

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.80 OF 2023**

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Dr. Mohammad Selim and others

... Petitioners

-Versus-

Mohammad Nurul Alam Tipu and others

... Opposite parties

Ms. Jobaida Gulshan Ara, Advocate

... For the petitioners.

Mr. Mohammad Redwanul Karim, Advocate

....For the opposite parties.

**Heard and Judgment on 30.06.2025.**

This Rule was issued calling upon the opposite party Nos.1-22 to show cause as to why the impugned order dated 18.10.2022 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Chattogram in Other Suit No.119 of 2022 rejecting the petitioners application dated 03.04.2022 for stay and thereby vacated the interim order of stay should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above Other Suit No.119 of 2022 for declaration of title and confirmation of possession for disputed 1.2681 acres land and for

further declaration that the ex-parte judgment and decree dated 05.06.2017 passed by the learned Senior Assistant Judge, 3<sup>rd</sup> Court, Chattogram in Title Suit No.126 of 1999 against plaintiff's predecessor Joynul Abedin Chowdhury is unlawful and not binding upon the plaintiffs.

It was alleged that Salamatullah was the lawful owner and processor of 8 ana share of B.S. Khatian No.816 and he died leaving six sons, namely, Yeasin, Ahsan, Ismat, Shahdat, Obidullah and Shafayet and wife Hosneara as heirs who transferred above land to Joynul Abedin Chowdhury by registered kobla deed dated 30.07.2008 and 01.10.2007. Above Joynul Abedin died leaving plaintiffs as heirs and they are in possession in above land by erecting dwelling huts. Plaintiffs filed above Title Suit No.126 of 1999 without impleading above Joynul Abedin as defendant. Above six sons of Salamatullah was defendants in above suit but since they had no subsisting interest in above land they did not contest above suit which was decreed ex-parte. The learned Senior Assistant Judge admitted above suit and stayed operation of the impugned judgment and decree passed by the learned Senior Assistant Judge in Title Suit No.126 of 1999.

Being aggrieved by above judgment and order of stay of operation of above judgment and decree above defendants submitted a petition for vacating above order of stay and the learned Joint District Judge allowed above petition and vacated above order of stay vide impugned order dated 18.10.2022.

Being aggrieved by above judgment and order of the learned Joint District Judge above plaintiffs as petitioners moved to this Court with this Civil Revisional application 115(4) of the Code of Civil Procedure and obtained this Rule with leave.

Ms. Jobaida Gulshan Ara, learned Advocate for the petitioner submits that admittedly disputed S. A. Khatian No.816 was recorded in the name of Salamatullah and he died leaving 6 sons namely Yeasin, Ahsan, Ismat, Shahdat, Obidullah and Shafayet and one wife Hosneara his heirs. Plaintiffs purchased disputed land by registered kobla deeds dated 01.10.2007 and 30.08.2008 from the transferee of above heirs of Salamatullah and they are in possession in above land by erecting dwelling huts but they were not made defendants in above suit. Challenging the legality of above ex-parte judgment and decree plaintiffs filed above suit and the learned Joint District Judge rightly stayed operation of above impugned ex-parte judgment and decree. The learned Joint District Judge most illegally allowed above petition and vacated the order of stay by impugned judgment and order dated 18.10.2022 which is not tenable in law.

Mr. Mohammad Redwanul Karim, learned Advocate for the opposite parties submits that the plaintiffs purchased above land from the transferee of heirs of Salamatullah during pendence of Title Suit No.116 of 1999. As such above kobla deeds were hit by lis pendence and above plaintiffs were not necessary party in above suit. The impugned ex-parte judgment and decree was rightly passed against

the heirs of Salamatullah after due service of process. The learned Joint District Judge on correct appreciation of above facts and circumstances of the case and materials on record rightly vacated the order of stay which calls for no interference.

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 name of Salamatullah was recorded in B. S. Khatian No.816 and from his successive heirs petitioners purchased above land by two registered kobla deeds dated 01.10.2007 and 30.07.2008 and opposite parties as plaintiffs filed Title Suit No.116 of 1999 against above Salamatullah for declaration of title for above land which was decreed ex-parte against heirs of above Salamatullah on 30.05.2017. As such it is clear that before impugned ex-parte judgment and decree was passed 30.05.2017 the petitioners had purchased above land from the heirs of Salamatullah who were defendants of above suit but on subsisting interest in above land.

The petitioners have claimed that after above purchase they got their names mutated, paid rent to the Government and erected dwelling huts in above land. Plaintiffs will be required to prove above claims by legal evidence at trial. In Title Suit No.126 of 1999 opposite parties not only sought a simple declaration of title but they also sought another decree declaring that above B. S. Khatian in the name of Salamatullah was erroneous. As such if above judgment and decree was not stayed the opposite party could modify above B. S. khatian

and got their names mutated which would cause further sufferings for the petitioners and give rise to multiply of suits or cases.

Admittedly petitioners were not parties to Title Suit No.126 of 1999 and they have filed above suit for avoiding above ex-parte judgment and decree. As such the learned Joint District Judge rightly stayed operation of above ex-parte judgment and decree passed against the predecessor of the petitioners in Title Suit No.126 of 1999 but the learned Joint District Judge committed serious error in allowing the petition of the opposite parties and vacating above order of stay which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection deserves to be absolute.

In the result, the Rule is made absolute. The impugned order dated 18.10.2022 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Chattogram in Other Suit No.119 of 2022 is set aside.

The learned Joint District Judge is directed to proceed with disposal of the suit in accordance with law expeditiously.

However, there will be no order as to costs.