

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)  
**CIVIL REVISION NO. 3084 OF 2024.**

**Ishrat Amin**

...Petitioner.

-Versus-

**Md. Shahjahan Miah alias Majnu Miah  
and others**

....Opposite parties.

Mr. Gazi Md. Parvez Hossain, Advocate

... For the petitioner

Mr. Swapon Kumar Dutta with

Mr. Prakash Chandra Mondal,

Advocates

... For opposite party No. 1

**Heard on: 17.12.24,12.01.25,13.01.2025 and  
14.01.2025.**

**Judgment on: 19..01.2025.**

**Present:**

**Mr. Justice Md. Badruzzaman;**

This Rule was issued calling upon the opposite party to show cause as to why judgment and order dated 30.05.2024 passed by learned Senior District Judge, Jhalakati in Civil Revision No. 24 of 2023 allowing the revision and setting aside order dated 20.09.2023 and restoring orders dated 20.06.2023 and 12.09.2023 passed by learned Joint District Judge, 2<sup>nd</sup> Court, Jhalakati in Title Suit No. 1 of 2005 should not be set aside.

Facts, relevant for the purpose of disposal of this Rule, are that opposite party No. 1 as plaintiff instituted Title Suit No. 15 of 1984 before the learned Assistant Judge, Jhalakati against the predecessor of opposite party No. 1 and others praying for a decree of declaration that Notice dated 22.11.1982 issued by defendant No. 1 cancelling partnership deed dated 26.06.1981 and power of attorney dated

27.06.1981 are illegal and another decree of permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property and from transferring the suit property to anybody else. The suit was transferred to 2<sup>nd</sup> Court of Joint District Judge, Jhalakati and renumbered as Title Suit No. 1 of 2005. Defendant Nos. 3 and 6 contested the suit by filing separate written statements. The plaintiff adduced two oral witnesses and defendant No. 3 adduced one witness and produced documentary evidences to prove their respective case. Defendant No. 6 did not adduce any evidence. The trial Court, after considering the evidence of the parties, decreed the suit vide judgment and decree dated 26.08.2008.

Defendant No. 3 challenged said judgment and decree by filing Title Appeal No. 56 of 2008 before learned District Judge, Jhalakati which was transferred to learned Additional District Judge, Jhalakati who, upon hearing the parties, dismissed the appeal by judgment and decree dated 07.04.2011. The appellate Court made some adverse findings against the plaintiff to the effect that the deed of partnership dated 26.06.1981 and power of attorney dated 27.06.1981 were inoperative and the suit property is an abandoned property and directed the Deputy Commissioner, Jhalakati to take possession of the suit property in accordance with law.

Being aggrieved by said judgment and decree dated 07.04.2011 defendant No. 3 preferred Civil Revision No. 2845 of 2011 and the plaintiff filed Civil Revision No. 1865 of 2011 before the High Court Division. Both revisions were heard analogously with some other civil revisions by a Single Bench of this Court who, after hearing the parties, vide judgment dated 03.02.2019 made the Rule issued in Civil Revision No. 1865 of 2011 absolute and discharged the Rule issued in Civil

Revision No. 2845 of 2011 and upheld the judgment and decree passed by the trial Court. The judgment and decree passed by the High Court Division in Civil Revision No. 2845 of 2011 was challenged by defendant No. 3 before the hon'ble Appellate Division in Civil Miscellaneous Petition No. 113 of 2019 which was dismissed vide order dated 05.12.2021.

