

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

Present:

Mr. Justice Mamnoon Rahman

Civil Revision No. 86 of 2024

In the matter of:

Ataur Rahman

.....Petitioner.

-Versus-

Mrs. Rezia Begum and others.

.....Opposite parties.

Mr. Suvra Chakravorty, Adv. with
Mr. Moyhammad Zamil Anwar, Adv.

....For the petitioner.

Mr. Dider Alam Kollol, Adv. with
Ms. Jausna Perveen, Adv.

.... For the opposite party Nos. 2 & 5.

Heard on: 20.02.2025

And

Judgment on: 26.02.2025.

In an application under section 115(4) of Code of Civil Procedure, 1908 rule was issued calling upon the opposite party Nos. 1-5 to show case as to why the judgment and order dated 28.11.2023 passed by the learned Senior District Judge, Dhaka in Civil Revision No. 333 of 2023 dismissing the revision and affirming the judgment and order dated 27.09.2023 passed by the learned Senior Assistant Judge, 2nd Court, Dhaka in Civil Execution Case No. 12 of 2021 arising out of Title Suit No. 233 of 2005 dismissing the application dated 30.09.2019, 03.11.2019 and 31.03.2022 for dismissing and staying of the further proceeding of

the said Civil Execution Case rejecting the application under Order 21, rule 29 of the Code of Civil Procedure, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

I have perused the impugned judgment and order passed by the courts below, revisional application, grounds taken thereon, necessary papers and documents annexed herewith, counter-affidavit as well as provisions of law. I have heard the learned counsels for the contesting parties.

On perusal of the same, it transpires that the present petitioner as plaintiff instituted Title Suit No. 185 of 2021 impleading the opposite party as defendants for certain reliefs. In the said plaint the present plaintiff-petitioner also challenging a judgment and decree passed in Title Suit No. 233 of 2005. It transpires that the present suit is pending wherein the opposite parties are contesting as defendants. On meticulous perusal of the papers and documents, it transpires that the present opposite party as plaintiffs instituted Title Suit No. 233 of 2005 and obtained decree against the present petitioners who are the defendant in the said suit. It further transpires that the present petitioner, thereafter, filed the instant suit praying for certain reliefs regarding the property in question including declaration of title, confirmation of possession as well as praying for a declaration that the decree

passed in Title Suit No. 233 of 2005 is collusive, illegal and not binding upon the parties.

It further transpires that during pendency of the present suit the petitioners filed an application before the executing court wherein the execution proceeding is being continuing to enforce the decree passed in Title Suit No. 233 of 2005. Both the courts below rejected the same. It is true that whether the present plaintiff will get decree or not or whether a judgment and decree passed in Title Suit No. 233 of 2005 is collusive and not binding can only be adjudicated by the trial court in the present suit on merit and after examining the evidence both oral and documentary to be adduced by the parties. In the decision as referred by the learned counsels for the opposite parties reported in 55 DLR(AD) 64 their Lordships came to a conclusion that usually a decree-holder should not be deprived from enjoying the fruit of a decree on the ground of the subsequent suit. It is also admitted in numerous decisions this court as well as our apex court came to a conclusion when a decree is being vigorously challenged in a subsequent suit to avoid multiplicity of proceeding and other extenuatory circumstances a limited stay can be granted enabling the trial court to adjudicate the matter with a direction to dispose of the suit expeditiously, as possible.

In the present case in hand, admittedly the executing court in the meantime executed Kabala in favour of the present opposite parties and yet to complete the execution proceeding. In the light of the decision of our apex court as well as since both the parties agreed for a limited period, I am inclined to pass the following orders;

“The executing court shall proceed with the execution case and complete it in accordance with law. However, the trial court, namely Joint District Judge, 1st Court, Dhaka is hereby directed to hear and dispose of the suit, namely Title Suit No. 185 of 2021 within 31st October, 2025 without fail and without giving any adjournment to the parties. In the meantime, the parties are directed to maintain status-quo in respect of possession and position of the suit property as well as transfer till disposal of the suit by the court below”.

With this observation and direction, the instant rule is disposed of.

Communicate the order at once.

(Mamnoon Rahman, J.)

Emdad (BO)