

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 981 OF 2016**

**IN THE MATTER OF:**

An application under section 115(1) of the  
Code of Civil Procedure. (Against Order)

-And-

**IN THE MATTER OF:**

Md. Amir Hossain alias Amirul

--- Defendant-Appellant-Petitioner.

-Versus-

Mst. Moymon Nessa Bewa and others

--- Plaintiff-Respondent-Opposite Parties.

No one appears

--- For the Defendant-Appellant-Petitioner.

Mr. Md. Monowar Hossain, Advocate

---For the Plaintiff-Res.-Opposite Parties.

**Heard on: 11.07.2023, 25.07.2023 and  
06.08.2023.**

**Judgment on: 06.08.2023.**

At the instance of the present defendant-appellant-petitioner, Md. Amir Hossain alias Amirul, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1-6 to show cause as to why the impugned judgment and order dated 02.02.2016 passed by the learned Additional District Judge, Court No. 1, Rangpur in the Miscellaneous Appeal No. 46 of 2010 dismissing the appeal and thereby affirming the judgment

and order dated 29.07.2010 passed by the learned Assistant Judge, Kaunia, Rangpur in the Other Suit No. 31 of 2010 allowing the application for temporary injunction should not be *set aside*.

The relevant facts in short for disposal of this Rule, *inter-alia*, are that the present opposite party Nos. 1-6 as the plaintiffs filed the Other Suit No. 31 of 2010 in the court of the learned Assistant Judge, Kaunia, Rangpur for partition of the land described in the schedule 'Ka' of the plaint claiming Shaham of  $.85\frac{3}{4}$  acres of land out of total land measuring  $(1.14 + 3.35) = 4.49$  acres and also for declaration of confirmation of possession in respect of the land measuring .40 acres of land out of aforesaid 'Ka' schedule of land described in schedule 'Kha' of the plaint. In the said suit the opposite parties as the plaintiffs filed an application for a temporary injunction on 07.06.2010 under Order XXXIX (39) rule 1 read with section 151 of the Code of Civil Procedure with a prayer that the plaintiffs are the owners of the land measuring  $.42\frac{3}{4}$  acres and also the land measuring  $.29\frac{3}{4}$  acres by different deeds out of total land measuring .05 acres of land. The plaintiffs described that they are cultivating some of

the above land and they have been the owner of some fisheries land but some portion of the fisheries land has been merged with the land of the Water Development Board (WDB) which was acquired by the Water Development Board (WDB) and also Tista Flood Control Dam. The plaintiffs also trying to get a lease and they prayed on 09.07.1997 before the Executive Engineer, Rangpur Cannel Division. Defendndant No. 2 directed the District Fishery Officer to give a lease out the land to the plaintiffs permanently but could not, because of no power to give permanent lease which belonged to WDB. Thereafter on 21.10.1997 they prayed getting lease to the State Minister, Ministry of Fishery and Livestock of the Government of the People's Republic of Bangladesh and they have established the Fishery Project "Borobit" ("ব-রাবিট").

The present opposite party No. 3 as the defendant contested the suit by filing a written objection on 13.07.2010 contending *inter alia* that the defendant No. 3 as the president of 18 members local beneficiary of the "Borobit" ("ব-রাবিট") / Fishery Re-excavation / Fresh Excavation Project under the approval of the relevant Authority of the Government. The

Government as the defendant appeared and contested the suit without filing any written objection to the temporary injunction.

After hearing the parties the learned Assistant Judge, Kaunia, Rangpur allowed the application for a temporary injunction by the judgment and order dated 29.07.2010. Being aggrieved the present petitioner as the defendant No. 3 preferred the Miscellaneous Appeal No. 46 of 2010 in the court of the learned District Judge, Rangpur which was heard by the learned Additional District Judge, Court No. 1, Rangpur who dismissed the appeal by affirming the judgment and order dated 29.07.2010 by his judgment and order dated 02.02.2016.

This revisional application has been appearing in the daily cause list for a long period of time but no one appears to support the Rule at any stage of hearing.

