

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

**Present:**  
**Mr. Justice Md. Mozibur Rahman Miah**

**CIVIL REVISION NO. 1716 OF 2005.**

In the matter of:

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

AND

IN THE MATER OF:

Md. Abdul Jabbar and others

..... Petitioners

-Versus-

Rafiquddin Sarker and others

..... Opposite Parties

None appears

... For the petitioners.

None appears

.....For the opposite parties

**Heard and Judgment on 02.09.2024**

**Md. Mozibur Rahman Miah, J:**

At the instance of the defendant in Other Class Suit No. 119 of  
2003 and that of the appellant in Miscellaneous Appeal No. 40 of 2004,  
this rule was issued calling upon the opposite-party nos. 1-4 to show  
cause as to why the judgment and order dated 08.03.2005 passed by the

learned Joint District Judge, 1<sup>st</sup> court, Dinajpur in the said Miscellaneous Appeal dismissing the appeal and affirming the judgment and order dated 15.05.2004 passed by the learned senior Assistant Judge, in-charge, Sadar, Dinajpur, in Other Class Suit No. 119 of 2003, allowing an application for temporary injunction ex parte filed by the plaintiffs-opposite parties restraining the defendants-petitioners from interfering in enjoying possession in the suit land 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 also stayed the operation of the impugned order and parties were directed to maintain status quo in respect of possession and position of the suit property initially for a period of 06(six) months which was subsequently extended from time to time.

The short facts leading to issuance of the instant rule are:

The present opposite-party nos. 1-4 as plaintiffs originally filed the aforesaid suit for declaration of title in the suit property stating inter alia that, the suit property originally belonged to CS recorded tenant namely, Didar Saha who sold out the same on 26.02.1948 to one, Alhaj Siraj Uddin Sarker by registered deed and during enjoying title and possession over the suit land it was recorded in his name in SA khatian. Thereafter, Alhaj Siraj Uddin Sarker died leaving behind wife, defendant no. 5, 3(three) sons and 6 daughters that is, defendant nos. 2-4 and

defendant nos. 5-7 respectively as his heirs. That the predecessor in interest of the plaintiff's however did not distribute the suit property among his successors and the property left by Alhaj Siraj Uddin Sarker was never partitioned by metes and bounds among his heirs which remained as *ejmali*. It has further been stated that, the plaintiff, Anowara Begum got the suit property through her husband by registered heba deed dated 03.01.1984 and since then she has been possessing the property and during enjoying possession she mutated her name in the khatian. It has further been alleged that, on 10.02.2003 the defendants-petitioners threatened to dispossess her from the suit land and hence the suit was filed. It is to be mentioned here that, after the demises of plaintiff, Anowara Begum the present opposite parties were substituted as her legal heirs. However after filing of the suit, the plaintiff on 04.11.2003 filed an application for injunction under Order 39 rule 1 of the Code of Civil Procedure against the defendants restraining them from interfering with the possession of the plaintiff's in the suit property. Though the defendants did not appear to contest the suit by filing written statement or that of the application filed for temporary injunction, yet it was taken up for hearing by the learned senior Assistant Judge, sadar, Dinajpur on 15.05.2004 and allowed the same ex parte restraining the defendants from entering into the suit property forcibly or to hinder peaceful possession of the plaintiff in the suit land holding that, the

defendants did not appear to contest the application within 10 days from the date of service of the notice of the application upon them.

Being aggrieved by and dissatisfied with the said order passed by the trial court, the defendants as appellants then preferred an appeal before the learned District Judge, Dinajpur being Miscellaneous Appeal No. 40 of 2004 and the said appeal was on transfer heard by the learned Joint District Judge, 1<sup>st</sup> court, Dinajpur and vide impugned judgment and order dismissed the appeal and affirmed the judgment and order passed by the trial court consequent to allowed the application for temporary injunction. It is at that stage, the defendants as petitioners came before this court and obtained instant rule and interim order as stated herein above.

None appeared either for the petitioners or for the opposite parties to press or oppose the rule.

However, I have perused the revisional application in particular, the impugned judgment and order passed by the trial court as well as the appellate court below. On going through the impugned judgment and order through which an order of temporary injunction was granted in favour of the plaintiff opposite party, I find that, the learned judge of the trial court only on considering the point that, since within 10 days upon receiving the summons, the defendants did not appear to contest the application so the plaintiff is entitled to get an order of injunction. While challenging the said order before the appellate court below, the learned

judge of the appellate court has just given a ditto to the order passed by the trial court without assigning any reason independently just upholding the judgment and order passed by the trial court. It is on the record that, the plaintiff filed the suit for declaration of title but it was alleged by the defendants as revealed from the memo of appeal, that the plaintiffs have got no title and possession over the suit property as the property has not been partitioned among the co-sharers through metes and bounds. On top of that, it is the settled proposition followed in disposing of an application for temporary injunction that, in granting an order of injunction, the court is to examine whether the claimant, has got any prima facie case in getting an order of injunction and the balance of inconvenience stands in his/her favour and finally if an order of injunction is not granted, the claimant has every chance to be prejudiced. But none of those settled principles have ever been discussed either by the trial court or by the appellate court while granting an order of injunction. So, in a sense, the order of injunction granted by the trial court and then affirmed by the appellate court clearly runs counter to the said settled principles. Since no reason has been assigned by the courts below while granting temporary injunction so I don't find any merit in the impugned order passed by the courts below which cannot stand.

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

The impugned judgment and order dated 08.03.2005 passed by the learned Joint District Judge, 1<sup>st</sup> court, Dinajpur, in Miscellaneous Appeal No. 40 of 2004 affirming that of the judgment and order dated 15.05.2004 passed by the learned senior Assistant Judge in-charge, Sadar, Dinajpur, in Other Class Suit No. 119 of 2003 is hereby set aside.

Invariably, the order of stay and the direction to maintain status quo stands recalled and vacated.

The trial court is hereby directed to dispose of the Other Class Suit No. 119 of 2002 as expeditiously as possible preferably within a period of 06(six) months from the date of receipt of the lower court records.

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.