

District- Dhaka

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

Present:

Mr Justice Md Atoar Rahman

Civil Revision No. 204 of 2016

Rupali Bank Limited represented by its
Deputy General Manager

... for the petitioner

- versus-

Md. Iqbal Hossain Khan and others

... for the opposite parties

No one appears

... for the petitioner

Mr. Swapan Kumar Dutta, Advocate

... for the opposite parties

**Heard On 16.01.2024, 17.01.2024,
07.02.2024, 25.02.2024 & 28.02.2024**

Judgment on: 12.03.2024

This Rule was issued on an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 04.11.2015 passed by the learned Additional District Judge, 2nd Court, Dhaka in Miscellaneous Appeal No. 53 of 2015 allowing the appeal and setting aside the judgment and order dated 26.02.2015 passed by the learned Judge, Artha Rin Adalat No 4, Dhaka in Artha Rin Miscellaneous Case No. 25 of 2012 should not be set aside and/or passed such other or further orders as to this court may seem fit and proper.

During issuance of the Rule an order was passed staying operation of the impugned judgment and order.

The short facts for the purpose of disposal of the Rule are that the present opposite parties No. 1 and 2 being third parties applicants (hereinafter called the third parties applicants) filed an application under Order XXI rule 58, read with sections 32 & 57 of the Artha Rin Adalat Ain, 2003, praying for releasing the scheduled property from the execution case stating *inter alia* that one Suruj Ali Khan being owner and possessor of land, under the CS and SA plot No 200 described in the schedule, by way of purchase and partition sold two kathas of land from sub-plot Nos 4 & 5 of the deed of partition in respect of the land under SA plot No 200 to Most Monwara Khatun vide a Deed of Sale No 3414 dated 11. 12.1980, who subsequently on 28.12.2004 sold out the same to Jahanara Begum and Sabina Yeasmin vide a Deed of Sale No. 7709. Thereafter said purchasers Jahanara Begum and Sabina Yeasmin sold out the same to the third party applicant No.1 Md. Iqbal Hossain Khan (the present opposite party No 1) vide a Deed of Sale No. 6589 dated 16.07.2007 who got mutated his name. It was also stated that said Suruj Ali again sold another two kathas of land from the said sub-plot Nos. 4 and 5 to one Md. Aman Ullah vide a Deed of Sale No. 58 dated 09.01.1981 who subsequently sold out the same to Most. Romana Tasnin, the third party applicant No. 2 (present opposite party No 2) who got mutated her

name in respect of such land. By these ways the third parties applicants purchased 4 kathas of land in total under sub-plot Nos. 4 and 5 and they have been in possession of the said land. On 05.11.2012 some officers of the decree holder-opposite party-petitioner Rupali Bank Ltd (the present petitioner, hereinafter called the decree holder bank) disclosed that one Rafiqul Islam, the opposite party No. 4, having mortgaged the case land under sub-plot No. 5 took loan and due to non-payment of such loan amount the decree holder bank filed Artha Rin Suit No. 159 of 2005 and got decree in respect of suit land and thereafter putting the said decree in execution was trying to sell the same. Upon hearing the news the third party applicants upon enquiry came to know about the invalid and inactive Sale Deed No. 1577 dated 06.06.1981 executed by Suruj Ali in favour of Rafiqul Islam and also came to know that said Rafiqul Islam collusively mortgaged the case land and executed a general power of attorney dated 03.05.2001. Thereafter the third party applicants filed the above miscellaneous case in the Artha Rin Adalat.

The decree holder bank contested the miscellaneous case denying all the material allegations stating *inter alia* that Suruj Ali being owner and possessor sold two kathas of land from the sub-plot No. 5 to Rafiqul Islam, the present opposite party No. 4 vide a

registered Deed of Sale No. 1577 dated 06.06.1981 who mutated his name in respect of such purchase land. Thereafter said Rafiqul Islam took loan by mortgaging the same to the decree holder bank vide a Deed of Mortgage No. 2195 dated 03.05.2021. Subsequently he defaulted in re-payment of the loan and the decree holder bank filed Artha Rin Suit No. 159 of 2005 and got exparte decree on 16-10-2005 and on the basis of such exparte decree Artha Decree Execution Case No. 42 of 2006 was filed wherein the decree holder bank obtained certificate of possession under section 33 (5) of Artha Rin Adalat Ain. The alleged purchased deeds of the third party applicants are not valid and, as such, the miscellaneous case was liable to be dismissed.

