

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3559 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Mst. Zamana Khatun and others

... Opponent-Petitioners

-Versus-

Umme Kulsum and others

... Applicant-Opposite Parties

Mr. Md. Alamgir Mustafizur Rahman, Advocate with

Mr. Md. Akramul Haque, Advocate

... For the petitioners

Mr. Md. Aminul Ehsan, Advocate with

Mr. Md. Abdullah Al Rashel, Advocate

... For the Opposite Parties

Judgment on: 12.03.2026

Md. Riaz Uddin Khan, J-

The petitioner obtained this Rule challenging the judgment and order dated 02.07.2025 passed by the Additional District Judge, 3rd Court, Kishoregonj in Civil Revision No.06 of 2023 rejecting the revision and thereby affirming the judgment and order dated 23.11.2022 passed by the Assistant Judge, Tarail, Kishoregonj in Miscellaneous Suit No.04 of 2013 allowing the Miscellaneous Case along with the direction to hand over the possession of suit property to the applicants within 45 days should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule the operation of the order dated 23.11.2022 passed by the Assistant Judge, Tarail, Kishoregonj in Miscellaneous Suit No.04 of 2013 was stayed for a period of 06 (six) months which was extended lastly on 21.10.2025 till disposal of the Rule.

Succinct facts for disposal of this Rule are that the opposite parties as applicants filed Miscellaneous Case No.04 of 2013 in the court of Assistant Judge, Tarail, Kishoregonj impleading the present petitioner and others under Order-XXI, Rules-101 and 102 of the Code of Civil Procedure for getting back possession of the suit land by evicting the opposite party Nos.01-11 (petitioners) there-from which they got by virtue of decree dated 14.02.2012 passed in Other Class Suit No.09 of 2007. Thereafter, the preset opposite parties filed an application for investigation under Order-XXVI, Rule-9 of the Code of Civil Procedure to ascertaining the location of the SA plot Nos.188 and 189 which was allowed and the advocate commissioner on appointed by the court submitted the report of local investigation on 01.07.2013. The present petitioners raised objection against the said report whereupon the learned judge upon hearing refused to accept the report of advocate commissioner by order dated 30.03.2025. Thereafter, the opposite parties as petitioners challenging order dated 30.03.2015 filed Civil Revision No.33 of 2015 before the District Judge, Kishorganj which was ultimately heard by Additional District Judge, 1st Court, Kishorganj who allowed the revision vide Judgment and order dated 20.10.2020; challenging the same the opposite parties filed Civil Revision

No.4502 of 2017 before this Court and obtained Rule and after hearing the same, this Court disposed of the same along with a direction "in the miscellaneous case the parties will be at liberty to give evidence both oral and documentary and which will be considered by the Court as per law as the report of the advocate commissioner as above mentioned above" vide Judgment and Order dated 20.10.2020.

Before the trial court the applicant-opposite parties examined 3 (three) witnesses while the opponent-petitioners examined 1 (one) witness in support of their respective cases. The trial court upon consideration of the evidence on record allowed the miscellaneous case by his Judgment and Order dated 23.11.2022 against which the opponents preferred Civil Revision No.06 of 2023 before the District Judge, Kishorganj. The revision was heard by the Additional District Judge, 3rd Court, Kishorganj who upon hearing disallowed the revision vide his Judgment and Order dated 02.07.2025 by affirming the Judgment and Order dated 23.11.2022 passed by the Assistant Judge in Miscellaneous Case No. 04 of 2013.

Being aggrieved by and dissatisfied with the said judgment and order dated 02.07.2025 passed by the Additional District Judge, the opponents preferred this civil revision before this Court and obtained the Rule and stay as stated at the very outset.

