

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

**Present:**

**Mr Justice Md. Aminul Islam**

**Civil Revision No. 5693 of 2002**

Abdul Gafur Waqf Estate and another

-----Co-sharer/3<sup>rd</sup> party in Title Execution Case

-----Petitioners.

-Vs-

Mohibunnessa Khatun

-----Decree holder in Title Execution Case

-----Opposite-Party

No one appears,

....For the Petitioners

No one appears,

....For the Opposite-Party

**Hearing concluded on 16.01.2024**

**Judgment on 17.01.2024.**

This Rule was issued calling upon the opposite party to show cause as to why the order No. 100 dated 10.09.2002 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet in Title Execution Case No. 05 of 1991 rejecting an application under section 151 of the Code of Civil Procedure for stay further proceedings of Title Execution Case No. 05 of 1991 should not be set aside and or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party (decree holder) as plaintiffs instituted a Title Suit No. 206 of 1970 before the then Subordinate Judge, 2<sup>nd</sup> Court, Sylhet for partition without impleading the party in the suit and a fraudulently preliminary decree was obtained on 27.12.1973 and a final decree was drawn up on 20.05.1988 that one of the decree holder, namely Muhibunnessa Khatun i.e, the opposite party filed a Title Execution Case No. 05 of 1991 for recovery of Khas possession regarding her alleged share in the suit schedule land.

On the other hand, the present petitioner is a co-sharer 3<sup>rd</sup> party in Title Execution Case No. 05 of 1991. The petitioner instituted a Title Suit No. 27 of 1999 before the learned Assistant Judge Court, Sadar Sylhet against the opposite party for a declaration that the judgment and decree passed by the then Subordinate Judge, 2<sup>nd</sup> Court, Sylhet in Title Suit No. 206 of 1970 to which the petitioner is a co-sharer as per Khatian is out and out illegal, void, malafide, collusive, in-operative and not binding upon the petitioner. On 23.07.2002 after hearing the learned Assistant Judge Court, Sadar, Sylhet setting aside the aforesaid judgment and decree passed by the then subordinate Judge, 2<sup>nd</sup> Court, Sylhet in Partition Suit No. 206 of 1970.

Thereafter the decree holder as opposite party was sold her share. Then the petitioner another case was filed in pre-emption Miscellaneous Case No. 82 of 2001 for Pre-emption.

The present petitioner on 25.11.2001 filed an application under section 151 of the Code of Civil Procedure in Title Execution Case No. 05 of 1991 for praying stay all further proceedings of Title Execution Case No. 05 of 1991 till disposal of the Title Suit No. 27 of 1999 as well as Pre-emption Miscellaneous Case No. 82 of 2001.

After hearing both the parties the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet rejected the aforesaid application under section 151 of the Code of Civil Procedure on 10.09.2002.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 10.09.2002, the petitioner preferred a Civil Revisional application under Section 115(1) of the Code of Civil Procedure before this Court and on 02.11.2002 obtained the instant Rule and with granting ad-interim order of stay. The petitioner lastly on 26.08.2003 the order of stay extended for a period of 6 (six) months. But the petitioner has no any further steps for hearing of this Rule.

No one appears for both the sides. It is now well settled by our Appellate Division decision the case of Safor Uddin vs Fazlul Huq, reported in 49 DLR (AD) 151 that a Revision can be disposed of on merit in the absence of either party or both the parties. It is an old case and in such circumstances of the case is taken up for hearing on merit.

The present petitioner in the Revisional Application and he claimed that the Title Execution Case No. 05 of 1991 filed on the basis of a decree passed in Partition Suit No. 206 of 1970 is out and out illegal, void, malafide, collusive, inoperative and not binding upon the petitioner. After hearing the learned Assistant Judge, Sadar, Sylhet already setting aside the judgment and decree dated 23.07.2002 and as such the Title Execution Case No. 05 of 1991 cannot be run. He further claimed that the present petitioner is a recorded co-sharer in the suit schedule land but the decree holder obtained fraudulent and infructuous decree without impleading the party as petitioner in partition Suit No. 206 of 1970 and the aforesaid decree is not binding upon the petitioner. The petitioner further claimed that the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet did not consider that an application under section 151 of the Code of Civil Procedure for stay further

proceeding of Title Execution Case No. 05 of 1991 was maintainable and thus committed error of law resulting in an error in the decision occasioning failure of justice. He also further claimed that the opposite party No. 01 sold her share and the petitioner already filed a Pre-emption Miscellaneous Case No. 82 of 2001 and as such the opposite party has lost her subsisting interest over the suit land but the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet did not consider that aspects and thus committed error of law resulting in an error in the decision occasioning failure of justice.

