District-Barishal.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1116 of 2025.

Md. Delowar Hossain alias Saijul Islam and others.
---- Plaintiffs-Petitioners.

-Versus-

Md. Kalam Mollah and others.
---- Defendant-Opposite Parties.

Mr. Md. Azim Uddin, Advocate.
---- For the Plaintiffs-Petitioners.

Mr. Md. Shahidul Islam, Senior Advocate with
Mr. S.M. Zakir Hossain, Advocate.
---- For the Plaintiffs-Opposite Parties.

Heard and Judgment Delivered On: 26.10.2025.

Md. Toufiq Inam, J.

Upon granting leave, this Rule was issued calling upon the opposite party Nos. 1–3, 11, 19, 32 and 33 to show cause as to why the order dated 18.11.2024 passed by the learned District Judge, Barishal in *Civil Revision No. 95 of 2024*, summarily dismissing the application and thereby affirming the order dated 08.09.2024 passed by the learned Assistant Judge, Muladi, Barishal in *Title Suit No. 96 of 2024* rejecting the plaintiffs' application for stay, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioners, as plaintiffs, instituted *Title Suit No. 96 of 2024* seeking (i) declaration of their title over the land described in the schedule "Ka", and (ii) a further declaration that the judgment and decree dated 27.03.1967 (decree drawn on 09.04.1967) passed by the learned Sub-Judge, Barishal in *Title Suit No. 14 of 1967* were obtained by fraud and are not binding upon them.

Their case is that the defendants' predecessors procured the 1967 decree by practicing fraud upon the court. The present plaintiffs Nos. 1 and 2, namely Md. Delwar Hossain alias Saijul Islam and Md. Anowar Hossain, were minors at the relevant time and no guardian *ad litem* had been appointed to represent them. It is alleged that the so-called compromise petition was forged and fabricated, and therefore, the resultant decree is *void ab initio*.

During pendency of the present suit, the plaintiffs sought an order staying operation of the said 1967 decree until disposal of the suit. The trial court rejected the prayer, and the revisional court, concurring with that view, dismissed *Civil Revision No. 95 of 2024*. Hence, the present Rule.

Mr. Md. Azim Uddin, learned Advocate for the petitioners, submits that fraud vitiates all judicial acts. Since the 1967 decree was founded upon a fraudulent compromise to which the minor plaintiffs were not parties, it is a nullity in law and *non est* in the eye of the court. He

argues that unless operation of the decree is stayed, the plaintiffs will suffer irreparable loss and the very purpose of the pending suit will be frustrated. He contends that fraud unravels everything and no person can be allowed to benefit from his own wrong.

Per contra, Mr. Md. Shahidul Islam, learned Senior Advocate for the opposite parties, on the other hand, submits that the plaintiffs have approached the court after an inordinate lapse of more than fifty-seven years. A decree passed by a competent court remains valid until it is duly set aside, and mere allegations of fraud cannot justify suspension of its operation. He further submits that the plaintiffs' plea of minority and absence of a *guardian ad litem* are disputed questions of fact to be established by evidence at trial. Both the courts below, he argues, exercised judicial discretion properly, and their concurrent findings do not warrant interference under Section 115(4) of the Code of Civil Procedure

This court has considered the rival submissions and examined the materials on record. The decree in *Title Suit No. 14 of 1967* was passed more than five decades ago, and its validity is now being challenged collaterally in *Title Suit No. 96 of 2024*.

The central question is whether a civil court can stay operation of an old decree merely upon allegations of fraud pending adjudication of a separate declaratory suit.

It is a settled proposition that a decree of a competent court is presumed valid unless and until set aside in due course of law. The principle of *finality of litigation* requires that judgments, once rendered, should not be lightly disturbed. Fraud must be pleaded with particularity and proved by clear and cogent evidence, not by general allegations.

The plaintiffs' claim that they were minors at the relevant time and unrepresented by any *guardian ad litem* raises a mixed question of fact and law which cannot be decided without evidence. The appointment (or absence) of a guardian *ad litem* must be ascertained from the record of the earlier suit, and this can only be examined at the stage of full trial, not on an interlocutory application. Moreover, the maxim *fraus omnia corrumpit* (fraud unravels everything), does not mean that a mere allegation of fraud automatically invalidates a decree. It must first be established through a proper proceeding.

Hence, until the plaintiffs succeed in proving their allegations of fraud in the pending suit, the decree of 1967 continues to have binding force. The courts below were therefore justified in refusing to stay its operation. This Court finds no illegality, irregularity, or jurisdictional

error in the orders impugned. Both courts applied correct principles of law in exercising their discretion.

A decree of a competent civil court, even if alleged to have been obtained by fraud, retains its binding force and legal effect until it is set aside through proper judicial proceedings. Mere allegations of fraud, without adjudication, cannot suspend or nullify the operation of such a decree. Relief by way of stay can be granted only upon prima facie proof of fraud striking at the root of jurisdiction; otherwise, the doctrine of finality of judgment must prevail.

In view of the foregoing discussion and settled legal principles, this Court finds no reason to interfere with the concurrent findings of the courts below.

Accordingly, the Rule stands **discharged**.
There shall be **no order as to costs**.

The order of **status quo**, stands **vacated**.

Let a copy of this judgment be transmitted to the courts below.

(Justice Md. Toufiq Inam)

Sayed.B.O