

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 2101 of 2024

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Mofidul Islam and others

...Defendant-Petitioners

-Versus-

Mst. Sarvannessa and others

...Plaintiffs-Opposite Parties

Mr. Md. Akhtar-Ul-Alam, Advocate

...for the petitioners

Mr. Mohammad Monir Hossain, Advocate

...for the Opposite Party No. 1

Judgment on: 15.12.2025

Md. Riaz Uddin Khan, J-

Rule was issued upon an application under section 115(4) of the Code of Civil Procedure asking the opposite party No.1 to show cause as to why the order No.5 dated 18.10.2023 passed by the District Judge, Rangpur in Civil Revision No. 18 of 2023 staying the further proceeding of Decree Execution Case No. 04 of 2022 reversing the order dated 06.06.2023 passed in Other Class Suit No. 130 of 2023 under section 151 of the Code of Civil Procedure rejecting the prayer for stay of further proceeding of Decree Execution Case No. 04 of 2022 arising out of Other Class Suit No. 20 of 1989 passed by the Senior Assistant Judge, Mithapukur, Rangpur 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 this Court stayed operation of the order No. 5 dated 18.10.2023 passed by the District Judge, Rangpur in Civil Revision No. 18 of 2023 for a period of 06 (six) months which was extended time to time.

Brief facts for disposal of this Rule is that the opposite party No.1 Mst. Sarvannessa as plaintiff filed Other Class Suit No. 130 of 2023 (partition suit) on 02.03.2023 for declaration of title of .2375 acres of land in the schedule with a prayer for partition and for cancellation of the decree passed in Other Class Suit No. 20 of 1989 wherein she was not a party. The plaintiff claimed the title and possession over the above mentioned suit land from S.A recorded tenant Rahimonnessa by way of Hiba-bil-ewaj deed No.2356 dated 26.01.1981.

At one stage of the suit the plaintiff filed an application for stay of the decree Execution Case No. 04 of 2022 arising out of Other Class Suit No. 20 of 1989 under section 151 of the Code of Civil Procedure.

The present petitioner as defendant contested it by filing written objection. It may be mentioned here that initially the trial court stayed the proceeding of Execution Case but after hearing both the parties was pleased to vacate his earlier order. Against that order the plaintiff opposite party filed Civil Revision No.18 of 2023 before the District Judge who by his impugned order No. 5 dated 18.10.2023 was pleased to stay all further proceedings of the Execution Case No. 04 of 2022 on the finding that he was inclined to hear the

Civil Revision and if the proceeding is not stayed the Civil Revision would be in-fructuous.

Being aggrieved by and dissatisfied with the impugned order the defendant-respondent filed this civil revision under section 115(4) of the Code of Civil Procedure and obtained the Rule and order of stay as stated at the very outset.

Mr. Md. Akhtar-Ul-Alam the learned advocate appearing for the defendant-petitioner submits that the plaintiff-opposite party has no right to file any application under Order 21 Rule 29 of the Code of Civil Procedure as she admittedly was not a party to the earlier suit and decree. It is only the judgment debtor who can file such application for stay execution of the earlier decree. In support of his submission Mr. Alam cited several decisions, the case of Md. Faruque Reza and another Vs Mst. Hossena Ara Begum and others reported in 13 MLR (AD) 14; the case of Abul Bashir and others Vs Prafulla Kumar Das and others reported in 56 DLR (AD) 139.

The learned advocate then submits that when there is a clear provision under Order 21 the application under section 151 of the Code of Civil Procedure for invoking inherent jurisdiction is not maintainable. In support of his submission he cited decisions of Aftab Ahmed Vs Moinuddin Zaigirdar and others reported in 46 DLR 173, the case of Jamil Akhter Vs Khurshed Anwar and another reported in 16 BLD (AD) 171, the case of Bangladesh Shilpa Bank Vs Bangladesh Hotels Ltd reported in 38 DLR (AD) 70 and the case of Nasir Ahmed Vs Habibar Rahman Mia and others reported in 7 DLR (FC) 192.

The learned advocate further submits that in earlier Suit no.20 of 1989 the present plaintiff's husband was made party as defendant no.2 who contested the suit by filing written statement wherein he mentioned about the present Hiba-bi-ewaj deed no.2356 dated 26.01.1981 and after considering all the evidence on record the trial court decreed the suit which was upheld up to the Supreme Court, both High Court Division and Appellate Division and the present suit claiming on same contention is not maintainable and when the suit itself is not maintainable, the plaintiff is not entitled to get any interim relief.

Per contra, Mr. Mohammad Monir Hossain, the learned advocate appearing for the plaintiff-opposite party No.1 submits that it is admitted position that the present plaintiff Sarvannessa was not made party in the earlier suit no.20 of 1989 and as such was not the judgment debtor of that decree. The plaintiff filed the instant suit for title and partition claiming specific portion of property which she got from the S.A recorded tenant Rahimonnessa in the year 1981. It is true that the decree passed in Suit no.20 of 1989 was upheld up to the Appellate Division but nowhere in the trial court, appellate court or Supreme Court (both in High Court Division and Appellate Division) the said deed of gift by which the plaintiff claimed property has been considered/discussed in any of those judgments. Since the present plaintiff was not party in that earlier suit she could not produce or adduce any witness or document before the court in the earlier suit. It is true that her husband was made party in that suit but the present plaintiff filed the instant suit claiming

her specific portion of the suit property on the strength of herself not by her husband.

