

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 607 of 2023

Hosne Ara Begum and another
..... plaintiff-petitioners

-Versus-

S. M. Habib Ulla and others
.... defendant-opposite parties

Ms. Farhana Siraj Ronnie, Advocate
..... for the plaintiff-petitioners
Mr. Md. Shahadat Hossen, Advocate
... For the defendant-opposite party Nos. 1-4

Heard and Judgment on: 28.10.2024

In the instant civil revision filed under Section 115(4) of the Code of Civil Procedure (CPC) at the instance of the plaintiff-petitioners, this Court on 19.02.2023 granted leave and issued a Rule calling upon the opposite parties to show cause as to why the impugned judgment and order dated 01.11.2022 passed by the learned Additional District Judge, 6th Court, Chattogram in Civil Revision No. 28 of 2022 allowing the civil revision upon reversing the judgment and order dated 18.11.2021 passed by the Joint District Judge, 1st Court, Chattogram in Other Class Suit No. 17 of 2015 staying all

further proceedings of Other Class Suit No. 17 of 2015 till disposal of Other Class Suit No. 442 of 2021 should not be set aside.

At the time of issuance of the Rule, this Court passed an interim order staying operation of the judgment and order dated 01.11.2022 passed by the Additional District Judge, 6th Court, Chattogram in Civil Revision No. 28 of 2022.

The opposite party Nos. 1-4 have entered appearance in the Rule.

I have heard the learned Advocates of both sides and perused the materials on record.

The relevant facts, in short, are that Jahanara Begum (present opposite party No. 5) as plaintiff filed suit for partition simpliciter impleading the present petitioners and others, who are opposite parties in the instant Rule, being Partition Suit No. 72 of 2009 in the Court of Joint District Judge, 1st Court, Chattogram. The suit was transferred to the Court of Senior Assistant Judge, 1st Court, Chattogram and was renumbered as Other Class Suit No. 442 of 2021 and is now pending before the said Court for determination of pecuniary jurisdiction.

The present petitioners as plaintiff filed Other Class Suit No. 17 of 2015 for partition in the Court of 1st Joint District Judge, Chattogram impleading the present opposite parties as defendants. In the said suit, the plaintiffs also prayed for correction of the B.S Khatian No. 217. Be it mentioned that the property sought to be partitioned as given in the schedule of the complaints of both suits are same.

While the Other Class Suit No. 17 of 2015 was fixed for taking further evidence, the present opposite party No. 5 Jahanara Begum (plaintiff of Other Class Suit No. 442 of 2021) and her sister Roushan Ara Begum (present opposite party No. 6) filed an application under Section 10 read with Section 115 of the Code of Civil Procedure (CPC) for stay of Other Class Suit No. 17 of 2015 on the grounds stated therein. The application was rejected by the learned Joint District Judge, 1st Court, Chattogram, vide order dated 18.11.2021. Challenging the same, Civil Revision No. 28 of 2022 was filed before the Court of District Judge, Chattogram, which was heard and disposed of by the learned Additional District Judge, 6th Court, Chattogram, who, vide judgement and order dated 01.11.2022 allowed the revision, set aside the judgment and order of the trial Court and stayed operation of the further proceedings of

Other Class Suit No. 17 of 2015 till disposal of the Other Class Suit No. 442 of 2021. Challenging the said judgment and order passed by the revisional Court below, the plaintiffs of the Other Class Suit No. 17 of 2015 have filed the instant civil revision, obtained Rule and order of stay.

On perusal of the respective complaints of the suits in question, it appears that the parties to the suits are same and properties sought to be partitioned between the parties are also same. The only difference is that Other Class Suit No. 442 of 2021 is a suit for partition simpliciter, whereas in Other Class Suit No. 17 of 2015 the plaintiffs made additional prayer for correction of the concerned record of rights. The instant Rule arose out of an application for stay of suit under Section 10 of the CPC. Be that as it may, having considered the fact that the parties and subject matter of both the suits are same, in my view Section 24 of the CPC, which has given the High Court Division the power to transfer any suit on its own motion to any Court subordinate to it for trial and disposal, shall apply to the instant scenario. This view gets support from the case of *Integrated Services Limited and Ors. Vs. Khaleda Rahman and Ors*, 5 BLC (AD) 69 wherein the Apex Court upheld the judgment of the High Court Division holding, "The High Court

Division did not enter into the merit of the suit so that it may not cause prejudice to either party before either Court. The High Court Division held that as both the suits are over the self-same subject matter it can suo motu exercise its authority under Section 24 CPC and withdraw the earlier suit and transfer it to be tried along with the later suit analogously by the First Court of Subordinate Judge, Dhaka”.

In view of the above discussions, both on relevant facts and law, Other Class Suit No. 442 of 2021 is withdrawn from the Court of 1st Senior Assistant Judge, Chattogram and is hereby transferred to the Court of Joint District Judge, 1st Court, Chattogram to be tried and disposed of analogously with Other Class Suit No. 17 of 2015.

With the above observations and directions, the Rule is disposed of.