

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.1900 OF 2023**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Gobinda Bar

.... Petitioner

-Versus-

Bijoy Rani Tikadar

.... Opposite party

Mr. Md. Asaduzzamn, Senior Advocate with

Mr. Md. Anisul Hasan, Advocate

.... For the petitioner.

Ms. Sara Hossain, Senior Advocate with

Ms. Abeda Gulrukh, Advocate

Ms. Urmeem Rahman, Advocate

Mr. Moloy Saha, Advocate and

Mr. Priya Ahsan Chowdhury

.... For the opposite party.

**Heard on 05.12.2024 and Judgment on 13.01.2025.**

On an application under Section 115(1) of the Code of Criminal Procedure this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 05.04.2023 passed by the learned Joint District and Sessions Judge, 4<sup>th</sup> Court, Dhaka in Family Appeal No.29 of 2023 filed by the petitioner, disallowing the appeal on hearing thereby affirming the order dated 22.01.2023 in Family Case No.1220 of 2022 passed by the learned 2<sup>nd</sup>

Court of Additional Assistant Judge and Family Court, Dhaka filed by the opposite party should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for decree for maintenance for herself and for her two children and restraining the defendant from evicting the plaintiff from 'Kha' schedule flat and allow her continuous possession in above flat.

In above suit plaintiff submitted a petition on 07.11.2022 for an ad-interim order for restraining the defendant from evicting the plaintiff from 'Kha' schedule flat and transferring above flat by sale and delivering to the plaintiff the ADB issued health and education insurance documents of her children. The learned Judge of the Family Court allowed above petition and passed an ad-interim order restraining the defendant from transferring above flat by sale and disturbing the peaceful possession of the plaintiff in above flat.

The defendant entered appearance and submitted a written objection on 21.11.2022 stating that for satisfying debts he is needed to sale above flat and he will arrange a suitable alternative accommodation for the plaintiff and her children and sought recall and set aside of above ad-interim order.

The learned Judge of the Family Court modified above order and lifted the restriction of sale of above flat but restrained the defendant from disturbing continued possession of the plaintiff in above flat.

Being aggrieved by and dissatisfied with above judgment and order of the Family Court above defendant preferred Family Appeal No.29 of 2023 to the District Judge, Dhaka which was heard by the learned Joint District Judge, 4<sup>th</sup> Court who dismissed above appeal and affirmed above judgment and order of the Family Court.

Being aggrieved by and the dissatisfied with above judgment and order of the Court of Appeal below above appellant as petitioner moved to this court with this petition under Section 115(1) of Code of Civil Procedure and obtained this Rule.

Mr. Md. Asaduzzaman, learned Senior Advocate for the petitioner submits that the defendant had several loans of huge amount of money and he was trying to sale above flat to satisfy above loans. After lifting the restriction on sale of above flat by the Family Court the defendant has transferred above flat by a registered kabala deed on 12.02.2023 to Kawser Mahmud. The defendant is now required to hand over possession of above flat to above purchaser. The defendant is ready to pay for maintenance including accommodation for the plaintiff and children and he will continue to do the same. The defendant has

pursuant to the order of this Court rented an alternative accommodation of same type and with same facilities and in the same compound for the plaintiff and children. The plaintiff is needed to agree to relocate in above accommodation so that the vacant possession could be delivered to the purchaser. But the learned Judge of the Court of Appeal below failed to appreciate above materials on record properly and most illegally dismissed the appeal and upheld the flawed judgment and order of the trial court for continued possession of the plaintiffs in above flat which not tenable in law.

On the other hand Ms. Sara Hossain, learned Senior Advocate for the opposite party submits that the plaintiff is entitled to the get maintenance and separate residence under Section 2(3) of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 and her children are entitled to get maintenance until attaining majority and accommodation is an important segment of maintenance. Plaintiff and her children are living in the above flat for a very long time and they love above accommodation and well being of above children will be better ensured if they are allowed to continue their residence in above apartment.

As far as transfer of the above flat by the defendant is concerned, the defendant has been making endless efforts from the day one to evict

the plaintiff and her children from above flat. Above sale is an innovative tool of the defendant for eviction of the plaintiff and her children and a mere paper transaction.

The learned Judges of the Courts below refused to believe above claim of sale without assessment of evidence and ordered for continuous possession of the plaintiff and her children in above flat. The Appellate Division also ignored above claim of sale and directed the parties to maintain status-quo as to possession of above flat and ordered the trial Court to conclude trial of the suit within three months.

The genuinity of the alleged sale can be determined by the Family Court on consideration of evidence but instead of facilitating the expeditious trial of the suit the defendant has been obstructing the same. The impugned judgment and order of the Court of Appeal below is based on materials on record and calls for no interference, concluded the learned Advocate.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the defendant married the plaintiff according to the Hindu Law and above wedlock gave birth to two children namely Sherosi Nelomi Trina and Joyojit Rudro and they were living in the above flat for a long time but from October 2022 plaintiff is living

separately with above children in above flat which belonged to the defendant.

Plaintiff instituted above suit for a decree for maintenance and for continued possession in above flat. On an application filed by the defendant restriction on sale of above flat was lifted but the petition of the defendant for vacating the order for continuous possession of the plaintiff in above flat on the ground of sale by registered kabala deed dated 12.02.2023 was rejected. The Court restrained the defendant from disturbing continued possession of the plaintiff in above flat. Above order of the trial Court was upheld by the Court of Appeal below. It appears that the learned Judges of the Courts below refused to act on above claim of sale without proof by evidence.

The plaintiff is entitled to get separate accommodation and maintenance from the defendant subject to the conditions as set out in the proviso of Section 2(7) of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 and her children are entitled to maintenance which includes accommodation until they attain majority. Separate residence for a married Hindu Woman means a residence without the husband but owned or rented or managed by the husband. The defendant concedes to above claim of accommodation of the plaintiff and pursuant to the order of this Court the defendant has

rented an alternative accommodation in the same compound. But the plaintiff refuses to relocate to the new accommodation on the ground of emotional attachment of the children with above flat and their well being. The plaintiff does not believe in the genuinity of above sale and the sale deed. She claims that above sale is a colourable transfer and a tool to evict the plaintiff and her children. There is nothing on record to show if above alleged purchaser is willing to rent out above flat. If above sale is proved to be genuine and the purchaser wants above flat for his own use then the Court will be required to ensure an alternative suitable accommodation for the plaintiff before delivery of possession to the purchaser. Above contentious issues of facts cannot be determined in this revisional proceedings.

In above view of above facts and circumstance of the case and materials on record I hold that the ends of justice will be ensured if the impugned judgment and order of Court of Appeal below is set aside and both the parties maintain status-quo as to the possession of above flat for three months and the learned Judge of the Family Court disposes of the suit on merit in accordance with law within above period.

Accordingly, the impugned judgment and order dated 05.04.2023 passed by the leaned Joint Disrict Judge in Family Appeal No.29 of 2023

affirming the judgment and order dated 22.01.2023 passed by the learned Judge of the Family Court in Family Suit No.1220 of 2022 is set aside and both the parties are directed to maintain status-quo as to possession of above flat for 3(three) months for the date of receipt of this order and the learned Judge of the Family Court shall dispose of above suit on merit within above period. The trial Court shall be at liberty to extend above period for 1(one) month if for unavoidable circumstances the trial could not be concluded.

The Rule is hereby accordingly disposed of.

However, there is no order as to costs.

Send down the lower Court's record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*