

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo  
and  
Mr. Justice Mohi Uddin Shamim

**Civil Revision No. 2628 of 2006**

In the matter of:

An application under Section 115 (1) of the Code of  
Civil Procedure.

AND

In the matter of:

1. Abdus Samad and others

.... Plaintiffs-appellants-petitioners

-Versus-

1. Mahfuzur Rahman Mamun

.... Defendant-respondent-opposite-party

2. Lilifa

.... Proforma-opposite party

Mr. Md. Abdul Mazid Mollah, Advocate

..... For the plaintiffs-appellants-petitioners

Mr. Md. Zahurul Islam Mukul, Advocate

... For the defendant-respondent-opposite party No.1

Heard on 12 January, 2025 &

Judgment on 21 January, 2025

Mohi Uddin Shamim, J.

At the instance of the plaintiffs-appellants-petitioners, this Rule  
was issued calling upon the opposite parties to show cause as to why the

impugned judgment and order dated 28.06.2005 passed by the learned Additional District Judge, Joypurhat in Miscellaneous Appeal No.5 of 2003 dismissing the appeal with a compensatory cost of taka 500/- and thereby affirming the judgment and order dated 23.02.2003 passed by the learned Joint District Judge, 1st Court, Joypurhat in Violation Miscellaneous Case No.13 of 1998, dismissing the case, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court stayed payment of the said compensatory cost of taka 500/- passed by the learned Additional District Judge, Joypurhat in Miscellaneous Appeal No.5 of 2003 till disposal of the rule.

It is evident from the record that the petitioner no.1 was died and the learned advocate took several adjournments since 29.06.2021 for substitution of the heirs of the deceased petitioner no.1; since then, neither did he file any application in that regard, nor were the heirs of petitioner no.1 substituted until 12.01.2025. Finally, on the day, i.e. 12.01.2025, the learned advocate for the petitioners orally submits that he had informed the heirs of the deceased petitioner no.1 and talked to

them about the matters, but they showed no interest in the same. In such a situation, we have no option but to dispose of the Civil Revision Application on its merits without substituting the heirs of petitioner no.1, since the application is an old pending one from 2006.

Facts necessary for disposal of the Rule, in short, are that the present petitioners, as plaintiffs, instituted Partition Suit No.33 of 1991 in the Court of learned Subordinate Judge, 1<sup>st</sup> Court, Joypurhat, impleading the opposite parties and others as defendants for partition of the suit land, stating, inter alia, that they own and possess the suit land by inheritance and that their names were recorded in the C.S. Khatian. Subsequently, the plaintiff petitioners filed an application under Order XXXIX, Rule 1 read with Section 151 of the Code of Civil Procedure for a temporary injunction.

The application had been contested by the defendants filing a written objection. The said injunction application was heard and ultimately, on 05.02.1998, the learned Subordinate Judge, 1<sup>st</sup> Court, Joypurhat, passed a direction upon the parties to maintain status quo in respect of position and possession of the suit land and not to undertake

any construction work on the same land until further order, instead of granting a temporary injunction.

Thereafter, the plaintiff petitioners on 24.03.1998 filed a Violation Miscellaneous Case No.13 of 1998 under Order XXXIX, Rule 2(3) of the Code of Civil Procedure against the defendant-opposite party, alleging, inter alia, that the defendant-opposite party violated the order of status quo granted earlier by the Court on 05.02.1998. The opposite party contested the case by filing a written statement denying the material averments made in the plaint by the plaintiffs. On 19.04.1999, the learned Subordinate Judge, 1st Court, Joypurhat dismissed the said violation case since the plaintiff petitioners didn't take any step for hearing the matter.

Thereafter, the plaintiff petitioners filed Miscellaneous Case No.21 of 1999 before the same Court with a prayer for restoration of the said Violation Case No.13 of 1998, under Order IX, Rule 9 of the CPC, which was allowed on 30.04.2000 with cost of tk. 500/-.

After restoration, the said Miscellaneous Case No.13 of 1998 was heard by the learned Joint District Judge, 1st Court, Joypurhat who after hearing the parties, examining the witnesses and perusing the evidences

dismissed the case having found no violation by his order dated 23.02.2003.

Challenging the said judgment and order dated 23.02.2003, the plaintiffs' petitioners filed Violation Miscellaneous Appeal No.5 of 2003, which was heard by the learned Additional District Judge, Joypurhat dismissed the appeal with a compensatory cost of Tk. 500/- and, thereby affirmed the judgment of the Trial Court in Miscellaneous Violation Case No. 13 of 1998 dated 23.02.2003 by his judgment and order dated 28.06.2005.

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 28.06.2005, the petitioners preferred this revision application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

The opposite party No.1 filed a counter affidavit to oppose the Rule, stating, inter alia, that petitioner no.1 along with others, instituted Other Class Suit No.161 of 1988 before the learned Assistant Judge, Joypurhat, praying for a permanent injunction over the suit property/suit land against the predecessors of this opposite party and others; and knowing about the said suit, the predecessors of the opposite parties, as

plaintiffs, instituted Title Suit No.245 of 1988 in the same Court against the present petitioners for a declaration of title over the suit land.

