

District-Dhaka.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 6836 of 2023.

Kazi Atiqur Rahman.

----- Petitioner.

-Versus-

Kazi Nasirul Alam and others.

----- Opposite parties.

Ms. Nusrat Yeasmin, Advocate

----- For the Applicant-Petitioner.

Mr. Gazi Md. Mamunur Rashid, Advocate with
Mr. Md. Amimul Ehsan, Advocate

----- For the opposite parties.

Heard On: 22.10.2025.

And

Judgment Delivered On: 27.10.2025.

Md. Toufiq Inam, J.

Upon granting leave, this Rule was issued calling upon the opposite parties to show cause as to why the Judgment and Order dated 27.07.2023 passed by the learned Additional District Judge, Court No. 5, Dhaka in Civil Revision No. 119 of 2022 affirming the order dated 30.05.2022 passed by the learned Senior Assistant Judge, Court No. 6, Dhaka in Title Suit No. 671 of 2021, rejecting the petitioner's application under Order I Rule 10 and Order XXII Rule 10(1) read with Section 151 of the Code of Civil Procedure, 1908,

should not be set aside, and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

The material facts, in short, are that the proforma opposite parties Nos. 4–7 along with one Manir Hossain Opu (since deceased) instituted Title Suit No. 211 of 2012 before the learned Joint District Judge, Court No. 4, Dhaka, seeking declaration of title and recovery of khas possession in respect of land measuring 0.488 ajutangsha as described in the schedule to the plaint. Subsequently, the said suit was transferred and renumbered as Title Suit No. 671 of 2021, now pending before the learned Senior Assistant Judge, Court No. 6, Dhaka.

During pendency of the said suit, on 03.02.2022, the plaintiffs transferred the suit property to the present petitioner, Kazi Atiqur Rahman, by a *Saf Kabala Deed* being No. 1451, registered at the Demra Sub-Registry Office. Based on that transfer, the petitioner filed an application before the trial Court on 20.03.2022 under Order I Rule 10 and Order XXII Rule 10(1) read with Section 151 of the Code, praying for substitution as plaintiff in place of the transferors. Notably, the original plaintiffs raised no objection to the said prayer.

Upon hearing, the learned Senior Assistant Judge, by Order No. 55 dated 30.05.2022, rejected the petitioner's application, holding that the alleged transfer did not confer any title or legal interest upon the petitioner to warrant substitution as plaintiff.

Being aggrieved, the petitioner preferred Civil Revision No. 119 of 2022 before the learned District Judge, Dhaka, which was subsequently transferred to the Court of the learned Additional District Judge, Court No. 5, Dhaka. The revisional Court, upon hearing, by Judgment and Order dated 27.07.2023, dismissed the revision observing that (i) the petitioner acquired no valid right or interest in the suit property, and (ii) the impugned order was not revisable under law. Hence, the present Rule before this Court.

Ms. Nusrat Yeasmin, learned Advocate appearing on behalf of the petitioner, submits that both the Courts below misconstrued the true import of Order XXII Rule 10(1) and Order I Rule 10 of the Code. She contends that once the plaintiffs had transferred their entire interest in the suit property to the petitioner by a registered deed, the petitioner, being a transferee *pendente lite*, became entitled to be substituted and to continue the suit in the same capacity as plaintiff. It is further argued that there was no injunction restraining alienation, and hence, the transfer cannot be branded void. She

submits that non-impleadment of the transferee would result in multiplicity of proceedings

Conversely, Mr. Gazi Md. Mamunur Rashid and Mr. Md. Amimul Ehsan, learned Advocates for the opposite parties, oppose the Rule, contending that the plaintiffs' title over the suit property is still under judicial scrutiny, and hence, the transferee cannot be permitted substitution until the plaintiffs' ownership is finally determined. They further submit that any transfer effected during pendency of the litigation is hit by Section 52 of the Transfer of Property Act, 1882 and confers no enforceable right. They also support the finding of the Courts below that an order refusing substitution is not revisable under Section 115 of the Code.

Having heard the learned Advocates and upon perusal of the impugned orders as well as the materials on record, it is evident from the admitted facts that the plaintiffs executed a registered *Saf Kabala Deed* in favour of the petitioner during the pendency of the suit. The execution and registration of the said deed have not been disputed by the transferors, nor is there any indication of any legal restraint or injunction having been issued to prohibit such transfer.

Order XXII Rule 10(1) of the Code provides that:

“In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person upon whom such interest has come or devolved.”

The intent of this provision is to bring before the Court the person in whom the real interest in the subject-matter of the litigation has vested, so that the adjudication may bind him and thereby avoid multiplicity of suits. The provision is not confined to cases of death of parties but extends to all forms of devolution, including voluntary transfer by act of parties.

Therefore, this court is of the view that the principle underlying Order XXII Rule 10 CPC is that the person who acquires the interest of a party in the subject-matter of litigation should, with leave, be allowed to prosecute or defend the suit, for otherwise the decision may not bind him. A transferee *pendente lite* may, with the leave of the Court, be impleaded as a party to the suit to protect his interest. The transferee does not acquire an independent right beyond the transferor, but he is entitled to come on record to ensure that the litigation is properly contested and that the decree ultimately passed binds him.

The reasoning adopted by the Courts below that unless and until the plaintiffs' ownership is judicially declared, they cannot effect a valid transfer is patently misconceived. A transfer *pendente lite* is not void; it merely remains subservient to the outcome of the litigation, as embodied in Section 52 of the Transfer of Property Act. The doctrine of *lis pendens* neither annuls the transfer nor renders it illegal; it only ensures that the transferee stands bound by the result of the pending suit.

Hence, the petitioner, being a bona fide transferee *pendente lite*, acquired a derivative interest in the property, subject to the final decision of the suit. To safeguard such interest and to avoid a multiplicity of litigation, his impleadment is not only permissible but also desirable in the ends of justice.

The revisional Court's further observation that the impugned order is not revisable is equally untenable. It is well settled that when a subordinate Court refuses substitution or impleadment by misapplying a legal provision, thereby acting with material irregularity and resulting in failure of justice, the High Court's revisional power under Section 115 CPC can certainly be invoked.

In the instant case, the petitioner has demonstrated a registered transfer in his favour, absence of any objection from the original plaintiffs, and no injunction restraining alienation. Since the original plaintiffs have divested themselves of their entire interest in the suit property, their incentive to prosecute the suit diligently is doubtful. In such circumstances, it is just and equitable that the petitioner be impleaded as co-plaintiff to ensure effective adjudication and to prevent future multiplicity of proceedings.

For the reasons discussed above, **the Rule is disposed of with directions.**

The learned Senior Assistant Judge, Court No. 6, Dhaka, is hereby directed to implead the petitioner as co-plaintiff in Title Suit No. 671 of 2021 and thereafter to dispose of the suit expeditiously, preferably within six (6) months from the date of receipt of this judgment.

The Judgment and Order dated 27.07.2023 passed by the learned Additional District Judge, Court No. 5, Dhaka in Civil Revision No. 119 of 2022, and the Order No. 55 dated 30.05.2022 passed by the learned Senior Assistant Judge, Court No. 6, Dhaka in the said suit, stand **set aside**.

The interim order of stay stands recalled and vacated.

There shall be **no order as to costs.**

Let a copy of this judgment be transmitted to the Court concerned forthwith for information and necessary compliance.

(Justice Md. Toufiq Inam)

Ashraf /ABO.