

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 2823 of 2024

Hossain Shahid Firoz

..... Petitioner

-Versus-

Md. Motalib Hossain and others

..... Opposite-Parties

Mr. A.N.M. Ashiqur Rahman Khan, Advocates
... For the Petitioner

Mr. Md. Sadekur Rahman, Advocate with

Mr. Mahabub-Ule-Islam, Advocate

... For the Opposite Party No. 1

Judgment on 22.07.2025

In this revision Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order No. 10 dated 12.03.2024 passed by the learned Joint District Judge and Arbitration Court, Dhaka in Title Suit No. 11 of 2023 (Previously Title Suit No. 515 of 2013) staying proceedings of Title Suit No. 11 of 2023 till disposal of Title Suit No. 123 of 2016 (Previously Title Suit No. 1945 of 2008) pending before the learned Joint District Judge, Arbitration Court, Dhaka 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 relevant for disposal of this Rule, in short, are that the opposite party No.1, as plaintiff, filed Title Suit No. 1945 of 2008 in

central filing before the District Judge, Dhaka which was renumbered as Title Suit No. 123 of 2016 on transfer to the court of Joint District Judge, Arbitration Court, Dhaka for hearing and disposal praying for decree of declaration in the following terms;

“(ক) বাদী নালিশী তপসিল বর্ণিত সম্পত্তির ১ যোল আনা মালিক মর্মে বাদীর পক্ষে এবং ১ নং মূল বিবাদীর বিরুদ্ধে এক ঘোষণা মূলক ডিক্রী দিতে;

(খ) যুগ্ম জেলা জজ (.সাব জজ) ২য় আদালতের দেওয়ানী মোকদ্দমা নং ২৮৮/১৯৮৫ এর বিগত ১৫/৭/১৯৯৩ইং তারিখের প্রচারিত একতরফা রায় ডিক্রী এবং উক্ত ডিক্রীর প্রেক্ষিতে মিরপুর সাব রেজিস্ট্রী অফিসে রেজিস্ট্রিকৃত সাফ কবলা দলিল যাহা বুক নং ১, ভলিয়ম নং ৮৪, পৃষ্ঠা নং-৭২ হইতে ৭৯ তে লিখিত দলিল নং ২৯৩৯ সন ১৯৯৭ইং, তঞ্চকী, যোগসাজসী পণপ্রবৃত্তি বিহিন, বে-আইনী এবং বাতিল মর্মে বাদীর পক্ষে এবং ১নং বিবাদীর বিরুদ্ধে এক ডিক্রী দিতে;”

Present petitioner, as defendant No. 1, appeared in suit filed written statement and in usual course contesting the suit. The suit ultimately reached at the stage of recording evidences and evidence P.Ws have become closed and D.Ws. continuing. At this stage, the defendant No. 1 along with 4 others filed Title Suit No. 515 of 2023 in the Court of Joint District Judge, 2nd Court, Dhaka against the opposite party No. 1 (plaintiff in Title Suit No. 123 of 2016) for decree of declaration in the following terms;

“(ক) নালিশী “ক” তফসিল বর্ণিত ১ যোল আনা জমির পরিমান-০.৩৭৫ বিঘাতে বাদী স্বত্বান, মালিক ও দখলকার মর্মে রায় ও ডিক্রী দিতে;

(খ) নালিশী “খ” তফসিল বর্ণিত জাল জালিয়াতির মাধ্যমে সৃষ্ট দলিল দুইটি রদ, রহিত ও বাতিল এবং বাদী পক্ষের উপর বাধ্যকর নয় মর্মে রায় ও ডিক্রি দিতে;

(গ) নামজারী জমাভাগ কেইস নং ১৪৭/০৬, তারিখ ৭/৩/০৬ইং বাতিল মর্মে রায় ও ডিক্রি দিতে;

(ঘ) নালিশী দলিল দুইটি বলে সৃষ্ট বিক্রয় চুক্তি, বিক্রয় অনুমতি ও বিক্রয় প্রস্তাব ইত্যাদি বাতিল মর্মে রায় ও ডিক্রি দিতে;

(ঙ) ২৩ নং মোকাবেলা বিবাদীকে নালিশী “খ” তফসিল বর্ণিত দলিল সমূহ মূল রেজিস্ট্রারে বাতিল করতঃ তা রেজিস্ট্রারে লিপিবদ্ধ করার নির্দেশাত্মক ডিক্রি দিতে;

(চ) ২০, ২১ ও ২২ নং মোকাবেলা বিবাদীগণকে ১নং মূল বিবাদী ও ২-৪নং মোকাবেলা বিবাদীগণের নামে সৃষ্ট সকল প্রকার রেকর্ড পর্চাদি, নামজারী বাতিল করতঃ সংশ্লিষ্ট নথিতে নোট লিপিবদ্ধ করার এক নির্দেশাত্মক ডিক্রি দিতে;

(ছ) ১৩-১৫ নং মোকাবেলা বিবাদী কর্তৃক নালিশী সম্পত্তি সংক্রান্তে গ্রহীত সকল পদক্ষেপ অবৈধ ও অকার্যকর এবং বাদীর উপর বাধ্যকর নয় মর্মে রায় ও ডিক্রি দিতে;”

After receipt of summon, the defendant No. 1 entered into appearance and filed an application under Section 10 of the Code of Civil Procedure praying for stay further proceeding of the suit till disposal of earlier Title Suit No. 123 of 2016 which is at the stage of final disposal.