Both suits were heard together by the learned Assistant Judge, Joypurhat and after hearing the parties, he was pleased to dismiss the Other Class Suit No.161 of 1988 and decreed the Title Suit No.245 of 1988 on 17.10.1990.

Being aggrieved by the aforementioned judgment, the present petitioners as appellants filed Title Appeal Nos.59 and 60 of 1990 before the learned District Judge, Joypurhat and those appeals were heard by the learned Subordinate Judge, 1st Court, Joypurhat, who, by his judgment and decree dated 17.09.1994, allowed the appeal by reversing the judgment and decree dated 17.10.1990 of the trial Court; thereby, Other Class Suit No.161 of 1988 was decreed and Title Suit No.245 of 1988 was dismissed.

Challenging the said judgment and decree dated 17.09.1994, the predecessors of the opposite parties filed Civil Revision Nos.27 of 1995 and 28 of 1995 before this Court and obtained the rules and the order of status quo with respect to the position and possession of the suit land.

The rules in Civil Revision Nos.27 of 1995 and 28 of 1995 were heard together and both rules were made absolute on 12.08.2018, thereby setting aside the judgment and decree of the Court of Appeal below by affirming the judgment and decree of the trial Court.

Just after pronouncement of the judgment and decree of the trial Court in Other Class Suit No.161 of 1988 and Title Suit No.245 of 1988 dated 17.10.1990, the petitioner instituted Partition Suit No.33 of 1991 before the learned Subordinate Judge, 1st Court, Joypurhat, and prayed for partition of the suit land, including the suit land of Title Suit No.245 of 1988, impleading the opposite parties as defendant No.10 along with others. And when an order of status quo had been passed by the Hon'ble High Court Division in Civil Revision Nos.27 of 1995 and 28 of 1995 and was in force, the plaintiff petitioners filed an application for a temporary injunction against this opposite party and others before the learned Subordinate Judge, 1st Court, Joypurhat in Partition Suit No.33 of 1991 and obtained an order of status quo with respect to the position and possession of the suit land dated 05.02.1998.

Mr. Md. Abdul Mazid Mollah, the learned Advocate, appears on behalf of the petitioners, takes us through the impugned judgment, the

judgment of the trial Court, and all other connected materials available on record, and submits that both the courts below committed an error of law resulting in an error in the decision, occasioning failure of justice. He further submits that the opposite party No.1 did not show any permission from Joypurhat Purashava, so he illegally vacated the status quo order of the learned Judge of the trial Court. He next submits that both the courts below did not consider that the opposite party No.1 violated the order of status quo. He finally prays for making the Rule absolute.

Mr. Md. Zahurul Islam Mukul, the learned Advocate appears for the opposite party No.1 contested the case by filing a counter affidavit submits that, since both the courts below, after discussing and appreciating all the documentary evidence and materials on record dismissed the case and appeal, the Rule may kindly be discharged. He further submits that since Other Class Suit No.161 of 1988 filed by the plaintiff petitioners praying for a permanent injunction was dismissed and the same was affirmed in Civil Revision No.27 of 1995, and since Title Suit No.245 of 1988, praying that the suit land be mutated in the names from the predecessor in interest and that rent be paid until the



current year for title over the suit land was decreed and the same has been affirmed by the lower court not only has this opposite party possessed the instant suit land, but they have also mutated their names and are paying rent and taxes, he finally prays that the Rule may kindly be discharged.

Heard the learned Advocates for the contending parties, perused the judgments of the courts below, the revision application and all other connected materials available in record, and the counter affidavit submitted by the opposite party No.1.

Upon careful examination, it is found that the petitioners have raised concerns regarding the alleged error of law by the lower courts, particularly the vacated status quo order and the purported violation of said order by the opposite party No.1. Despite the petitioners' arguments, it is evident from the record that both the courts below have meticulously reviewed all evidences and have arrived at their respective conclusions that no violation has been proved based on sound legal principles. No misreading or non-reading of material facts or evidence or any consequent error of law is found in the judgments. A prayer for remand by the present petitioner was also negated in the judgment of the

appellate Court. The opposite parties' title and possession have further been corroborated by the opposite party's continuous possession of the suit land and payment of rent and taxes.

Given the comprehensive examination of the case by the lower courts and the lack of substantial new evidence or convincing arguments to overturn these findings, this Court finds no merit in the present revision application. Consequently, the **Rule is discharged**, and thereby upholding the judgment and order of the Appellate Court in Miscellaneous Appeal No.5 of 2003 **except for order regarding the payment of the compensatory cost of taka 500.**

The order of stay granted at the time of issuance of the Rule upon the payment of the compensatory cost is hereby recalled and vacated.

Let a copy of this judgment along with the lower Court records be communicated to the Court concerned forthwith.

Kazi Md. Ejarul Haque Akondo, J.

I agree.