendant-opposite party-petitioner filed an application under Order XXI, rule 29 read with section 151 of the Code of Civil Procedure praying for stay of all further proceedings of the decree execution case pending disposal of Title Suit No. 167 of 2021 and the executing Court after hearing by its order dated 02.11.2021 rejected the application holding that the attempt of the defendant to stay the execution case is nothing but to frustrate the decree and as such, the said application is not maintainable.

Having been aggrieved by the order of the Executing Court dated 02.11.2021 passed in Other Execution Case No. 14 of 2015, the defendant-opposite parties preferred Civil Revision No. 41 of 2021 before District Judge, Mymensingh and learned District

Judge by her order dated 07.11.2022 rejected the revision affirming the order of the Executing Court.

On being aggrieved by and dissatisfied with the aforesaid order of learned District Judge, Mymensingh, the defendants opposite party-petitioners filed this revisional application and obtained the Rule together with an ad-interim order of stay of all further proceedings of Other Execution Case No. 14 of 2015 pending before the Senior Assistant Judge, Ishwarganj, Mymensingh.

Ms. Nahid Yesmin, learned Advocate for the petitioner submits that the petitioner filed Civil Petition for Leave to Appeal No. 1672 of 2023 against the judgment and order dated 01.03.2021 passed by the High Court Division in FMA No.213 of 2019 arising out of an order purportedly passed under Order XXI, rule 32(1) read with section 151 of the Code of Civil Procedure by the Executing Court in Other Execution Case No.14 of 2015 directing the defendants-opposite party-petitioners to vacate $.14\frac{1}{2}$ decimals of land and handed over the possession to the plaintiff-petitioner-opposite party together with an order of civil

confinement for 3(three) months and penalty of Tk.30,000/-. She continues to submit that the said C.P. is pending before the Hon'ble Appellate Division subject matter of which is whether the direction dated 20.03.2016 of the Executing Court directing to execute the compromise decree dated 26.01.2011 of the Other Class Suit No.177 of 2010 which is at all executable or not is to be decided by the Apex Court. Apart from that the present petitioner filed Title Suit No. 167 of 2021 before the Senior Assistant Judge, Ishwarganj, Mymensingh for declaration of title regarding .47 decimals of land out of .67 decimals of plot No.556 appertaining to S.A. khatian No.239 and 236 and the present opposite party is claiming $.14 \frac{1}{2}$ decimals of land out of the said .47 decimals. She next submits that the decreed .20 decimals of land in compromise decree of Other Class Suit No.177 of 2010 is altogether different from the .47 decimals of land. Thus the opposite party's claimed $.14 \frac{1}{2}$ decimals through the application under Order XXI, rule 32(1) read with section 151 of the Code of Civil Procedure is very much the subject matter of Title Suit No.167 of 2021, thus, the

execution proceedings should be stayed during pendency of the said suit.

She lastly submits that the present petitioner is an old man of about 80 years, but he was not properly advised or assisted by his engaged Advocate of the lower Court and now he went before the Apex Court as the last resort against a flagrant injustice and in view of the above, she prayed for making the Rule absolute, staying the execution case pending before the Senior Assistant Judge, Ishwarganj, Mymensingh.

On the other hand, Mr. Shahed Ahmed Sadi, learned Advocate for the opposite party submits that the plaintiff should not be deprived from the fruit of his decree obtained in the year 2011 on the basis of a solenama. He further submits that the defendant being embolden with some local unruly persons forcibly dispossessed the plaintiff-opposite party from $.14 \frac{1}{2}$ decimals of land and in spite of repeated demand to restore the possession in favour of the plaintiff-opposite party, the defendant-petitioner did not pay any heed and as such the plaintiff-petitioner-opposite party was constrained to file an application under Order

XXI, rule 32 (1) read with section 151 of the Code of Civil Procedure and learned Judge of the Executing Court by his order dated 20.03.2016 allowed the said application directing the defendant- opposite party-petitioner to hand over the possession of $.14 \frac{1}{2}$ decimals of land in favour of the present opposite party together with an order confirming the present petitioner along with others in civil imprisonment for 3(three) months and the said order has been upheld up to the High Court Division, despite the defendant- petitioner continuously tried to frustrate the decree of Other Class Suit No.177 of 2010 and thus, the Executing Court as well as the District Judge justly and legally rejected the application for stay.

Heard learned Advocates of both the parties, perused the revisional application together with the annexures and the counter affidavit filed on behalf of the opposite party; having gone through the provisions of law.