Mr. Md. Alamgir Mustafizur Rahman with Mr. Md. Akramul Haque, the learned advocate appearing for the petitioners at the very outset submits that though the petitioners took several grounds in the revision application but he will argue only on law point of

maintainability. He submits that since admittedly the present opposite parties were allegedly dispossessed, did not claim the possession over the decretal property, the application under Rules-100 or 101 and 102 of Order-XXI of the Code of Civil Procedure is not maintainable. According to the learned advocate the above Rules is applicable in case, the person dispossessed from the decretal property who claims his possession on his own account or on account of some person other than the judgment debtor. In support of his contentions the learned advocate cited the case of Saleh Ahmed Vs. Md. Zakaria reported in 37 DLR 296 and some decisions from Indian jurisdiction in the case of Kanagasabhai Pathar vs. Poornathammal reported in AIR (34) 1947 Madras 458[C.N.247], the case of R.L. Mitra Vs. Smt. Minoti Mazumdar and another reported in AIR 1975 Allahabad 424 and the case of Bholanath Bondopadhyay Vs. Banarasilal Saraf and others reported in AIR 1961 Assam 79 (V 48 C 24).

On the other hand, Mr. Aminul Ehsan with Mr. Md. Abdullah Al Rashel, the learned advocate appearing for the opposite parties submits that the opposite parties were dispossessed from the land of SA plot No.189 in execution of the decretal land of SA plot No.188. The learned advocate submits that since the opposite parties were dispossessed from the property in execution of a decree he has rightly filed the application under Rule-101 and 102 of Order-XXI of the Code of Civil Procedure. In support of his contention the learned advocate also relied upon the decision reported in 37 DLR (supra) and further cited decision of the case of Abdul Kaiyum (Md) Vs. Krishnadhan Banik

being dead his heirs Bijan Kumar Banik and others reported in 49 DLR (AD) 140.

I have heard the learned advocates for both the parties, perused the application along with the annexures. I have also carefully examined the judgments and orders passed by the courts below.

The learned advocate petitioners before this Court does not deny that the opposite parties were dispossessed from SA plot No.189 but his only contention is that since plot No.189 was not in the decree, hence the opposite parties cannot come before the court under Rules-100 or 101 and 102. In that context we have to see whether the application of the present opposite parties under Order-XXI, Rule-100 or 101 and 102 of the Code of Civil Procedure was maintainable or not. Order-XXI, Rules-100 and 101 are in the following terms:

100. Dispossession by decree-holder or purchaser.

(1) Where any person other than the judgment-debtor is disposed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. (underline added).

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. *Bona fide* claimant to be restored to possession.

Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

From plain reading of Rule-100 it is apparent that this rule provides remedy for a 3rd party who is not a judgment debtor but has been dispossessed of immovable property in executing a decree. What he has to prove that he was in possession on the day of dispossession in execution of the decree. A court dealing with such an application under this rule is concerned only with the factum of possession, the nature of such possession, whether it was on his own account or on account of a person other than the judgment debtor and Rule-101 clearly states that where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property. Before applying Rule-101 the court has to fix a date for investigating the matter and has to summon all the parties against whom the application is made to appear and answer the same. Then the court is to take evidence both oral and documentary which is restricted to the question of possession only. In the present case it appears from the record that all these procedure have been followed by the trial court. Both the courts below have

concurrently found that the applicants were dispossessed from the property, which is immovable property, in execution of the decree, hence ordered that the applicants be put into possession. Sitting in a revision, I do not think it proper to interfere with the concurrent finding of facts by the courts below as there is no allegation/proof of misreading and/or non-consideration of evidence on record. However, the petitioners raised a question of law before this Court in this revision.

The only objection raised by the petitioners is that the application filed under Order-XXI, Rule-101 and 102 of the Code of Civil Procedure filed by the opposite parties as 3rd parties is not maintainable. Let me first examine the decision both the parties relied on as reported in 37 DLR (supra). In that case the decree holder as petitioner came before the Supreme Court, High Court Division calling in question an order passed by the Sub-ordinate Judge, 3rd Court, Chittagong in Miscellaneous Case No.47 of 1974 (order No. 126 dated 06.04.1978) directing the decree-holder to proceed with the execution case by determining the location of holding No.339 i.e. the suit property with further direction not to dispossess the 3rd party opposite party Md. Zakaria from holding No.339A in execution of the decree passed in Other Suit No.57/71 - 50/69. The Rule was made absolute by a Division Bench of the Supreme Court, High Court Division. In paragraph No.8 their lordships opined that-