Thereafter, the decree holder filed an application before the trial Court under Order XXI rule 32 read with section 151 of the Code of Civil Procedure praying for civil imprisonment of the judgment-debtors as well as restoration of possession of the dispossessed land alleging, *inter alia*, that the judgment-debtors have willfully violated the decree of injunction and dispossessed him from some portions of the suit land, as described in the schedule of the application. The trial Court, after *ex parte* hearing, vide order dated 20.06.2023 allowed the application and directed judgment-debtor Nos. 1(Ka), 3 and 6 to restore possession of the dispossessed land and vide order dated 12.09.2023 directed the decree-holder to serve notice upon the heirs of the judgment debtors. Upon receipt of the notice from the trial Court judgment-debtor-defendant No. 1(Ka), (the petitioner herein), filed an application seeking for an order that the notice issued vide order dated 12.09.2023 was not binding upon her. The trial Court, upon hearing the learned Advocate of defendant No. 1(Ka), vide order dated 20.09.2023 recalled its earlier orders dated 20.06.2023 and 12.09.2023 holding that there was no scope to give the decree-holder restoration of possession of the dispossessed land under Order XXI rule 32 of the Code of Civil Procedure and the decree holder should have filed suit for recovery of possession. By same order the trial Court rejected the application of judgment-debtor No. 1(Ka).

The decree holder challenged said order of the trial Court dated 20.09.2023 before the learned District Judge, Jhalakati in Civil Revision No. 24 of 2023 which was contested by the judgment-debtor No. 1(Ka) by filing written objection stating that the suit property is not covered by the partnership deed as well as power of attorney because of the fact that the deed of partnership and power of attorney were executed and registered in respect of land appertaining to R.S Khatian Nos. 490-496 but the plaintiff-decree-holder by suppression of facts got decree in the suit in respect of land appertaining to S.A Khatian Nos. 490-496 and that defendant-judgment-debtor No. 1(Ka) has been owning and possessing the land covered by the partnership agreement as well as power of attorney by way of inheritance from her husband, the original defendant No.1. The Court of revision, after hearing the parties, vide judgment dated 30.5.2024 allowed the revision holding that the decree holder is entitled to recovery of possession of the dispossessed land in an application under Order 21 rule 32 of the Code of Civil Procedure and set aside order dated 20.09.2023 and restored orders dated 20.06.2023 and 12.09.2023 passed by the trial Court. Being aggrieved by said judgment and order dated 30.05.2024, the judgment-debtor No. 1(Ka) has preferred this second revision under section 115(4) of the Code of Civil Procedure and obtained the instant Rule.

Mr. Gazi Md. Parvez Hossain, learned Advocate appearing for the petitioner by taking me to the impugned judgment and order of the Court of revision and the orders passed by the trial Court and other materials available on record submitted that the suit property does not tally with the property mentioned in the schedule of partnership deed as well as power of attorney and as such, the plea of the decree-holder that defendant No. 1(Ka) has dispossessed him from a portion of

decretal property is totally false and misconceived. Learned Advocate further submitted that there is no scope under Order XXI rule 32(1) of the Code of Civil Procedure to restore possession of the alleged dispossessed land to the decree holder inasmuch as that as per Order XXI rule 32 of the Code of Civil Procedure the decree-holder could pray for imprisonment and/or attachment of the property of the judgment-debtor for violation of the decree of injunction. Learned Advocate further submitted that before passing order of delivery of possession to the decree holder the Court below did not make any inquiry in regards the fact of alleged violation of the decree and dispossession and accordingly, committed serious miscarriage of justice.

Mr. Swapon Kumar Dutta, learned Advocate appearing for decree-holder opposite party No. 1 submitted that on the event of violation of a decree of a permanent injunction the remedy lies under Order XXI rule 32(1) read with section 151 of the Code of Civil Procedure. Learned Advocate further submitted that a decree of permanent injunction can be enforced for violation of it by taking recourse to the provision of sub-rule (1) of Rule 32 of Order XXI of the Code and not by a fresh suit for recovery of possession for the reason of avoiding multiplicity of proceedings. Learned Advocate further submitted that Order XXI rule 32(1) of the Code of Civil Procedure although does not provide any provision of delivery of possession but section 151 of the Code of Civil Procedure empowers the executing Court to direct the judgment-debtor to make delivery of possession of the disposed land in favour of the decree-holder. Learned Advocate further submitted that the trial Court has no jurisdiction to go beyond the decree and since the judgment debtors dispossessed the decree holder from a portion of the decretal property by violating the decree

of permanent injunction the Court of revision committed no error in directing to restore possession of the suit property in favour of the decree holder.