The Rule has been opposed by the present plaintiff-opposite parties.

Mr. Md. Monowar Hossain, the learned Advocate, appearing on behalf of the present plaintiff-respondent-opposite parties submits that the learned courts below have considered the case filed by the plaintiffs and also considered the prayer for an interim order of temporary injunction after considering the

evidence and documents adduced and produced by the parties the learned trial court passed the judgment and order granting a temporary injunction in favour of the plaintiff-opposite party Nos. 1-6, as such, no interference from this court is called for.

The learned Advocate also submits that the plaintiff-opposite parties filed the partition suit of the cultivating land as well as the watering land by impleading the Government but the Government could not adduce any evidence or documents in support of the claim of the Government upon the suit land, as such, the impugned judgment and order dismissing the miscellaneous appeal by affirming the judgment and order of the learned trial court committed no error of law by passing the impugned judgment and order which requires no further consideration from this revisional court.

Mr. Md. Humayun Kabir, the learned Assistant Attorney General appearing for the Government opposed the Rule without providing any substantial assistance to the court in support of the Government.

Considering the above submissions made by the learned Advocate appearing for the plaintiff-respondent-opposite parties and also considering the revisional application filed by the

present petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and order passed by the learned appellate court below and also perusing the relevant documents exhibited by the parties which are available in the lower courts records, it appears to me that the opposite parties as the plaintiffs filed the other suit for partition of the suit land described in the schedules of the plaint along with an application for an interim order of a temporary injunction upon the suit land. The learned Assistant Judge, Kaunia, Rangpur being the learned trial court heard the application for a temporary injunction and allowed the temporary injunction upon the land by restraining the defendant not to interfering or dispossessing the plaintiffs from the suit land.

Being aggrieved the present petitioner as the appellant preferred the miscellaneous appeal which was heard by the learned appellate court below and the learned appellate court below disallowed the appeal by affirming the judgment and order of the learned trial court.

In an application for a temporary injunction, the learned courts below are obliged and inclined to allow the application for

a temporary injunction and inconvenience the parties as well as the possession of the suit land including the title thereupon.

I am surprised to see from the record that the necessary steps would have taken by the Government in such a case where the land is under the control of the Water Development Board as to the “Tista Flood Control Dam” and other necessities under the authority of the Government have not taken proper steps in the learned trial court as well as in the learned appellate court below. I am also surprised that the concerned Deputy Commission of the said area and all other relevant authorities have failed to assist the court upon this kind of case which can not be considered as absolute negligence and indifference by the Government as to this suit land. I therefore desired the learned Attorney General's Office to provide sufficient submissions regarding the land which they could not provide at all.

I have carefully examined the judgment and order passed by the learned trial court by describing in detail the claim of the plaintiffs, in particular, I have examined the judgment and order of the learned trial court passed on 29.07.2010 and came to a conclusion to pass the temporary injunction by following findings:

...“কা-জই নালিশী জমি-ত বাদীর স্বার্থ সংশ্লিষ্টতা প্রতীয়মান হয় এবং অত্র অস্থায়ী নিষেধাজ্ঞা দরখাস্তে বাদীর অত্যন্ত শক্তিশালী ও যুক্তিগ্রাহ্য মোকদ্দমা বিদ্যমান আছে। অপরদিকে, যে-হতু নালিশী সম্পত্তিতে পাউবো এর সহিত বাদী-প্রার্থীর জমি সীমানা পৃথক চিহ্নিত হয় নাই। কিংবা কোন চূড়ান্ত বন্টন হয় নাই। এবং যেহেতু এটি একটি বন্টনের মোকদ্দমা কাজেই এমতাবস্থায় অত্র অস্থায়ী নিষেধাজ্ঞার দরখাস্ত মঞ্জুর করিলে প্রতিপক্ষের যেরূপ অসুবিধার ক্ষতির আশঙ্কা রহিয়াছে অত্র দরখাস্ত না মঞ্জুর করিলে বাদীর-প্রার্থীর ক্ষতির আশঙ্কা তার চাইতে অনেক গুণে বেশি। কেননা, পাউ-বা এবং মৎস্য অধিদপ্ত-রর একাধিক তদন্ত প্রতি-বদন ও স্মারক হই-ত এ কথা সুস্পষ্ট যে, বাদী-প্রার্থীর নালিশী জমি-ত তাহার নিজ জমি সহ একীভূত করিয়া মৎস্য চাষ করিয়া আসি-ত-ছেন। কা-জই, নালিশী সম্পত্তির চূড়ান্ত বা-টায়ারা এবং পৃথক সীমানা চিহ্নিত না হওয়া পর্যন্ত নালিশী জমি-ত তৃতীয় কোন পক্ষ-ক অনুপ্র-বশ করি-ত দি-ল বাদী-প্রার্থীর অপূরণীয় ক্ষতির আশঙ্কা আছে বলিয়া আদালতের নিকট পরিলক্ষিত হয়।”...