8. In our opinion the remedy of the 3rd party is available in a separate suit and the principle of law decided in 29 DLR

(SC) 185 is applicable to the present case and the 3rd party may come to the picture in the execution case filed by a different person under Order 21, rule 100 of the Code of Civil Procedure after eviction. The inherent power u/s 151 of the Code of Civil Procedure cannot be invoked at the instance of 3rd party who is neither a party to the suit nor to the decree sought to be executed. Moreover, he admittedly does not claim any interest in the suit holding but in a different holding and questions the identity of the suit land and has filed the application in apprehension of being dispossessed from his land. His such apprehension may be a cause of action for a separate suit for permanent injunction. Admittedly, a separate suit had already been filed and a decree of permanent injunction has already been passed against the decree holder petitioner and so he cannot go to plot No. 339A. Mr A.K. M. Shafiqur Rahman submits that if without ascertaining the location of holding No.339 the decretal land, the decree-holder dispossesses the 3rd party opposite party from holding No. 339A identifying it to be holding no.339 then multiplicity of legal proceedings shall be cropped up and the learned court below rightly passed the impugned order which has not prejudiced the decree-

holder, rather it would prevent the multiplicity of legal proceedings and would settle all the disputes once and for all. We have already observed that the order of the executing court is harmless but every order must be passed with jurisdiction vested by law which is lacking in the present case. In this view of the matter the order cannot stand being passed without jurisdiction and is liable to be set aside. Before we part with the case we must observe that it is the duty of the executing court to give delivery of possession of the decretal property to the decree-holder and he may pass necessary order if he finds that the ascertainment of the suit property by local investigation is necessary in order to see that the decree of the court is correctly executed although he cannot pass such order on an application of a 3rd party who has no *locus standi* in law at this stage before being evicted. (underline added).

In the abovementioned case it appears that the opposite party as 3rd party filed the application under Order-XXI, Rule-100 on the apprehension that he may be dispossessed from plot No.339A instead of decretal plot No.339 and their lordships opined that “the 3rd party’s remedy is available in a separate suit”. In fact in that case the 3rd party earlier filed a suit for permanent injunction and obtained decree. Beside the

suit for permanent injunction he also filed the application under Rules-99 and 100 and in the given facts, this Court opined that the applicant came before the executing court on apprehension but not after eviction and their lordships further opined that “the 3rd party may come to the picture in the execution case filed by a different person under Order-XXI, Rule-100 of the Code of Civil Procedure after eviction.”

In the cited cases submitted by the learned advocate for the petitioners from different High Courts of Indian jurisdiction, it has been held that if 3rd party wants to maintain an application under Rule-100 he is to show that the dispossession complained of is the decretal property. I regret that I cannot agree with the opinion of those decisions in Indian jurisdiction. Because, the rule-100 does not say that the property is to be ‘decretal property’ rather says that dispossessed from immovable property ‘by the holder of a decree for the possession’. Moreover, in our jurisdiction the only cited reported case, 37 DLR(supra), upon which both the parties relied, clearly opined that the 3rd party can come before the court after eviction on filing an application under Rule-100 though remedy of the 3rd party is also available in separate suit. The alternative remedy, in my view, does not preclude the 3rd party to seek remedy under this rule-100. In the application filed under this Rule-100 what the 3rd party has to prove that he was in possession of immovable property on the day of dispossession in execution of the decree. The Court has to see whether the 3rd party on account of his own and

not from the judgment debtor was evicted from immovable property in execution of a decree.

Considering all the facts of the present case as stated above and the position of law, I am of the opinion, the courts below did not commit any wrong in passing the impugned judgments and orders. Before part with this judgment, I am also with the respectful agreement with the observation made in the reported case of 37 DLR (supra) that it is the duty of the executing court to give delivery of possession of the decretal property for the decree holder and he may pass necessary order if he finds that the ascertainment of the suit property by local investigation is necessary in order to see that the decree of court is correctly executed.

In the present case it appears from record that the application has been filed under Order-XXI, Rule-101 and 102 which should have been filed under Order-XXI, Rule-100 of the Code of Civil Procedure. However, misquotation of Rule will not hinder the remedy, the petitioners sought for, which they are entitled to.

I do not find any reason to interfere with the judgment and order passed by the courts below hence the Rule is **discharged**. However, there will be no order as to cost.

The order of stay passed earlier by this Court stands vacated.

Communicate the judgment and order at once.