Before hearing of the application under section 10 CPC, plaintiffs in Title Suit No. 11 of 2023 filed a Miscellaneous Case before the District Judge, Dhaka for withdrawing Title Suit No. 11 of 2023 from the court of Joint District Judge, 2nd Court and transfer the same to the court of Joint District Judge, Arbitration Court, Dhaka for analogous hearing with Title Suit No. 123 of 2016. Learned District Judge by its judgment and order dated 23.11.2023 allowed the application and transferred the Title Suit

No. 515 of 2023 (11 of 2023) to the Court of Joint District Judge, Arbitration Court, Dhaka for analogous hearing with Title Suit No. 123 of 2016. After receipt of record by the court concerned the defendant No. 1 took step for hearing application under Section 10 of the Code of Civil Procedure. The trial court after hearing allowed the application and stayed further proceeding of Title Suit No. 11 of 2023 till disposal of Title Suit No. 123 of 2016. At this juncture, the petitioner moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. A.N.M. Ashiqur Rahman Khan, learned Advocate appearing for the petitioner submits that earlier suit filed by opposite party No. 1 is not against all the plaintiffs in subsequent Title Suit No.11 of 2023. The property involve in both the suits though same but the reliefs sought for by the plaintiffs in Title Suit No. 123 of 2016 and Title Suit No. 11 of 2023 are totally different from each other and for determination of the dispute between the parties in two separate suits issues have to be framed differently, therefore, issues for disposal of both the suits are not same. In the event of staying further proceeding of subsequent Title Suit No. 11 of

2023 the reliefs prayed for by the plaintiffs will remain undecided affecting the legal right of the plaintiffs in Title Suit No. 11 of 2023.

He argued that when learned District Judge allowed the application under Section 24 of the Code, directing the trial court to hear and dispose of both the suits analogously, meaning thereby, the court should dispose of both the suits analogously by a single judgment, but the trial court defying the direction of the superior court took the matter of hearing application under Section 10 and most unfortunately stayed further proceeding of Title Suit No. 11 of 2023 till disposal of Title Suit No. 123 of 2016 filed by the opposite party No. 1, as plaintiff, in which the issues and the reliefs are not same, as such, the trial court has committed error of law in the decision occasioning failure of justice.

Mr. Md. Sadekur Rahman, learned Advocate appearing for the opposite party No. 1 submits that admittedly the suit property involve in both the suits are same, both in nature and quantum. The defendant in earlier suit is one of the plaintiffs in the instant suit, who by filing written statement did not disclose the fact that the property in question acquired by five brothers by way of inheritance but he claimed that the property owned by him solely.

He submits that the defendant No. 1 in Title Suit No. 123 of 2016 suppressed the fact of acquiring the property by all the heirs of Sabera Khatun, consequently, the plaintiff in Title Suit No. 123 of 2016 did not make the other heirs as defendants. He submits that Transfer Miscellaneous Case No. 591 of 2023 was filed by the petitioners for transfer of the Title Suit No. 515 of 2023 (11 of 2023) in which summon notices were not served upon the opposite party and without service of summon and in violation of provision of Section 24 the order was passed.

He submits that the defendant filed the application under Section 10 of the Code before filing miscellaneous case for transfer of the suit. The order whatever passed by the learned District Judge is an administrative order. However, after receipt of record in Title Suit No. 551 of 2023, the court renumbered the same as Title Suit No. 11 of 2023. Since an application under Section 10 of the Code of Civil Procedure remained pending for disposal, the trial court rightly took the matter for hearing and after hearing rightly observed that parties to the proceeding in both the suits are same, subject matter is same and the relief whatever sought for by the parties directly or indirectly related to each other, as such, in the event of disposal of earlier suit which attained maturity and waiting for

argument the matter in dispute between the parties can be finally settled, as such, the trial court by staying further proceeding of Title Suit No. 11 of 2023 has committed no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaints in Title Suit No. 123 of 2016 and 11 of 2023, application under Section 10 of the Code of Civil Procedure, judgment and order passed by the learned District Judge in Miscellaneous Case No. 591 of 2023 and judgment and order of the trial court.