The learned advocate passionately submits that it is settled law that if any 3rd party can prove his/her case prima-facie to show that he/she is the owner of any land which has been decreed in earlier suit, his/her suit is very much maintainable and (s)he cannot be dispossessed by that decree passed earlier where she was not party. In support of his submission the learned advocate cited decision of Rasib Ali (Md) Vs Moniruzzaman Chowdhury and others reported in 17 BLC 459.

The learned advocate lastly submits that the provision of Order XXI Rule 29 is not applicable for 3rd party rather it is only applicable for the judgment debtor and as such finding no other alternative the plaintiff filed application under section 151 of the Code of Civil Procedure to invoke inherent power of the Court to secure ends of justice which is not only maintainable but also appropriate in the present case.

I have heard the learned advocates of both the parties, perused the application along with the annexures and impugned orders passed by the courts below.

It appears from the order of the trial court that the opposite party No. 1 as plaintiff filed an application under section 151 of the Code of Civil Procedure for staying the decree Execution Case No. 04 of 2022 arising out of the Other Class Suit No. 20 of 1989 against which she filed the instant suit. The plaintiff claimed .2375 acres of land from the plot No. 1609 of the scheduled suit property. The trial court

though at first allowed the prayer but ultimately vacated the same on the contention that the plaintiff has no prima-facie title and possession of the suit property. It further appears from the impugned order passed by the first revisional court that the learned District Judge admitted the Civil Revision and by the impugned order stayed the further proceedings of Decree Execution Case No.04 of 2022 on the contention that the plaintiff petitioner filed the Civil Revision which has been admitted and if the proceeding is not stayed the civil revision would be in-fructuous.

At this stage of the case sitting in an interlocutory civil revision under section 115(4) of the Code of Civil Procedure I am not inclined to make any comment touching the merit of the case which may prejudice the either party in the ultimate trial except those, which are necessary for disposal of the instant Rule.

I have carefully scrutinized the earlier judgment passed by the trial court in Other Class Suit No. 20 of 1989 and the judgment of the Appellate Court passed in Other Class Appeal No.77 of 1998. I have also read the judgment passed in civil revision no.1360 of 2001 by the High Court Division and the judgment passed by the Appellate Division in Civil Petition for Leave to Appeal No.1642 of 2007. It appears from the judgment of the trial court that though in the written statement the husband of the present plaintiff stated about the deed of gift of the present plaintiff (deed no.2356 dated 26.01.1981) but the trial court did not discuss anything about that deed. That was not also considered by the appellate court or the revisional court of the

High Court Division or it was also not considered by the Appellate Division. In fact, there was no scope to consider that deed of gift because of the present plaintiff was not made party to that suit and that deed was not produced before the court to be marked as exhibit. Be that as it may, on examination of plaint of the present suit it appears that the plaintiff claimed title and possession of the suit property as a third party claimant by her own account. If she is in possession, as she claimed, she cannot be dispossessed in execution of a decree where she was not a party. Whether the plaintiff has any title in the suit land at all is a matter of trial. In the case of MA Salek (Salauddin) Vs Sree Sree Kripa Maya Kali Mata and others reported in 7 BLT (AD) 29 an execution case was stayed by the executing court at the instance of 3rd party claimant and said stay order was ultimately upheld by the Supreme Court, Appellate Division. In the case of Abdul Hakim (Md) being dead his heirs M Mashukul Alam and others Vs Ganendra Nath Basu Roy being dead his heirs Debendra Nath Basu Roy and others reported in 47 DLR (AD) 95 their lordships observed: *“The High Court Division has rightly held that rule 29 of Order 21 applies only in the case of a person who challenges decree under execution in a subsequent suit, which is not the case here.”* This observation matches the case of the present petitioner that her application under section 151 of the Code of Civil Procedure is maintainable. However, in the facts and circumstances of the present case, I am of the view, that the learned District Judge admitting the civil revision passed the impugned order staying the proceeding of execution case

till hearing of the civil revision is a reasonable order. Because in the revision he is to examine the propriety or correctness of the order passed by the trial court.

The learned advocates of both the parties informed this Court that the civil revision filed before the District Judge is still pending. In such facts and circumstances of the case, I am of the opinion, justice would be met, if the proceeding of execution case is stayed as passed by the learned District Judge till disposal of the civil revision pending before it. In such view of the matter, the further proceeding of Decree Execution Case No. 04 of 2022 be stayed till disposal of the civil revision and the learned District Judge, Rangpur is directed to dispose of the Civil Revision No.18 of 2023 expeditiously as early as possible. With this observation the **Rule is disposed of.**

The order of stay granted earlier by this court stands vacated.

Communicate the judgment and order at once.