

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 310 of 2015

In the matter of:

Md. Bazlur Rahman and others

...Plaintiff-petitioners

-Versus-

Md. Abu Bakkar Siddique alias Lalu and another

...Defendant-opposite parties

None appears.

...For the petitioners

Mr. Md. Shamsur Rahman, with

Ms. Rina Begum, Advocates

.....For the opposite party No. 1

Heard on: 15.05.2025 and 21.05.2025

Judgment on: 22.05.2025

In the instant civil revisional application, the petitioners have challenged the judgment and order dated 16.10.2014 passed by the learned Additional District Judge, 3rd Court, Bogura in Miscellaneous Appeal No. 110 of 2013 dismissing the appeal and affirming the judgment and order dated 21.07.2013 passed by the learned Senior Assistant Judge, 1st Court, Bogura in Other Suit No. 224 of 2013 rejecting the petitioners' application for temporary injunction in respect of further proceedings of Execution Case (Partition) No. 5 of

2013 pending in the Court of Senior Assistant Judge, 1st Court, Bogura.

This Court, on 22.02.2015, issued the Rule.

None appeared for the petitioners when the Rule was taken up for hearing. Opposite party No. 1 has contested the Rule by filing a counter affidavit.

Relevant facts are that the present opposite party No. 1 and others as plaintiff filed Partition Suit No. 67 of 1996 in the Court of Senior Assistant Judge, 1st Court, Bogura impleading the vendor of the present petitioners and others. The suit was dismissed on contest on 30.03.2005. The present petitioners were not parties to the said partition suit. The plaintiffs preferred Title Appeal No. 77 of 2005 which was allowed by the learned Additional District Judge, 1st Court, Bogura on contest on 04.02.2008 and the suit was decreed. The contesting defendant filed Civil Revision No. 3231 of 2008 and the Rule was discharged by the High Court Division on 20.03.2017. Thereafter, the contesting defendants filed Civil Miscellaneous Petition (CMP) No. 714 of 2017. On 19.06.2019, the Appellate Division passed an order directing the petitioners of the CMP (defendants) to file regular leave petition within 10 weeks' time failing which the CMP would stand dismissed. Regular leave petition

was not filed and the CMP stood dismissed after expiry of 10 weeks' time.

Thereafter, plaintiff-decree-holders (present opposite parties) filed Decree Execution Case No. 5 of 2013 before the Court of learned Senior Assistant Judge, 1st Court, Bogura on 31.03.2013. The present petitioners were not parties to the execution case. During pendency of the said execution case, the present petitioners, on 12.06.2013, filed Other Suit No. 224 of 2013 impleading the opposite parties and others praying for declaration that the preliminary decree dated 04.02.2008 passed in Miscellaneous Appeal No. 77 of 2005 arising out of Partition Suit No. 67 of 1996 which gave rise to the execution case are null and void and not binding upon the plaintiffs. The plaintiffs of the Other Suit No. 224 of 2013 also filed an application for temporary injunction in the said suit for stay of the further proceedings of the Execution Case No. 5 of 2013 till disposal of the Other Suit No. 224 of 2013. The trial Court rejected the said application which was affirmed by the appellate Court below and hence, the instant revision at the instance of the plaintiffs of Other Suit No. 224 of 2013.

Mr. Md. Shamsur Rahman appearing with Ms. Rina Begum, learned Advocates for opposite party No. 1, submits that although the plaintiffs of Other Suit No. 224 of 2013 prayed for injunction, they, for all practical purposes, prayed for stay of the proceedings of the

execution case. Mr. Shamsur Rahman refers to Order 21 rule 29 of the Code of Civil Procedure (CPC) and submits that the Rule does not permit the Court to stay the proceedings of the execution case in the present scenario.

Rules 26 to 29 of Order 21 of the CPC provide provisions regarding stay of execution by the executing Court. In the attending facts and circumstances of the case rule 29 is relevant.

Order 21 rule 29 runs as follows:

“R.29. *Stay of execution pending suit between decree-holder and judgment-debtor:* Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Under rule 29, only the person against whom the decree is passed can make an application for stay of the execution proceedings. It was held in *Abul Kalam and Ors vs. Kafiluddin and Ors.*, 49 DLR 569 that rule 29 contemplates the pendency of a suit between the decree-holder and the judgment-debtor in respect of the decree in question, and it has no reference to any suit filed by a third party. In *Gourango Rishnupriya vs. Afzal Khan*, 52 DLR 172, it was held that any application for stay of the execution of a decree passed in a previous suit under r.29 is misconceived where the plaintiff being a

stranger or a third party to the decree under execution got no legal character nor *locus standi* to maintain such application.

In the case in hand, no decree was passed against the present petitioners in the previous suit. Their vendor was defendant No. 20 in the previous Other Suit No. 224 of 2013 which gave rise to the execution case. The said vendor is also a party to the execution case as judgment-debtor No. 18. Since no decree was passed against the present petitioners in the previous suit, there is no scope in law to stay the further proceedings of the execution case in a subsequent suit filed by them challenging the decree in question. In that view of the matter, the impugned judgment and order does not call for any interference.

In the result, the Rule is discharged.