

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah**

**Civil Revision No.809 of 2011**

**IN THE MATTER OF:**

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

- AND -

**IN THE MATTER OF:**

Ayesha Akhter

... Petitioner

-Versus –

Rakibuddin Ahmed and others

... Opposite Parties

Mr. M.A. Quddus Sheikh, Advocate

.... For the petitioner

Mr. Arobinda Kumar Roy, Advocate

...For the Opposite Parties

**Heard and Judgment on 10.12.2023**

**Md. Kamrul Hossain Mollah, J:**

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order No.16 dated 22.02.2011 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka in Title Execution Case No.14 of 2009 rejecting the application under Order 21 Rule 99 of the Code of Civil Procedure 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 the proceeding of the Title Execution Case No.14 of 2009, now pending in the Court of learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka for a period of 06(six) months.

Facts necessary for disposal of the Rule, in short, are that the case property situated within District, Dhaka formerly Police Station-Keranigonj, then Tejgaon then Gulshan and now hal Dakhin Khan, Mouza-193, Dakhin Khan, C.S. khatian No.255, S.A. khatian No.379, Mutation 379/kat C.S. plot No.2706, total area of land 1.63 owned by Idris Ali and then his son Sultan owned  $.16\frac{1}{2}$  decimals of land he transferred  $.3\frac{3}{4}$  decimals of land to this petitioner by a registered sale deed No.7526 dated 23.06.1993 and handover the physical possession of the same to the petitioner thus the petitioner after purchase mutated her name in office of the Assistant Commissioner of land paying taxes to the Government. Thereafter, the petitioner erected semi pucca tin shade wall ghat and connected electricity line in her name and paying bills to that petitioner name mutated under mutation Case No.9308/10-11 with the office of the Assistant Commissioner (Land) Dhakhin Khan, Dhaka and finally city zarip also prepared in the name of the petitioner. Thus in the aforesaid way while the petitioner was in the enjoyment and peaceful possession of the case property then all on sudden came to know on 02.12.2010 from the Police Station of Dakhin Khan that they made an enquiry with the order of

the Hon'ble Court under Title Execution Case No.14 of 2009 pending before the 2<sup>nd</sup> Court of Joint District Judge, Dhaka. Thereafter, the petitioner on 19.01.2011 filed Title Suit No.67 of 2011 before the 1<sup>st</sup> Court of Joint District Judge, Dhaka for a declaration of her title to the schedule property and the decree dated 02.11.2004 is not binding upon her as the decree was obtained by fraud upon the Court. The said suit is pending and fixed for S.R. on 02.04.2011 in the same Court, Thereafter, the petitioner filed an application on 20.02.2011 under Order 21 Rule 99 read with section 151 of the Code of Civil Procedure in Title Execution Case No.14 of 2009 before the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka for staying all further proceeding of the said Execution Case before it, and after hearing the parties, the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka rejected the said application of the petitioner on 22.02.2011 by order No.16 with observation that there is no scope to consider the case of the petitioner as such rejected the application under Order 21 Rule 99 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with the judgment and order No.16 dated 22.02.2011 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka in Title Execution Case No.14 of 2009, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. M. A. Quddus Shaikh, the learned Advocate appearing on behalf of the petitioners by filing an application for send back to the remand in Civil Revision No.3732 of 2009 submits that the opposite parties have been in possession of the suit land and the deed No.4522 dated 21.05.1965

executed by Osimuddin transferring .35 decimals of land in favour of Idris Ali and Deed No.7526 of 1993 and 17249 of 2004 have been discovered after the appeal has been disposed of and continuation of possession of the land of the opposite parties support the existence of the said deed and they are quite confident that they will be able to prove the same and had the said deed been placed in the trial Court or in the Appellate Court then result would have been otherwise. Therefore, considering the above attending facts and circumstances the suit may be sent back on remand with a direction to the learned Additional District Judge, 5<sup>th</sup> Court Dhaka to dispose of the appeal being Title Appeal No.25 of 2005 within a specified time by taking the said Deed No.4522 dated 21.05.1965 and Deed No.2844, 7526, 17249 and judgment of the Appellate Division in Civil Petition for Leave to Appeal No.2602 as additional evidence and giving the opportunity to the parties to amend their respective pleadings otherwise the petitioner and opposite parties shall have to suffer serious irreparable loss and injury. Accordingly, he prays for sending this case to the Appellate Court below for re-hearing and submitting the additional evidences.

Mr. Arobinda Kumar Roy, the learned Advocate appearing on behalf of the opposite parties agreed with the submissions of the learned Advocate for the opposite parties and prays for send back this case to the Appellate Court below for further hearing to give change for submitting the additional evidences.

I have heard the submissions of the learned Advocates for the parties, perused the revisional application, the impugned judgment and

order of the Court's below, the papers and documents as available on the record.

In the light of the above discussion, it appears that both the parties prays for sending back this case to the Appellate Court below to give opportunity for submitting the additional evidence and amending their respective pleadings and further hearing.

Considering the above facts and circumstances and materials on record, I think that it will be best serve for ends of justice, if I send back this case to the Appellate Court for submitting the additional evidence and amending their respective pleadings and further hearing.

In the Result, the Rule is disposed of.

The judgment and order No.16 dated 22.02.2011 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka in Title Execution Case No.14 of 2009 rejecting the application under Order 21 Rule 99 of the Code of Civil Procedure is hereby set-aside.

The learned Additional District Judge, 5<sup>th</sup> Court, Dhaka is hereby directed to give opportunity both the parties for submitting the additional evidence and amending their respective pleadings and upon hearing the parties to dispose the Title Appeal No.25 of 2005 arising out Title Suit No.247 of 1999 within 01(one) year from the date of receipt of this judgment and order and both the parties of this suit are hereby directed to maintain status-quo till disposal of this Suit.

Let a copy of this judgment and order be communicated to the concerned Court below at once.

Md. Anamul Hoque Parvej  
Bench Officer