

**Present:**  
**Mr. Justice Md. Salim**

**CIVIL REVISION NO.4994 of 2011**

Most. Nilufa Begum  
..... *Plaintiff-Petitioner.*

-VERSUS-

Md. Alamgir Pramanik and another  
.....*Defendant=Opposite parties.*

No one appears  
----- For both the parties.

**Heard and Judgment on 25.05.2023.**

This revision by leave is directed against against the judgment and order dated 27.09.2011 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Bogra in Civil Revision No.23 of 2010 allowing the revision and reversing the judgment and order dated 10.02.2010 passed by the learned Senior Assistant Judge, 1<sup>st</sup> Court, Bogra in Partition Suit No.90 of 2002 rejecting the application for stay of execution case and proceeding of a partition suit..

Facts, in a nutshell, are that the present petitioner as plaintiff filed a Partition Suit No.90 of 2002 before the learned Senior Assistant Judge, 1<sup>st</sup> Court, Bogra against the defendant-opposite party and others. Subsequently, the Suit was dismissed on ex-parte. Being aggrieved by and dissatisfied with the dismissal order of the Suit the plaintiff as

appellant preferred an appeal before the District Judge, Bogra bearing Title Appeal No.52 of 2003. On transfer, the appeal was heard by the 1st Joint District Judge, Bogra, and thereby allowed the appeal by decreeing the partition suit. Thereafter, the opposite party herein after having known about the Judgment filed Other Class Suit NO.246 of 2009 before the 1<sup>st</sup> Joint District Judge, Bogra challenged the Judgment of the partition Suit along with seeking to set aside the said Judgment which is now pending for hearing. On the other hand, based on the said Judgment of the partition Suit the petitioner herein filed an execution case and applied for the appointment of an Advocate Commissioner, and accordingly the court below appointed the Advocate Commissioner who issued notice to the opposite party for allotment of the Decreed land by fixing a date on 11.02.2010. Thereafter, the opposite party applied to the 1<sup>st</sup> Senior Assistant Judge, Bogra for staying the further proceeding of the partition Suit recalling the writ of the Commissioner which was issued upon him. Eventually, the said application was rejected on 10.02.2010 by the learned 1<sup>st</sup> Senior Assistant Judge, Bogra.

Being aggrieved by and dissatisfied with the aforesaid rejection order dated 10.02.2010 the opposite herein as petitioner instituted Civil Revision No.23 of 2010 before the District Judge, Bogra. On transfer, 2<sup>nd</sup> Additional District

Judge, Bogra by the judgment and order dated 27.09.2011 allowed the Civil Revision and stayed the further proceedings of the Partition Suit No.90 of 2002 and also stayed the execution case till disposal of the Other Class Suit No.246 of 2009.

Being aggrieved by and dissatisfied with the judgment and order dated 27.09.2011 passed by the 2<sup>nd</sup> Additional District Judge, Bogra, the plaintiff petitioner moved this Civil Revision before this court and obtained the present Rule and stayed of the impugned Judgment and order.

Despite the matter appearing on the cause list, no one feels to appear on behalf of the petitioner to press the Rule. However, I am inclined to dispose of the Rule on merit.

I have perused the impugned judgment and order, annexures, and other materials on record. It appears from the records that the Other Class Suit No.246 of 2009 which has been filed by the opposite party as judgment debtor challenging the judgment and decree of the partition suit is still pending for hearing. So in the above circumstances if the proceeding of the Execution case proceeds and ends by allotment of the Decreed land the Judgment debtor will suffer irreparable loss and injury. Because of the above, it appears to me that the proceedings of the Execution case should be

stayed as per the provision so enumerated in Order 21 Rule 29 of the Code of Civil Procedure.

On the above discussions and reasons, it appears to me that the learned 2<sup>nd</sup> Additional District Judge very rightly and exhaustively considered the facts and circumstances of the case and passed the impugned Judgment. So the conclusion reached by the Revisional Court below cannot be said that those suffer from patent illegality, legal infirmity, and flagrant error of law warranting any interference in the exercise of this Court in Civil Revisional Jurisdiction under Section 115(4) of the Code of Civil Procedure and thus the Rule has no merit.

Resultantly, the Rule is discharged without any order as to cost. The impugned judgment and order dated 27.09.2011 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Bogra in Civil Revision No.23 of 2010 is hereby affirmed.

Let the order stay passed by this Court is hereby vacated.

Communicate this judgment.

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**(Md. Salim, J).**