

Present:-***Mr. Justice Mahmudul Hoque*****Civil Revision No.991 of 2004**

Rezia Begum and others

... Petitioners

-Versus-

Bazal Ahmed Chowdhury being dead his
legal heirs; 1(a) Mosammat Ruksana
Begum Chowdhury and others

... Opposite- parties

Mr. Abdul Momen Chowdhury, Advocate

...For the petitioners

Ms. Shahanaj Akther, Advocate for

Mr. Kamal-ul-Alam, Senior Advocate

...For the opposite-party Nos.1-4.

Judgment on 11th August, 2025.

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and order dated 16.02.1998 passed by the learned Additional District Judge, 1st Court, Chattogram in Miscellaneous Appeal No.133 of 1989 disallowing the appeal and thereby affirming the judgment and order dated 02.03.1989 passed by the learned Sub-ordinate Judge (now Joint District Judge), 2nd Court, Chattogram in Other Suit No.184 of 1988 allowing application for injunction and granting an order of status-quo should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party Nos.1-4, as plaintiff, filed Other Suit No.78 of 1988 in the Court of Assistant Judge, Fatikchari, Chattogram renumbered as Other Suit No.184 of 1988 on transfer to the court of Sub-ordinate Judge (now Joint District Judge), 2nd Court, Chattogram against the present petitioners along with others, as defendant, for a decree declaration in the following terms;

“(ক) বি-রাধীয় সো-লহনামায় বর্ণিত সকল পক্ষগণ বি-রাধীয় সো-লহনামা সম্পাদন ক-র নাই, মাত্র কয়েকজন পক্ষ তাহা সম্পাদন ক-র। -স কারনে সোলেহনামা ও তৎমূলে আদেশকৃত ডিক্রি ফেরবী ও বে-আইনী হয়।

(খ) বিরোধীয় সোলেহনামা ও বিরোধীয় ডিক্রি দৃষ্টে প্রতীয়মান হইবে যে বি-রাধীয় সো-লহনামায় নাবালক পক্ষ রহিয়া-ছ। কিন্তু নাবালক পক্ষগ-ণর প-ক্ষ সো-লহনামা করার জন্য আদালত হই-ত কোন অনুমতি গ্রহন করা হয় নাই।”

In the suit the plaintiffs challenged the validity of a compromise decree passed in Partition Suit No.02 of 1972 renumbered as Partition Suit No.641 of 1984. During pendency of the suit the plaintiffs filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction against the defendant No.1, predecessor of the petitioners.

The defendant No.1 contested the application by filing a written objection. The trial court after hearing by judgment and order dated 02.03.1989 allowed the application and directed the defendant No.1 to maintain status-quo in respect of possession and position of the suit property till disposal of the suit.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, defendant-predecessor of the present petitioners, preferred Miscellaneous Appeal No.133 of 1989 before the learned District Judge, Chuadanga. Eventually, the appeal was transferred to the Court of learned Additional District Judge, 1st Court, Chattogram for hearing and disposal, who after hearing by the impugned judgment and order dated 16.02.1998 disallowed the appeal and thereby affirmed the judgment and order of the trial court. At this juncture, the petitioners moved this Court by filing this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Abdul Momen Chowdhury, learned Advocate appearing for the petitioners submits that admittedly the plaintiffs entered into a contract for sale with defendant No.1. Being failed in getting sale

deed plaintiffs in the instant suit filed a suit for decree of Specific Performance of Contract and obtained sale deed through court. The sale is hit by Doctrine of Lispendense under Section 52 of the Transfer of Property Act as the same was obtained during pendency of Partition Suit No.641 of 1984. He submits that partition suit was disposed of on compromise in terms of Solehnama dated 14.05.1987 and suit property fell to the saham of defendant No.1, predecessor of the present petitioners and the decree put in execution by filing Execution Case No.05 of 1988 to get possession through court. As such, the present plaintiffs cannot prevent the decree-holder from executing decree and obtaining possession through court by way of injunction.

Ms. Shahnaj Akther, learned Advocate appearing for Mr. Kamal-ul-Alam, learned Senior Advocate for the opposite party Nos.1-4 submits that the decree obtained by the defendants collusively and fraudulently which has been challenged by the plaintiffs in the instant suit. Therefore, the defendant cannot capitalize on the collusive and fraudulent decree and get delivery of possession in Other Execution Case No.05 of 1988, as such, the trial court as well as

the appellate court rightly passed an order of status-quo restraining the defendant No.1.

Heard the learned Advocates for both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint, application for injunction, written objection thereto and the impugned judgment and order of both the courts below.

It is fact that during pendency of partition suit the opposite parties on the basis of a decree of a Specific Performance of Contract got the sale deed registered through court. It is well settled that alienation pendente lite is not void, but it is subject to the result of the suit in otherwise the Rule Lis pendens does not make the transfer of the property invalid, it only makes the transfer subservient to the decision of the court. It is also fact that the property under contract and sale deed executed by the court fell in the share of defendants comprising R.S. Plot No.6608. So, unless the said decree set aside or revised on the ground of fraud and the collusion by any competent Court of law by the defendant No.1, predecessor of the present

petitioners legally entitled to get delivery of possession of the suit property through court in Execution Case No.05 of 1988.

From the claim and counter claim, it is apparent that both the parties litigating in respect of some properties not either in the possession of the plaintiffs or the defendants. In this situation, both the parties are waiting to get the possession through court in two execution cases now pending. Since the compromise decree passed in Partition Suit No.641 of 1984 under challenge both the courts below for ends of justice passed an order of status-quo in respect of possession and position of the suit property.

In this situation, I think that this is a long pending litigation starts in the year 1988 lying pending for disposal for long time. Considering age of the litigation, I think that justice will be met and purpose of the parties will be served if the trial court is directed to dispose of the suit within shortest possible time giving top most priority maintaining the order of status-quo which continued for more than 35 years.

In view of the above, taking into consideration all the facts and circumstances of the case, I am inclined to dispose of the Rule directing the court below to dispose of the suit.

Accordingly, the Rule is disposed of, however, without any order as to costs.

The trial court is hereby directed to dispose of the suit within shortest possible time preferably within 6(six) months from the date of receipt of this judgment and order giving top most priority and considering age of the litigation.

Both the parties are hereby directed to maintain status-quo in respect of possession and position of the suit property till disposal of the suit.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.