I have perused the Revisional application as well as Annexures all papers and documents, judgment and order and other materials on record.

The learned Trial Court observed that the petitioner did not any party of the Title Suit No. 206 of 1970 but he is a co-sharer in the aforesaid suit schedule land. Thereafter the petitioner filed a Title Suit No. 27 of 1999 before the learned Senior Assistant Judge, Sadar Court, Sylhet and another filed a Pre-emption Miscellaneous Case No. 82 of 2001 in the same Court and prayed for stay all further proceedings in Execution Case No. 05 of 1991 till disposal of the Title Suit No. 27 of 1999

and Pre-emption Miscellaneous Case No. 82 of 2001 but he had no party in the instant suit Rather, he is a 3<sup>rd</sup> party. There is no scope to allow the application for stay. Therefore, the application is rejected.

Scrutinizing the relevant papers and documents it appears that the petitioner instituted a Title Suit No. 27 of 1999 before the learned Court of Senior Assistant Judge, Sadar, Sylhet against the opposite party for declaration that the judgment and decree dated 27.12.1973 in Partition Suit No. 206 of 1970 passed by the then learned Subordinate Judge, 2<sup>nd</sup> Court, Sylhet is out and out illegal, void, collusive in operative and not binding upon the petitioner. Accordingly the aforesaid Suit No. 27 of 1999 was decreed on 23.07.2002 in favor of the petitioner on the basis of setting aside the judgment and decree dated 23.07.2002 passed by the then Subordinate Judge, 2<sup>nd</sup> Court, Sylhet. The petitioner claimed that the petitioner is a co-sharer in the schedule land but the opposite party No. 01 sold her share. Thereafter the petitioner instituted a Pre-emption Case No. 82 of 2001 which was lost her subsisting interest over the suit land. Therefore, the petitioner filed an application under section 151 of the Code of Civil Procedure before the learned Joint District Judge, 2<sup>nd</sup> Court,

Sylhet in Title Execution Case No. 05 of 1991 for praying stay all further proceedings of Title Executions case No. 05 of 1991 till disposal of the Title Suit No. 27 of 1999 and Pre-emption Miscellaneous Case No. 82 of 2001. It further appears that admittedly, the petitioner had no party in Title Execution Case No. 05 of 1991 and he is a 3<sup>rd</sup> party. The petitioner filed an application for praying stay out of misconception of law which is not tenable in the eye of law. Rather, the petitioner could have filed any application to appropriate process for remedy. Moreover, the petitioner filed a Title Suit No. 27 of 1999 before the learned Assistant Judge Court, Sadar, Sylhet for setting aside the judgment and decree dated 23.07.2003 in Partition Suit No. 206 of 1970 passed by the then Subordinate Judge, 2<sup>nd</sup> Court Sylhet and after hearing the learned Assistant Judge setting aside the aforesaid judgment and decree dated 23.07.2003 is totally misconceived. The learned Assistant Judge had no jurisdiction or authority to set aside the judgment and decree passed by the then Subordinate Judge, 2<sup>nd</sup> Court, Sylhet in partition Suit No. 206 of 1970. At that time the petitioner had no party in the instant suit as well as he has no Locus Standi to file an application for praying stay all further proceedings of Execution Case No. 05 of 1991

before the Court of learned Joint District Judge, 2<sup>nd</sup> Court Sylhet and thereby, no scope for getting any remedy in the instant case.

Having regard to the facts and circumstances as discussed above I am to hold that the learned Court below did not commit any error of law and there is no illegality or infirmity or misreading or non reading evidence or non consideration of material facts resulting in an error in the decision occasioning failure of justice by which requires no interference by this Court. Therefore, I find no merit in this Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

The impugned judgment and order dated 10.09.2002 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet in Title Execution Case No. 05 of 1991 is hereby affirmed.

The learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet is directed to proceed in Title Execution Case No. 05 of 1991 in accordance with law and also directed to dispose of the suit as early as possible.

The earlier order of stay granted by this Court is hereby recalled and vacated.



Send down the Lower Court Record and communicate the judgment and order at once.

*Enayet/A.B.O*