In support of his contentions learned Advocate has referred to the cases of Safar Ali Miah & others vs. Badsha @ Siddique & others 45 DLR 483, Zainal Abedin & another vs. Md. Abdur Rahim 53 DLR (AD) 69, Hazi Altas Member & others vs. Shamsar Alam Chowdhury being dead his heirs Sirajul Huq & others 14 BLT 346 and Legal Representatives of Maga Ram & another vs. Kana Ram & others AIR 1993 Rajasthan 208.

I have heard the learned Advocates, perused the revisional application, the judgment and decree of the trial Court, the orders passed by the trial Court, the impugned order and other materials available on record. It is not denial of the fact that opposite party No. 1 got a decree of permanent injunction from the trial Court in Title Suit No. 1 of 2005 against the predecessor of the petitioner and others which has been upheld up to the hon'ble Appellate Division. Thereafter, the decree-holder filed application before the trial Court under Order XXI rule 32(1) read with section 151 of the Code of Civil Procedure for restoration of possession contending, that in violation of the decree, the judgment debtors dispossessed the decree-holder on 16.04.2023 from some portion of the decretal property as mentioned in the schedule of the application. It further appears that the trial Court by order dated 20.06.2023 allowed the application *ex parte* without any investigation into facts violation of the decree and dispossession directed the judgment-debtors to restore possession of the so-called dispossessed land in favour of the decree-holder. On the prayer of the decree-holder the trial Court again passed an order on 12.09.2023 allowing the same application and directed to serve notice upon the

heirs of the judgment debtors. Upon receipt of the notice, debtor No. 1(Ka) filed application before the trial Court praying for an order that the notice was not binding upon her stating that she did not dispossess the decree-holder from the decretal property rather, she is owning and possessing the land left by her husband which is beyond the decretal property. The trial Court, upon hearing, vide order dated 20.09.2023 set aside its earlier orders dated 20.06.2023 and 12.09.2023 holding that the decree holder should have filed suit for recovery of possession and that the application filed under Order XXI rule 32 of the Code was not maintainable. The Court of revision set aside said order dated 20.9.2023 by the impugned judgment and order dated 30.05.2024 holding that application for restoration of possession of the decretal property is maintainable under Order XII rule 32(1) of the Code of Civil Procedure.

Now question arises whether the decree-holder is entitled to restoration of possession of the decretal property allegedly dispossessed by the judgment-debtors in defiance of the decree of permanent injunction as per provisions under Order XXI rule 32 read with section 151 of the Code of Civil Procedure.

*In Safar Ali Miah & ors. vs. Badsha @ Siddique & ors., 45 DLR 483* a Division Bench of the High Court Division, constituted by the Hon'ble Chief Justice upon a reference, held that *"a decree of permanent injunction can be enforced for violation of it by taking recourse to the provision of sub-rule (1) of rule 32 of Order XXI of the Code and not by a fresh suit. It is for this reason of avoiding multiplicity of proceedings that such a decree should be enforced without taking recourse to a separate suit"*. This view has been affirmed by the Hon'ble Appellate Division in the case of *Zainal Abedin & another vs. Md. Abdur Rahim 53 DLR (AD)*

69. In *Hazi Altas Member & others vs. Shamser Alam Chowdhury being dead his heirs Sirajul Huq & others* 14 BLT 346 it has held that “the Order XXI rule 32(1) although does not provide for delivery of possession but section 151 of the Code of Civil Procedure empowers the executing Court to direct the judgment debtor for making delivery of possession of the suit property in favour of the decree-holder”.