The learned appellate court below also considered the documents produced by the parties and came to a conclusion by affirming the judgment and order of the learned trial court on the basis of the following findings:

...“বিজ্ঞ নিম্ন আদালতের নথি পর্যালোচনায় আরও দেখা যায় যে, নালিশী জো-তর জমি বাদী-রেসপন-ডন্টগণ কবলা দলিলমূ-ল প্রাপ্ত হ-য় ভোগদখল করেন। পানি উন্নয়ন বোর্ডের বাধের উত্তর অংশে বাদী-প্রার্থীগণ ভোগদখলীয় ১৪ দা-গর জমির অংশ মাছ চা-ষর জন্য খনন পূর্বক ভোগ-দখল করা কালে উক্ত জমি বাধের নয়নজলির সাথে একীভূত হয়ে যায়। বা-ধর অধিগ্রহণকৃত ৬০ শতক জমি এবং বাদী-দর ভোগদখলীয় ৪০ শতক জমি একীভূত হয়ে একটি জলাশয়ের সৃষ্টি হয়। উক্ত জলাশয়টি পুনঃ খনন



ক-র বিবাদী-আপীল্যান্টপক্ষ তা-ত মাছ চাষ করার উ-দ্যোগ গ্রহণ ক-রছি-লন। কিন্তু পানি উন্নয়ন বো-র্ডর নির্বাহী প্র-কৌশলী এবং মৎস্য বিভা-গর উর্ধ্বতন কর্মকতাগণ কর্তৃক বিভিন্ন তারিখে প্রেরীত পত্র ও স্মারক সমূহ পর্যা-লাচনায় দেখা যায় যে, পুনঃ খনন প্রক-ল্পর কাজ স্থগিত করার জন্য সুনির্দিষ্ট নি-র্দশনা প্রদান করা হ-য়ছিল। নালিশী জমির সীমানা সু-চিহ্নিত না থাকার কারণে উক্তরূপ আদেশ প্রদান করা হয়েছে মর্মে দেখা যায়।”...

In view of the above discussions and findings of the learned courts below I am of the opinion that the learned courts below, particularly, the learned appellate court below committed no error of law and there is no nonconsideration and misreading by passing the impugned judgment and order by affirming the judgment of the learned trial court.

In such a situation, I consider that this is not a proper case for interference by this court upon the impugned judgment and order.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim order passed by this court at the time of issuance of the Rule staying the operation of the impugned judgment and order dated 02.02.2016 passed by the learned Additional District Judge, Court No. 1, Rangpur for a period of 6

(six) months and subsequently the same was extended from time to time are hereby recalled and vacated.

The impugned judgment and order dated 02.02.2016 passed by the learned Additional District Judge, Court No. 1, Rangpur in the Miscellaneous Appeal No. 46 of 2010 dismissing the appeal and thereby affirming the judgment and order dated 29.07.2010 passed by the learned Assistant Judge, Kaunia, Rangpur in the Other Suit No. 31 of 2010 is hereby upheld.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below immediately.