

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 8910 of 2023.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Awlia Khatun

..... Petitioner

-Versus-

The Government of the People's Republic of
Bangladesh represented by the Secretary,
Ministry of Land and others.

. . . Respondents.

Ms. Joya Bhattacharjee, Advocate

. . . For the petitioner.

Mr. Syfuzzaman, Advocate

. . . For the respondent No. 3.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard and Judgment on 07.12.2023.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Order dated 01.02.2021 passed by the learned Judge, Artha Rin Adalat, Habiganj in Artha Rin Jari Case No. 06 of 2019 arising out of judgment and decree dated 22.03.2018 and 28.03.2018 respectively passed by the Artha Rin Adalat, 1st Court, Habiganj in Artha Rin Suit No. 13 of 2017 (Annexure-F to the writ petition) should not be declared to have been passed without lawful authority and is of no legal effect And as to why the Order dated 12.06.2023 passed by the Artha Rin Adalat, First Court, Habiganuj in Artha Rin Jari Case No. 06 of 2019 arising out of judgment and decree dated 22.03.2018 and 28.03.2018 respectively passed by the Artha Rin Adalat, 1st Court, Habiganj in Artha Rin Suit No.

13 of 2017 (Annexure-H) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that the respondent Bank, namely, Bangladesh Krishi Bank Limited, Habiganj Branch (respondent No.3) filed Artha Rin Jari Case No. 06 of 2019 for recovery of decretal dues obtained in Artha Rin Suit No. 13 of 2017. In the execution proceeding the warrant was issued upon the principal borrower (judgment debtor). Subsequently, on his death his heirs i.e present petitioner and others filed an application for impleading them in the execution case. The Adalat by the impugned order dated 12.06.2023 rejected the said application which led the petitioner to file this writ petition.

Ms. Joya Bhattacharjee, learned Advocate for the petitioner submits that the Adalat misconceived the law and thereby passed the impugned order which is not tenable in the eye of law.

Mr. Syfuzzaman, learned Advocate for the respondent No.3-Bank contends that since the certificate under section 33(7) of the Artha Rin Adalat Ain, 2003 (the Act, 2003) relating to the mortgaged property has been issued, the execution case was disposed of in accordance with section 33(9) of the Act, 2003. As such, there is no scope to implead the petitioner in the execution case and so, the impugned order was rightly passed.

We have gone through the writ petition and other materials on record.

Admittedly the judgment debtor died on 21.11.2019. Although in the meantime, the Adalat issued Title Certificate under section 33(7) of the Act, 2003 but possession thereof has not yet been recovered. The petitioner and

other heirs of deceased judgment debtor have been occupying the same. Since delivery of possession has not yet been completed the execution case can not be treated as disposed of only by issuance of certificate under section 33(7) of the Act, 2003.

Submission of Mr. Syfuzzaman that immediately after issuance of title certificate under section 33(7) of the Act, the Adalat had to dispose of the 1st execution case is not tenable in the eye of law unless ownership is vested by completing delivery of possession of the property. This view of ours finds support in the case reported in 15 BLT (HCD) page 425 (supra). For our better understanding relevant portions of the ratio are quoted herein below:

“9. It appears that the decree-holder appellant filed an application praying for an order to put the decree-holder into possession of the concerned property as it was allegedly obstructed by the judgment-debtor but the learned Judge, Artha Rin Court, dismissed the petition on the ground that on the issuance of the certificate of title in favour of the decree-holder, the execution case had already been disposed of and the Court has got nothing further to do in this respect.

With respect, we are unable to agree with the said views of the learned Judge, Artha Rin Court.

Sub-Section 7 envisages vesting of ownership of the property of the judgment-debtor upon the decree-holder. The said vesting of ownership includes delivery of possession of the property. Without the delivery of possession, the execution case cannot be disposed of.

Sub-Section 9 would make the position clearer. Sub-section 9 reads as follows:

“(৯) উপ-ধারা (৫) এর অধীনে সম্পত্তির দখল ও ভোগের অধিকার অথবা উপধারা (৭) এর অধীনে সম্পত্তির স্বত্ব ডিক্রীদারের অনুকূলে ন্যস্ত হইলে, ধারা ২৮ এর বিধান সাপেক্ষে, উক্ত ডিক্রীজারী মামলার চূড়ান্ত নিষ্পত্তি হইবে।”

(The underlinings are mine)

From a plane reading of the above provision it would be clear that only with the total vesting upon the decree-holder, the execution case would be disposed of, otherwise not.1.

As such in the instant case, the learned Judge ought to have taken necessary steps to put the decree-holder in physical possession of the concerned property of the Judgment-debtor as prayed for.”

Similarly, in the present case although certificate under section 33(7) of the Act was issued, but possession of the property has not yet been delivered from the heirs of the judgment debtor. Hence, heirs of judgment debtor have to be impleaded. Therefore, the Rule Nisi finds merit.

In the result, the Rule is disposed of. The Adalat is directed to implead the heirs of late Hazi Abdul Samed and shall proceed accordingly.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.