

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1900 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Asmat Sana

...Plaintiff-Petitioner

-Versus-

Sree Rabindra Nath Sana and others

...Defendant-Opposite Parties

Mr. Mostafa Golam Kibria with

Ms. Ishrat Jahan Shabana, Advocates

...For the plaintiff-petitioner

Mr. Uzzal Bhowmick, with

Mr. Manoz Kumar Kirtania, Advocates

...For the Opposite Party No. 1

Judgment on: 11.12.2025

Md. Riaz Uddin Khan, J:-

Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 30.04.2024 passed by the District Judge, Satkhira in Civil Revision No. 38 of 2023 allowing the revision application and thereby setting aside the order dated 30.08.2023 passed by the Assistant Judge, Ashasuni, Satkhira in Title Suit No. 205 of 2023 rejecting the application for vacating the order dated 09.08.2023 staying all further proceeding of the final decree dated 20.11.2009 passed in Title Suit No. 10 of 1999 till disposal of the Title Suit No. 205 of 2023 should not be set aside and/or pass such

other or further order or orders as to this Court may deem fit and appropriate.

At the time of issuance of Rule the operation of the impugned judgment and order dated 30.04.2024 passed by the District Judge, Satkhira in Civil Revision No. 38 of 2023 was stayed for a period of 06 months.

The opposite party entered appearance by filing a counter affidavit.

Brief facts for disposal of this Rule is that the present petitioner as plaintiff filed Title Suit No. 205 of 2023 before the Court of Assistant Judge, Ashasuni, Satkhira, against the opposite party challenging the judgment and preliminary decree on compromise dated 27.02.2014 (decree signed on 06.03.2014) and final decree dated 20.11.2009 in Title Suit No. 10 of 1999.

The facts of the suit as made out in the plaint in a nutshell is that Nofil Uddin and others were the owner and possessor of the land of S.A. Khatian No. 60 of Chandibamandanga Mouza under Police Station Ashashuni, District-Satkhira and Nofil Uddin was owner of the land measuring 0.6381 acre out of 10.21 acre of S.A. Khatian No. 60; Nofil Uddin died leaving behind three sons Sahidul, Mahidul @ Bhatte, Ohidul, and 5 daughters Khadiza Khatoon, Joshna, Ghedi, Marufa and Selina and thus each son and each daughter of Nofil Uddin got 0.11 acre and 0.058 acre land respectively; thereafter Selina died leaving behind her husband, the plaintiff and only son Mamun as her heirs and thus the plaintiff got 0.0145 acre land and possess the same; on 11.11.2022 the plaintiff came to know from Md. Abdus Samad Molla and others that a Judgment and order dated

17.02.2014 and preliminary decree on compromise dated 06.03.2014 (Decree signed on 06.03.2014) and final decree dated 20.11.2019 in Title Suit No. 10 of 1999 in relation to suit land was obtained fraudulently by the defendants and after knowing the disputed decree he obtained a certified copy of the said decree on 13.11.2023; the plaintiff of Title Suit No. 10 of 1999 obtained the disputed decree on compromise by providing wrong address of the defendant (present plaintiff) and without serving the summons and notices properly upon him; the further case of the plaintiff is that the plaintiff of the Title Suit No. 10 of 1999 claimed the right and title in the suit land on the basis of CS khatian having no title as the land of CS Khatian was auction purchased by the predecessor of the plaintiff of the instant suit and as such the impugned compromised decree is not binding upon the plaintiff of the instant suit as it was obtained by practicing fraud upon court and hence the suit.

On 09.08.2023 the plaintiff filed an application under Order 21, Rule 29 along with section 151 of the Code of Civil Procedure to stay the further proceedings of final decree dated 20.11.2019 passed in Title Suit No. 10 of 1999 against which the defendant No. 1 filed written objection and upon hearing the trial court by his order dated 09.08.2023 allowed the application and thereby stayed all further proceedings of final decree dated 20.11.2019 passed in Title Suit No. 10 of 1999 till disposal of the Title Suit No. 205 of 2023.

Thereafter, on 20.08.2023 defendant No. 1 filed an application for vacating the order of stay dated 09.08.2023 passed by the Court of learned Assistant

Judge and after hearing the learned Assistant Judge by his order dated 30.08.2023 was pleased to reject the said application.

Against the said order dated 30.08.2023 the defendant No. 1 filed Civil Revision No. 38 of 2023 before the District Judge, Satkhira who upon hearing both the parties by his impugned Judgment and order dated 30.04.24 allowed the revision reversing the order of the Trial Court dated 30.08.2023.

