

Present:
Mr. Justice Md. Iqbal Kabir
Civil Revision No. 4680 of 2006

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Ahmed Ali and others
....Petitioners

Versus
Abdul Awal and others
....Opposite Parties

No one appears
....For both parties

Judgment on 09.12.2025

At the instance of the plaintiffs-petitioners, this Rule was issued in the following terms:

“Let a Rule be issued calling upon the opposite parties to show cause as to why the order of rejection the petition under order 26 Rule 9 of the Code of Civil Procedure dated 10.10.2006 passed by the learned Additional District and Sessions Judge, Court No. 8, Dhaka should not be set aside and/pr such other or further order or orders passed as to this Court may seem fit and proper.”

Short facts stated in the Rule are that the petitioners as plaintiffs filed a declaratory suit, being No. 19 of 2006, before the Joint District Judge, 5th Court, Dhaka, against the defendant-opposite party.

The plaintiff is alleging that the land in question belonged to the C.S owner; however, the defendant-opposite party instituted a partition suit, being Partition Suit No. 113 of 1991, which was disposed of by an ex parte decree. Subsequently, the said ex parte decree was set aside by the Apex Court in Civil Appeal No. 69 of 2003 by the judgment and order dated 21.03.2005. As a result, the partition suit has been restored and is presently pending for disposal before the Court of Joint District Judge, 2nd Court, Dhaka. During the subsistence of the said exparte decree, the defendant–opposite party, with a malafide intention, instituted Permanent Injunction Suit No. 53 of 1994 by describing the schedule of property purportedly obtained under the exparte decree and obtained a judgment and decree for permanent injunction on 30.03.1995. The exparte decree passed in partition suit No. 113 of 1991 has been set aside by the Apex Court and the partition suit is now pending. The

judgment and decree passed in Suit No. 53 of 1994 for permanent injunction have lost its legal efficacy and are not binding upon the plaintiff.

However, after filing the suit, the plaintiff-petitioner filed an application under section 151 of the Code of Civil Procedure for a stay of the order dated 30.03.1995 passed in Title Suit No. 53 of 1994 for permanent injunction.

It appears that the learned trial Court rejected the application vide its order dated 27.02.2006, and being aggrieved by the order, the plaintiff petitioners filed Civil Revision No. 105 of 2006 before the District Judge, which was transferred to the learned Additional District and Session Judge, Court No. 8, Dhaka, for trial and disposal.

It appears that after filling the Civil Revision, the plaintiff petitioner filed an application dated 13.03.2006 for a stay of the order of permanent injunction passed in Title Suit No. 53 of 1994. However, the learned Revisional Court, upon hearing the application filed under Order XXVI Rule 9 of the Code of Civil Procedure, was pleased to reject the same by order dated 10.10.2006 without considering the legality of the matter and without assigning any reason therefore.

Being aggrieved by and dissatisfied with the impugned order, the petitioners filed the instant civil revision and obtained the Rule and stay.

No one appears to press the Rule.

However, the record shows that the petitioner, challenging the order dated 10.10.2006 passed in Civil Revision No. 105 of 2006, brought this civil revision in the year 2006. By this time, 20 (twenty) years have elapsed. No one took appropriate initiative for its disposal, and no one also apprised this Court about the present position of the original suit. Since this is a long-pending Rule, there is no reason to make it pending for an unlimited period.

In the above context, it is pertinent to note that in the present revision, this Court found that the petitioners took several grounds from which it appears that the subject matter of the original suit relates to a claim for permanent injunction concerning the scheduled property, which was neither inherited nor possessed by the defendant-opposite party. In this context, for proper adjudication of the Civil Revision as well as the original suit requires a clear determination of the identity, possession, and status of the scheduled land. Therefore, for the above noted purpose, the appointment of an advocate commissioner was essential to ascertain the factual position on the spot and to place the true state of affairs before the trial Court. From the alleged perspective, the plaintiff-petitioner filed an application under Order XXVI Rule 9 of the Code of Civil Procedure.

It is pertinent to note that an injunction order has been passed in respect of a scheduled land which was not specifically identified or demarcated. Therefore, to remove such ambiguity, the plaintiff-petitioner had prayed before the Court for the appointment of an advocate commissioner to specifically identify, demarcate, and point out the exact area of land allegedly possessed and claimed by both the plaintiff-petitioner and the defendant-opposite party.

The record shows that the Revisional Court without determining the identity and location of the disputed land passed the impugned order, thereby failed to consider and adjudicate vital issue and passed the impugned order. As such, the learned Court committed an illegality apparent on the face of the record, resulting in an erroneous decision and thereby occasioning failure of justice.

Further, the evaluation of the evidence and documents by the learned Revisional Court is erroneous and inconsistent with the settled principles of law, as well as the facts and circumstances of the case. Consequently, the impugned order cannot be sustained in the eye of the law and is liable to be set aside. The Court below, without proper application of its judicial mind and without assigning any cogent reasons, passed the impugned order dated 10.10.2006.

In view of the above, the Rule is made absolute.

The impugned order dated 10.10.2006 passed by the learned Additional District and Sessions Judge, Court No. 8, Dhaka is hereby set aside.

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

The Court below is directed to dispose of the original suit (if any) as soon as possible, preferably within 6(six) months from the date of receipt of this judgment and order, if it has not already been disposed of.

Let a copy of this judgment be communicated to the Court concerned forthwith.