The learned Judge of the Artha Rin Adalat No. 4 disallowed the application on contest by her judgment and order dated 26.02.2015 against which the third party applicants preferred an appeal in the Court of District Judge, Dhaka being Miscellaneous Appeal No. 53 of 2015. On transfer the said appeal was heard by the Additional District Judge, 2nd Court, Dhaka who by the impugned judgment and order dated 04.11.2015 allowed the miscellaneous appeal and released the disputed land from the execution case.

Being aggrieved by and dissatisfied with the above judgment and order passed by the appellate court, the decree holder bank moved this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and the order of stay.

No one appears on behalf of the decree holder bank to press the Rule.

Mr. Swapan Kumar Dutta, the learned Advocate appearing on behalf of the third party applicants has submitted that the admitted owner Suruj Ali transferred 4 kathas of land by separate two deeds of sale in favour of Monwarta Khatun and Md. Aman Ullah vide Deed of Sale Nos. 3414 dated 11.12.1980 and 58 dated 09.01.1981 respectively. Thereafter on 06.06.1981 the mortgagor Rafiqul Islam obtained a registered deed being No. 1577 from said Suruj Ali in respect of two kathas of land from the sub-plot No 5 wherein said Suruj Ali had not sellable interest and, as such, said Rafiqul Islam did not acquire anything in the self same land as his so called purchase deed dated 06.06.1981 is later in point of time and accordingly the mortgage of such land by him is not lawful and tenable in law. But, according to him, the learned Judge of the Artha Rin Adalat having failed to realize the legal aspects disallowed the miscellaneous case filed by the third parties

applicants and considering the legal aspects and facts and circumstances of the case the learned Judge of the appellate court rightly and perfectly allowed the appeal and in passing of the impugned judgment and order he did not commit any error of law resulting in an error in his decision occasioning failure of justice and, as such, the Rule is liable to be discharged.

I have heard the submissions advanced by the learned Advocate for the third parties applicants and perused the application along with the impugned judgment and order and connected papers on records.

In this application filed under section 115(1) of the Code of Civil Procedure grounds have been taken that the learned Additional District Judge failed to take into consideration that the mortgagor Md Rafiqul Islam on 06.06.1981 purchased the land in question vide a registered deed bearing No 1577 and City Survey Khatian No 4431 plot No 480 was duly prepared and published in his name and the third party applicants purchased their claimed land in the year of 2004 and 2007 and thereby committed an error of law in allowing the miscellaneous appeal resulting in an error in the decision occasioning failure of justice.

On Perusal of the Sale Deed No. 3414 dated 11.12.1980 it appears that Md. Suruj Ali sold his two kathas of land to Most. Monwara Khatun from sub-plot Nos. 4 and 5 of the deed of partition in respect of land of S.A Plot No 200. It appears that said purchaser Most. Monwara Khatun sold out her entire purchased land to Jahanara Begum and Sabina Yeasmin who thereafter sold out the same to the third party applicant No I.

On perusal of the Sale Deed No. 58 dated 09.01.1981 it transpires that said Suruj Ali sold another two kathas of land to Md. Aman Ullah from the said sub-plot Nos. 4 and 5 who subsequently sold out his entire purchased land to Most Romana Tasnin, the third party applicants No 1.

It appears that all the Sale Deeds No. 3414 dated 11.12.1980, 58 dated 09.01.1981 and 1577 dated 06.06.1981 executed by Md Suruj Ali contained the sub-plot No. 5. Thus, it is clear that among these three deeds of transfer in respect of same property by the same vendor the previous two deeds namely deed No. 3414 dated 11.12.1980 and deed No 58 dated 09.01.1981 executed in favour of the predecessors-in-interest of the third party applicants shall get priority upon the deed No 1577 dated 06.06.1981 executed in favour of mortgagor Rafiqul Islam as the later one is later in point of time. Had it been found that after

transferring 4 kathas of land by the above deeds from the sub-plot Nos. 4 and 5 in favour of Most. Monwara Khatun and Md Aman Ullah Suruj Ali had saleable interest at least two kathas of land in sub-plot No 5 which was transferred to Rafiqul Islam and the same is separated and demarcated then the mortgage would have been valid. But the decree holder bank failed to prove validity of mortgage.

In view of the above discussions and facts and circumstances of the case, I am of the opinion that learned Judge of the appellate court below in passing the impugned judgment and order did not commit any error of law resulting in an error in his decision occasioning failure of justice and, as such, the Rule does not have any merit and accordingly the same is liable to be discharged.

In the result, the Rule is discharged without any order as to cost. The impugned judgment and order passed by the learned Additional District Judge allowing the Miscellaneous Appeal No. 53 of 2015 is hereby affirmed.

Let the lower courts' records along with a copy of this judgment be transmitted at once.