

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.808 of 2011

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

S.M. Milon and others

... Petitioners

-Versus –

Rakibuddin Ahmed and others

... Opposite Parties

Mr. M.A. Quddus Sheikh, Advocate

.... For the petitioners

Mr. Arobinda Kumar Roy, Advocate

...For the Opposite Parties

**Heard on 05.12.2023 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, 2nd 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, 2nd 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, R.S. khatian No.527, C.S. and S.A. plot No.2706, R.S. plot No.6577, total area of land 8.60 acres out of which idris Ali's share 1.44 and after his death his son Sultan Mia got his share .3149 Ajutangsha and out of .3149 Ajutangsha the petitioners purchase $.2\frac{1}{2}$ kathas of land from Sultan Miah and is in the enjoyment and possession of the case property. The petitioner's further case is that they entered into agreement for sale comprising 4 kathas of land valued at Tk.13,50,000/- but subsequently Sultan was dispossessed from that land, thus amicably gave a written promissory note on 15.09.2000 comprising $2\frac{1}{2}$ kathas of land (instead of 4 Kathas) with dwelling House in Plot No.2706 and handover the possession of the said $2\frac{1}{2}$ Kathas of land in favour of the petitioners. The petitioners paid up the entire settled price to Sultan Miah and requested Sultan to execute and registrar the necessary sale deed in favour of the petitioners, when Sultan

Miah refuse to give register sale deed in favour of the petitioners then petitioners were constrained to file a suit for Specific Performance of Contract being Title Suit No.30 of 2001 before the 1st Court, Joint District Judge, Dhaka the said suit was decreed on contest on 26.06.2003 and afterward, the decree dated 26.06.2003 was placed for execution under Title Execution Case No.14 of 2003 and through Court the petitioners got Sale Deed No.17249 dated 28.11.2004. Thereafter, the said Sultan Miah preferred F.A. No.300 of 2003 before the Hon'ble High Court Division and after hearing the Appeal on contest Hon'ble High Court Division dismissed the Appeal on 10.05.2010 with a direction to pay Tk.4,00,000/- to the appellant as solatium money of case property in question. Thus the petitioners complied with the order of the High Court Division and paid Tk.4,00,000/- under chalan No.03 of 1983 dated 01.12.2010 Sultan Mia did not filed any Civil Petition before the Appellate Division, Supreme Court of Bangladesh. Thus, in the above mentioned way the petitioners are in the enjoyment and possession of the case property since 2000 to till date and paying rents and taxes to the different authority of the government. All on a sudden, on 02.12.2010 came to know from the Dakhin Khan Police Station under Execution Case No.14 of 2009 arising out of Title Suit No.247 of 1999 pending in the Court of 2nd Court of Joint District Judge, Dhaka petitioners are going to be evicted from the case property after submitting the police report as per the demand of that Court. Thus the petitioners make it sure with searching in the concern sheresta by the appointed Advocate M.A. Quddus Shaikh and was advised to file an application under Order 21 Rule 99 of the Code of Civil Procedure filed on 20.01.2011 stating that the

petitioners filed Title Suit No.60 of 2011 before the 1st Court of Joint District Judge, Dhaka challenging the decree dated 02.11.2004 in Title Suit No.247 of 1999 and also prayed for stay proceedings of the Execution Case No.14 of 2009. After hearing the parties, the learned Joint District Judge, 2nd Court, Dhaka rejected the application of the petitioners under Order 21 Rule 99 of the Cod of Civil Procedure in Title Execution Case No.14 of 2009 by this judgment and order dated 22.02.2011.

Being aggrieved by and dissatisfied with the judgment and order No.16 dated 22.02.2011 passed by the learned Joint District Judge, 2nd 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 Ohimuddin 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 and 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, 5th 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, 2nd 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, 5th 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