It appears that the present opposite party as plaintiff filed a suit being Other Class Suit No. 177 of 2010 before the Senior Assistant Judge, Ishwarganj, Mymensingh impeding the present

petitioner as defendant for permanent injunction over a piece of land measuring .20 decimals out of the schedule to the plaint.

In the schedule, it is stated that the claim of plaintiff is regarding 20 decimals of land, other than $.33\frac{1}{2}$ decimals of land in the eastern side of the plot. In the schedule, the boundary of the suit property has been described, wherein it is stated that the property of defendant No.1, Abdur Rashid is situated in the Western side.

Upon such schedule, the suit was decreed on compromise between both plaintiff and defendants and in the decree it is declared that the deed of compromise shall be treated as part of the decree; the condition of compromise has been quoted herein above, among others, the first one is, (ক) নালিশী তপশিল বর্ণিত ২০ শতাংশ ভূমি বাদী প্রাপ্ত হইবেন এবং উহাতে বিবাদীগণের কোনরূপ দাবী দাবা স্বত্ব দখল রহিল না। (খ) এবং বিবাদীগণ নালিশী ভূমির পরিবর্তে বাদীর নিকট হইতে ৬৫,০০০/- (পয়ষট্টি) হাজার টাকা প্রাপ্ত হইবেন।

In the compromise application it is stated that at the instance of local elites and relatives, the plaintiff and defendants

agreed to settle the dispute to save themselves from harassment and financial loss. No where in the compromise it is asserted (through terms and conditions) that in default of any condition the plaintiff or defendant i.e. parties to the compromise decree may take recourse of execution. Moreover, it is not the case of present petitioner or opposite party that the said compromise decree was not executed or dishonoured. Even it is not the case of the plaintiff-petitioner-opposite party that he did not get 20 decimals of land according to the compromise decree dated 26.01.2011, vice-versa the defendant-opposite party-petitioner did not claim that he did not get Tk. 65,000/-, his portion as settled in the compromise decree, and as such, nothing was left to be executed.

From the averment of plaintiff-petitioner-opposite party, it appears that he claimed that he has been dispossessed from $.14\frac{1}{2}$ decimals of land, although the said claim has been denied by the defendant-opposite party-petitioner asserting that the aforesaid $.14\frac{1}{2}$ decimals of land was not part of the compromise decree and it is situated outside of the decreed .20 decimals of land and is his

ancestral property, the $.14\frac{1}{2}$ decimals of land was never possessed by the plaintiff.

As this Court found herein before from the terms and condition of the compromise decree dated 26.01.2011 that there was nothing left to be executed. Apart from that if the plaintiff-petitioner-opposite party has been dispossessed as alleged by him. He may take proper recourse as provided under the law by filing separate suit. The application under Order XXI, rule 32 seems to be a misconceived one, because, the suit for permanent injunction has been turned into a title suit simplicitor by consent or compromise of both the parties and now the parties are barred by 'Estoppel' in claiming that the suit is one for permanent injunction, because, in the condition of compromise no restraint has been imposed upon either of the parties, and the suit and the decree which has been drawn upon it, has already been changed its character to a suit or decree for declaration of title and through the consent of both the parties the title of the plaintiff over .20 decimals of land has been declared against a consideration of Tk.65,000/-. In the said decree neither of the

parties has been injuncted permanently or temporarily, thus, the application under Order XXI, rule 32(1) is a misconceived one. Apart from that in a proceeding under Order XXI, rule 32, there is hardly any scope to recover the khas possession as alleged by the plaintiff-petitioner-opposite party.

However, those question are to be finally adjudicated before the Apex Court in Civil Petition for Leave to Appeal No.1672 of 2023, and since the case before this Court is whether the execution proceedings should be stayed or not.

In the premise above, this Court is of the view that the execution proceedings should be stayed till disposal of the Civil Petition for Leave to Appeal No. 1672 of 2023 pending before the Apex Court.

Accordingly, all further proceedings of Decree Execution Case No. 14 of 2015 of the Court of Senior Assistant Judge, Ishwargonj, Mymensingh is hereby stayed till disposal of the Civil Petition for Leave to Appeal No. 1672 of 2023, pending before the Hon'ble Appellate Division of the Supreme Court of Bangladesh.

With the above observation and direction the Rule is disposed of.

No order as to cost.

Communicate the judgment and order at once.