

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No.1415 of 2004

Md. Ismail and others

... Petitioners

-Versus-

Anwara Begum being dead her legal heirs;

Md. Mofizur Rahman and others

...Opposite-parties

No one appears

...For the petitioners

Mr. Md. Masud Alam, Advocate

...For the opposite-party Nos. 2-3.

Judgment on 2nd June, 2025.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioners, Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 30.03.2004 passed by the learned Additional District Judge, 1st Court, Chattogram in Civil Revision No.01 of 2004 disallowing the same and thereby affirming the judgment and order No.32 dated 15.11.2003 passed by the learned Senior Assistant Judge, 2nd Court, Chattogram in Other Execution Case No.03 of 2002 rejecting the application under Section 3 of the Limitation Act filed by the judgment-debtor-petitioner and allowing the application under Section 151 of the Code of Civil Procedure filed on behalf of the decree-holder-

opposite parties restoring possession should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. Md. Yusuf and others, as plaintiff, filed Other Suit No.127 of 1984 for a decree of partition. The suit was decreed on 02.04.1987 in preliminary form and subsequently, it was made final on 22.07.1989. Thereafter, the decree-holder put the decree in execution by filing Other Execution Case No.14 of 1989 on 11.11.1989. Present petitioners, as plaintiff, filed Other Suit No.163 of 1989 on 28.11.1989 for a decree of declaration that the judgment and decree both preliminary and final decree passed in Other Suit No.127 of 1984 is collusive, malafide, null and void, ineffective and not binding upon the plaintiffs. The said suit was dismissed on 28.05.1991. Against the judgment and decree passed in Other Suit No.163 of 1989, present petitioners, as plaintiff-appellant, filed Other Appeal No.626 of 1991. Ultimately, said appeal was dismissed for default for non compliance of the order of the Court. Thereafter, the appellants filed miscellaneous case and then appeal and revision

against so many proceedings which were ultimately ended unsuccessfully. In Other Suit No.163 of 1989 and Other Appeal No.626 of 1991 the proceedings of Execution Case No.14 of 1989 was stayed. During subsistence of order of stay execution court inadvertently, dismissed the execution case for default on 18.03.1992. Other Appeal No.626 of 1991 disposed of on 15.07.2001. Thereafter, the decree-holder, filed Execution Case No.03 of 2002 on 01.12.2002 and through said execution case, the decree-holder obtained possession and before passing formal order recording the fact that the execution case has been disposed of with full satisfaction, the present petitioners, filed an application on the ground that the execution case was not filed within 12 years from final decree dated 22.07.1989.

Side by side decree-holder filed an application under Section 151 of the Code of Civil Procedure praying for restoration of possession alleging that after effecting delivery of possession, the judgment-debtors forcibly dispossessed the decree-holder. The execution court heard both the applications and after hearing by order dated 15.11.2003 allowed application under Section 151 of the

Code of Civil Procedure filed by the decree-holder restoring possession and rejected the application filed by the judgment-debtors.

Being aggrieved, the judgment-debtors, filed Civil Revision No.01 of 2004 before the court of learned District Judge, Chattogram. Eventually, said revision was transferred to the court of learned Additional District Judge, 1st Court, Chattogram for hearing and disposal, who after hearing by the impugned judgment and order dated 30.03.2004 rejected the revision maintaining the order of the execution court. At this juncture, the petitioners moved this Court by filing this revision and obtained the present Rule and order of stay.

Mr. Jashim Uddin, learned Advocate for the petitioners appearing before this Court took pass over, but did not appear when the matter was taken up for hearing, consequently, heard the learned Advocate for the opposite parties.