It is fact that opposite party No. 1 Md. Motaleb Hossain, as plaintiff, filed Title Suit No. 123 of 2016 for declaration of title and for declaring an ex parte decree dated 15.07.1993 passed in Title Suit No. 288 of 1985 to be null and void. The petitioner No. 1 in the present Rule as defendant No. 1 appeared in suit, filed written statement and additional written statement. The suit is now at the stage of argument. When the suit reached at the stage of further hearing, the present petitioners filed another Title Suit No. 11 of 2023 for the self same property against the same party and without knowledge of the plaintiff in earlier suit got an order from

District Judge by filing Transfer Miscellaneous Case No. 591 of 2023 and got the subsequent Title Suit No. 11 of 2023 transferred to the same court for disposal of the same analogously with Title Suit No. 123 of 2016. Before transfer, the plaintiff in earlier suit as defendant No. 1 filed an application under Section 10 of the Code praying for stay further proceeding of Title Suit No. 11 of 2023 till disposal of earlier Title Suit No. 123 of 2016. The trial court after hearing by the impugned judgment and order dated 12.03.2024 allowed the application and stayed further proceeding of Title Suit No. 11 of 2023 till disposal of Title Suit No. 123 of 2016 holding that both the suits between the same parties, one filed in the year 2008 and another filed in the year 2023, issues and reliefs sought for are almost directly or indirectly same and also held that to avoid conflicting decision and speedy disposal of the suit, stayed further proceeding of Title Suit No. 11 of 2023, but the trial court ignored the order of the learned District Judge, transferring subsequent suit to the same court for analogous trial and disposal.

To appreciate the submissions of learned Advocates for both the parties and the observations of the trial court, I have gone through the complaints in Title Suit No. 123 of 2016 and Title Suit No. 11 of 2023, and

find that the prayers in both the suits are basically different from each other. Though the dispute between the parties relating to same property involved in both the suits. In Title Suit No. 123 of 2016, the plaintiffs sought for a declaration of title in the property and 2nd declaration against an ex parte decree dated 15.07.1993 passed in Title Suit No. 280 of 1985 and also a registered sale deed No. 2939 of 1997 executed and registered by the court pursuant to decree passed in Title Suit No. 288 of 1985. In Title Suit No. 11 of 2023, the plaintiff-petitioners prayed for a declaration of title in the suit property, 2nd declaration to the effect that the deed mentioned in schedule 'Kha' being number 5985 dated 31.10.2002 is forged and fabricated, not binding upon the plaintiff, 3rd declaration to the effect that mutation order dated 07.03.2006 passed in Mutation Case No. 147 of 2006 is illegal and other prayers ancillary to the principal prayers to the plaint. For determination of dispute between the parties issues framed in earlier Title Suit No. 123 of 2016 and to be framed in Title Suit No. 11 of 2023 normally should be different from each other. In earlier Title Suit No. 123 of 2016 there is no scope for declaring the deed of the plaintiff to be illegal or not binding upon the defendant, similarly the prayers made in Title Suit No. 11 of 2023 cannot be given in Title Suit No.

123 of 2016. It is true that after a long time of filing earlier suit in the year 2008, the petitioners, as plaintiff, filed Title Suit No. 11 of 2023 when earlier suit attained maturity and waiting for argument, however, when the learned District Judge transferred the subsequent suit with direction to dispose of the same analogously with the Title Suit No. 123 of 2016, the trial court ought to have heard both the suits giving a reasonable time to the plaintiff in Title Suit No. 123 of 2016 to file written statement and then framing issues and it will not take more time to dispose of both the suits analogously. Because of staying further proceeding of subsequent suit, the trial court instead of avoiding conflicting decision made a scope of multiplicity of judicial proceeding. If both the suits are tried analogously it could be disposed of by a single judgment and in the event of analogous trial more time will not be required as both the parties already adduced evidence in earlier suit and filed documents in support of their respective claim. Had the trial court took step for analogous hearing of both the suits as directed by the learned District Judge the matter in dispute could have been finally disposed of by this time.

Apart from this, the trial court cannot defy direction of the superior court, however, present opposite party if aggrieved by order of the learned

District Judge could have moved before the Higher Court against the order for analogous trial, but the trial court cannot avoid a direction given by the superior court. Moreover, I think that justice will be met and the purpose of the parties will be served if both the suits are tried analogously and dispose of by a single judgment. Therefore, I find that the trial court staying further proceedings in Title Suit No. 11 of 2023 has committed error of law in the decision occasioning failure of justice.

In the result, the Rule is made absolute, however, without any order as to costs.

Judgment and order of the trial court is hereby set aside. The trial court is hereby directed to dispose of both the suits analogously by a single judgment as per direction of the learned District Judge, giving opportunity to the opposite party i.e., plaintiff in Title Suit No. 123 of 2016 to file written statement within one month and thereafter by framing issues within 15 (fifteen) days and taking evidences of the parties, without allowing any unreasonable adjournment to the plaintiffs in Title Suit No. 11 of 2023 and dispose of both the suits within shortest possible time preferable within 04 (four) months.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned at once.

Md. Akteruzzaman Khan (B.O)