Mr. Mostafa Golam Kibria along with Ms. Ishrat Jahan Shabana, the learned advocate appearing for the petitioner submits that the plaintiff though categorically mentioned in the plaint of Title Suit No. 205 of 2023 that the defendant No. 1 obtained a fraudulent decree on compromise in Title Suit No. 10 of 1999 compromising only with defendant No. 84 and though this plaintiff was made defendant No. 10 in the aforementioned suit but the address was wrong for which no summons was served upon him and by practicing fraud upon court the earlier decree in Title Suit No. 10 of 1999 was obtained. The learned advocate then submits that the present petitioner could not know about the earlier preliminary decree as well as the final decree but on 11.11.2022 came to know from Md. Abdus Samad Molla and others about the disputed decree passed in Title Suit No. 10 of 1999 in relation to suit land and the petitioner instituted the instant suit.

The learned advocate for the petitioner next submits that the trial court rightly stayed the operation of the disputed decree earlier obtained fraudulently by the defendant no.1 after considering the all aspect of the facts and circumstances of the

suit but the learned District Judge without considering the peculiar facts and circumstances of the present case allowed the revision setting aside the order of stay passed by the trial court. The learned advocate further submits that the petitioner is the owner of the suit property and he has every chance of success in the present suit who is enjoying his property peacefully having title and possession but on the fraudulent so-called compromised decree the defendant is now trying to dispossess him. Hence, an order of stay is required and this Court should interfere with the order passed by the learned District Judge.

Mr. Uzzal Bhowmick along with Mr. Manoz Kumar Kirtania, the learned advocate appearing for the opposite party no.1 submits that the learned District Judge by his judicious and well reasoned judgment and order dated 24.04.2024 rightly reversed the unsustainable order of the trial court dated 31.07.2023 refusing to vacating the order dated 09.08.2023. The learned advocate next submits that the judgment passed by the District Judge are base on established legal principle especially citing the cases reported in 1995 BLD (AD)347, 52 DLR (AD)33 and 1996 BLD 171. Citing those decisions the learned advocate submits that under Order 21, Rule 29 of the Code of Civil Procedure there is only scope for staying any execution case of earlier decree passed by the Court.

The learned advocate finally submits that the trial court lacked jurisdiction to grant any stay on the entre decree's efficacy under Order 21, Rule 29 of the Code of Civil Procedure since the final decree was passed and effected through amicable settlement and

since there was no execution case pending before any Court and as such the trial court committed error in staying the operation of the final decree.

I have heard the learned advocates for both the parties, perused the application along with annexures.

The moot question of this revision is that whether the Appellate Court was justified in vacating the order of stay passed by the trial court staying all further proceeding of the preliminary and final decree passed earlier in another suit. To deal with this question it would be profitable if we consider the Rule 29 of Order XXI of the Code of Civil Procedure, which read as under;-

“Stay of execution pending suit between decree-holder and judgment debtor- Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”

According to this provision if any person against whom a decree is passed (judgment debtor) institute any subsequent suit touching the merit of the decree passed earlier in another suit and if it is set for execution, the execution of decree can be stayed until the pending of the subsequent suit is decided.

In the instant case admittedly there is no execution proceeding pending before any court. The plaintiff petitioner filed the instant suit claiming share of a very small portion of the property which was

scheduled in the earlier suit in which a preliminary decree was passed and thereafter an Advocate commissioner was appointed and upon his report a final decree was drawn and as such the final decree was concluded. In such circumstances it cannot be said that any execution case was pending. Hence, the court below has no scope to stay further proceeding of the final decree passed earlier.

According to the learned advocate of the plaintiff petitioner that the final decree was obtained fraudulently through compromise only with one defendant being defendant No. 84 while 97 defendants were made parties in that earlier suit and by suppressing summons upon the present petitioner that compromise decree was obtained. The plaintiff petitioner is in possession of his claimed land and by the strength of the decree earlier drawn the present defendant is trying to dispossess the petitioner. The petitioner may have a case but not in the present application under Rule 29 of Order XXI of the Code of Civil Procedure.

I have already opined that the trial court has no jurisdiction to stay operation of the final decree since there is no execution case pending before it. If the petitioner as plaintiff can prove his case before the court after adducing and producing witness and evidence there is no bar to get a decree in the suit but since law does not provide under Order XXI, Rule 29 of the Code of Civil Procedure to stay any further proceeding when there is no execution case is pending, in my view, the instant Rule has no merit. Hence I am constrained to hold that the Rule should be discharged as devoid of merit.

In the result the Rule is **discharged**.

The order of stay earlier passed by this Court stands vacated. The trial court is at liberty to proceed with the suit.

Communicate the judgment and order at once.