Mr. Md. Masud Alam, learned Advocate appearing for the opposite-party Nos.2-3 submits that admittedly Partition Suit No.127 of 1984 was decreed on 22.07.1989 finally. Thereafter, decree-

holder, filed Execution Case No.14 of 1989. Challenging both the preliminary and final decree, judgment-debtors filed Other Suit No.163 of 1989 in which proceeding in execution case was stayed. The suit was dismissed on 05.06.1991. Thereafter, they filed Other Appeal No.626 of 1991 against the judgment and decree of the trial court, wherein, execution proceeding was stayed till disposal of the appeal. During subsistence of order of stay in Other Appeal No.626 of 1991 execution court inadvertently dismissed the Execution Case No.14 of 1989 on 18.03.1992 for default. Other Appeal No.626 of 1991 was dismissed for default on 15.07.2001. After dismissal of appeal, the decree-holder, filed Execution Case No.03 of 2002 on 01.12.2002. He submits that as per Section 15 of the Limitation Act, period of limitation prescribed for execution of a decree if stayed by order of the court, the time of the continuance of the stay order the day on which it was issued or made and the day on which it was withdrawn shall be excluded.

In the instant case, after filing Execution Case No.14 of 1989 proceeding was stayed in Other Suit No.163 of 1989 and then in Other Appeal No.626 of 1991 till disposal of appeal. The order of

stay was terminated on the very day of dismissal of appeal on 15.07.2001. After dismissal of appeal decree-holder filed Execution Case No.03 of 2002 on 01.12.2002, as such, the case is not barred by law and the provisions of Section 48 of the Code of Civil Procedure is not at all attracted in the instant case and as such, the execution court as well as the revisional court rightly rejected the application of the judgment debtors and allowed the application of the decree-holder for restoration of possession and they have not committed any error in the decision occasioning failure of justice.

Heard the learned Advocate for the opposite party Nos.2-3, have gone through the application, relevant orders in Execution Case No.03 of 2002 and the impugned judgment and order of the revisional court as well as the execution court.

It appears that the petitioners only impugned the judgment and order dated 30.03.2004 passed in Civil Revision No.01 of 2004, but did not impugned the order dated 15.11.2003 passed by the execution court.

From perusal of order of the court below, I find that decree-holder at the first instance filed Execution Case No.14 of 1989 on

11.11.1989. Said execution case was dismissed for default on 18.03.1992 when order of stay was subsisting in Other Appeal No.626 of 1991 till disposal on 15.07.2001. When a proceeding in execution case has been stayed in appeal the execution court cannot proceed with the execution case and dismiss the same for default until the order of stay is vacated or withdrawn. Admittedly, decree-holder obtained possession of the suit property through court and after delivery of possession to the decree-holder as claimed by them, judgment-debtors forcibly dispossessed them before passing final order in execution case. Consequently, they filed an application praying for restoration of possession under Section 151 of the Code of Civil Procedure. The judgment-debtors prayed for rejection of Execution Case No.03 of 2002 on the ground of limitation. The trial court rejected the application under Section 3 of the Limitation Act and allowed application under Section 151 of the Code of Civil Procedure directing restoration of possession in favour of judgment-debtors. Both the courts below while rejecting the application of the petitioners held that Execution Case No.14 of 1989 was stayed in Other Suit No.163 of 1989. During subsistence of order of stay the

execution court wrongly dismissed the said execution case on 18.03.1992. Subsequently, record of the execution case destroyed by the court as per civil Rules and orders, but order of stay continued upto 15.07.2001. Thereafter, the decree-holder, filed Execution Case No.03 of 2002 on 01.12.2002. The decree-holder filed Execution Case No.14 of 1989 within time, proceeding of which was stayed in Other Suit No.163 of 1989 and then in Other Appeal No.626 of 1991 till 15.07.2001. Time spent in Other Suit No.163 of 1989 and Other Appeal No.626 of 1991 will be excluded as per provisions of Section 15 of the Limitation Act.

This instant Execution Case No.03 of 2002 is not barred by limitation as the decree was stayed in Other Suit No.163 of 1989 and said order of stay continued upto 15.07.2001. Therefore, plea of limitation as raised by petitioners are not at all sustainable in law.

Apart from this, the decree-holder claimed that after delivery of possession the judgment-debtors again dispossessed the decree-holder during pendency of Execution Case No.03 of 2002. They came with an application under Section 151 of the Code of Civil Procedure for restoration of possession. The execution court allowed

the same. The court in exercise of inherent power can restore possession to the decree-holder to prevent abuse of process of the court. Accordingly, the execution court by order dated 15.11.1989 restored possession to the decree-holder and as such, in passing the impugned judgment and order both the courts below have committed no illegality or error of law in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

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

Order of *stay* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.