In *Jibon Bima Corporation vs. Md. Mohibul Majid & another* 52 DLR 186 it has held as follows:

“Whenever the decree of permanent injunction is violated or willfully disobeyed the decree-holder becomes entitled to execution of the decree in accordance with the provisions of Order 21 rule 32(1) of the Code of Civil Procedure but before taking action under Order 21 rule 32(1) of the Code of Civil Procedure against the delinquent the Court must be satisfied on evidence that the judgment-debtor has willfully disobeyed or violated injunction in defiance of the majesty of law. An inquiry on the truth or otherwise of the allegation of willful disobedience or violation of injunction by the judgment-debtor is, therefore, essential before taking any punitive action against the delinquent.”

I find no reason to disagree with the views taken by the High Court Division in the cases referred to above. In the event of violation of a decree of permanent injunction, the decree is enforceable by taking recourse to the provision of Order XXI rule 32(1) of the Code of Civil Procedure and not by a fresh suit but where willful disobedience of the order of injunction is alleged, such violation must be proved by cogent, independent and reliable evidence and the Court must be satisfied upon inquiry and on consideration of the materials on record before passing order under Order XXI rule 32 of the Code of Civil Procedure that the judgment-debtor has willfully disobeyed or violated injunction in defiance of the majesty of law. If violation is proved, the decree of



permanent injunction can be executed by attachment of the property or putting the judgment debtor in civil imprisonment or by both or directing the judgment-debtor for making delivery of possession of the dispossessed property in favour of the decree-holder.

In the instant case defendant No.1 (Ka) as heir of the defendant No. 1 alleged that she did not violate the decree and she has been possessing her inherited property which is not covered by the suit land. On perusal of the partnership agreement and power of attorney it appears that those were executed and registered in respect of land appertaining to R.S Khatian Nos. 490-496 but from the schedule of the plaint as well as the decree, it appears that the suit was filed and decree was passed in respect of 3.61 acre land appertaining to S.A Khatian Nos. 490-496 of various S.A Plots. Since the judgment debtor specially claimed that the decretal property is not covered by the power of attorney and partnership agreement, the trial Court should have made a local investigation to ascertain whether the decretal property is covered by the deed of agreement and power of attorney and whether the judgment-debtors have willfully disobeyed or violated the decree of permanent injunction in defiance of the majesty of law and thereafter, passed necessary order on the application filed by the decree-holder under Order XXI rule 32(1) of the Code of Civil Procedure. The trial Court without doing so passed orders dated 20.06.2023 and 12.09.2023 allowing the application and directing defendant Nos. 1(Ka), 3 and 6 to restore possession in favour of the decree-holder. Though the trial Court vide order dated 20.9.2023 set aside its earlier orders dated 20.06.2023 and 12.09.2023 but wrongly held that the decree-holder should have filed regular suit for recovery of possession. It appears that the Court of revision though set aside order dated 20.9.2023 and

restored orders dated 20.06.2023 and 12.09.2023 passed by the trial Court by the impugned order but it did not satisfy itself on evidence that the judgment-debtors have willfully disobeyed or violated decree of permanent injunction in defiance of the majesty of law and thus committed an error of important question of law resulting in an error in the decision occasioning failure of justice.

Accordingly, I find merit in this Rule.

In the result, the Rule is made absolute however, without any order as to costs.

The impugned order dated 30.05.2024 passed by learned District Judge, Jhalakati in Civil Revision No. 24 of 2023 and those of dated 20.06.2023, 12.09.2023 and 20.09.2023 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Jhalakati in Title Suit No. 1 of 2005 are set aside.

The trial Court is directed to register the application filed by the decree-holder under Order XXI rule 32 read with section 151 of the Code of Civil Procedure as "Execution Case" and dispose of the same afresh preferably within 3 (three) months from the date of receipt of the copy of this judgment in view of the observations made above.

Communicate a copy of this judgment to the Courts below at once.

**(Justice Md. Badruzzaman)**