

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 596 of 2025

Md. Ataur Rahman and others

.....petitioners

-Versus-

Mamataz Begum and others

.....opposite parties

Mr. Prabir Halder, Advocate

.....for the petitioners

Mr. Chanchal Kumar, Advocate

.....for the opposite parties

**Heard on: 23.10.2025, 03.11.2025 and  
10.11.2025**

**Judgment on: 11.11.2025**

In the instant revision upon leave rule was issued on 23.02.2025 calling upon the opposite parties 1-11 to show cause as to why the judgment and order dated 28.01.2025 passed by the Additional District and Sessions Judge, 1<sup>st</sup> Court, Mymensingh in Civil Revision 15 of 2024 rejecting the revision thereby affirming the order dated 02.05.2024 passed by the Assistant Judge, Mymensingh passed in Partition Suit 83 of 2024 refusing to stay all further proceedings of Partition Decree Execution Case 14 of 2023 arising out of Partition Suit 50 of 2012 should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The petitioners as plaintiff filed the instant Title Suit 83 of 2024 for declaration of title and for setting aside the exparte decree passed in Title Suit 50 of 2012 filed for partition. After about four years the original Title Suit 50 of 2012 was decreed exparte in preliminary form on 09.02.2016 in respect of  $2.64\frac{1}{2}$  acres of land. After 7 years of such preliminary decree advocate commissioner filed report on 03.08.2023 and final decree was drawn up on 23.10.2023. Accordingly Decree Execution Case 14 of 2023 started. The present petitioners as plaintiff filed the instant Title Suit 83 of 2024 in the court of Senior Assistant Judge, Valuka for declaration of title in respect of .61 acres of land and also for cancellation of decree passed in Title Suit 50 of 2012 claiming their title on the basis of oral exchange amongst co-sharers. In the present suit the petitioners filed an application for staying all further proceedings of the Execution Case 14 of 2023 arising out of the Original Title Suit 50 of 2012. Trial court rejected the application for stay on 02.05.2024 for which the present petitioners preferred Civil Revision 15 of 2024 before the District Judge under section 115(2) of the Code of Civil Procedure along with an application for stay. On transfer the

revision was heard by Additional District Judge who was pleased to reject the same on 28.01.2025.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 28.01.2025 passed by the lower revisional court the petitioners came before this court with this revision under section 115(4) of the Code of Civil Procedure and obtained rule upon leave on 23.02.2025.

Mr. Prabir Halder, learned Senior Advocate appearing on behalf of the petitioners submits that both the courts below committed error of an important question of law resulting in an error in such order occasioning failure justice in rejecting the application for stay upon fanciful consideration. He further submits that the courts below failed to apply judicial mind and upon surmise and conjecture rejected the application for stay which cannot be sustained. He also submits that the revisional court without passing its independent finding wrongly relied upon the decision of the executing court thus the revisional court committed error of an important question of law occasioning failure of justice. He contends that the impugned judgment shall bring forth misery and complexity in resolving the dispute between the parties and shall cause multiplicity of

proceedings and for the sake of ends of justice he finally prays to allow the instant revision on humanitarian ground.

On the other hand Mr. Chanchal Kumar, learned Advocate appearing on behalf of the opposite parties submits that since plaintiffs 2 and 3 as defendants 4 and 5 of the original suit duly received summonses they have no *locus standi* to file the present suit seeking to impeach the decree passed in the suit for partition. He points out that the decree holder is entitled to enjoy the fruit of the decree and since the cause of action of the present suit is false the petitioners are not entitled to have any relief in the instant revision nor can they be permitted to deprive the opposite parties of their lawful entitlement. He finally prays that the rule having been issued at the instance of the plaintiff petitioners may kindly be discharged.

Heard the learned Advocates for both sides and gone through the judgments of the courts below and perused the materials on record as well as the revisional application with the documents appended thereto.

From perusal of the record it appears that the petitioners 2 and 3 along with others filed Title Suit 83 of 2024 for setting aside the exparte decree passed in Title Suit 50 of 2012 on the

ground that they had no knowledge about the decree passed in Title Suit 50 of 2012 which was made final on 23.10.2023 and execution case started after 11 years of the filing of the original suit. It was contended on behalf of the opposite parties that petitioners 2 and 3 were defendants 4 and 5 in the original suit upon whom summonses were duly served but they did not contest the suit. There is nothing adduced by the present petitioners to show that they had no knowledge of the earlier suit. Filing of Title Suit 83 of 2024 by the present petitioners thus becomes questionable on the plea of lack of no knowledge because knowledge of petitioners 2 and 3 is inseparably attributable to the other plaintiffs as they all having acted under the same cause of action. Furthermore the executing court found that petitioners 2 and 3 themselves signed and received the summons being defendants 4 and 5 in the original suit and this application for stay would only cause unnecessary delay in judicial proceedings. The revisional court upon detailed discussion supported the finding of the executing court and passed independent opinion that the decree holder should not be deprived from getting the fruits of the decree. In coming to its decision the revisional court also relied upon Javed Ali case reported in 55 DLR(AD) 64 in

which our Appellate Division held that when summonses are duly served and accepted by the trial court the decree holder should be allowed to enjoy the fruit of the decree and execution cannot be stayed on ground of filing subsequent suit.

Mr. Halder failed to show any error of an important question of law occasioning failure of justice.

Therefore I find no merit in this rule. Accordingly the rule is discharged.

Executing court is directed to proceed with the execution. Any reverse finding if passed in this judgment against the interest of any of the parties shall not bar the trial court from arriving at its own independent decision on merit while trying Title Suit 83 of 2024.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court.

Md. Ali Reza, J: