

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)
First Miscellaneous Appeal No. 100 of 2017
with
(Civil Rule No. 67 (FM) of 2017)
In the matter of:**

Md. Shajahan Bhuiyan and others
... Plaintiffs-Appellants

-Versus-

Sabina Yeasmin and others
...Defendants-Respondents

Ms. Tahmina Polly, Advocate
...For the appellants-petitioners

Mr. Md. Zahangir Kabir, Advocate
... For the respondents-opposite parties nos. 1-6

Heard on 22.10.2024

Judgment on 24.10.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

Since the point of law and fact figured in the appeal and the rule are intertwined, those have been heard together and are being disposed of by this common judgment.

At the instance of the plaintiffs in Title Suit No. 1100 of 2014, this appeal is directed against the order dated 15.01.2017 passed by the learned Joint District Judge, First Court, Dhaka in the above-mentioned suit rejecting the application for temporary injunction.

At the time of issuance of the Rule, the defendant-respondent-opposite party nos. 1-6 were restrained from dispossessing the plaintiff-appellant-petitioners from the suit land described in the schedule for a

period of 02(two) months, which was subsequently extended from time to time and it was lastly extended on 21.11.2017 till disposal of the Rule.

The salient facts leading to preferring this appeal are:

The present appellants as plaintiffs instituted Title Suit No. 1100 of 2014 before the learned Joint District Judge, First Court, Dhaka for declaration that the plaintiffs are the absolute owners of the scheduled land and the judgment and order dated 22.11.1988, Preliminary Decree dated 29.11.1988 and the final Decree dated 11.1.1992 passed in Title Suit No 321 of 1985 are collusive, fraudulent and not binding upon the plaintiffs.

On the following day of filing the suit on 26.11.2014, plaintiffs also filed an application under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction restraining the defendants from executing the decree in Execution Case No. 16 of 2000 and demolishing the building situated on the plots and dispossessing the plaintiff therefrom, stating *inter alia* that one Nazar Mahmood was the CS recorded tenant of the suit land including 15.26 acres of land appertaining to CS plot nos. 1053, 1054, 1057, 1058, 1069, 1071, 1075 under CS khatian No: 313. After demise of Nazar Mahmood his heirs became the owners of the suit land. The heirs sold out and handed over possession of the suit land to various persons. Thus one Md. Asad Ullah became owner of 4.125 decimals of land and sold the same to plaintiff no. 1 by registered deed of sale being No. 6274 dated 20.03. 2007. One Rezaul Karim through his attorney sold 7.0125 decimals of land by

registered deed of sale dated 7.4.94 in favour of plaintiff no 2. One Khaleda Begum on 3.3.2011 by registered deed of sale sold 5.36 decimals of land in favour of plaintiff nos. 3 and 4. Sona Miah, Wakib Miah, Habibullah sons of Nazar Mahmood, Nazu Miah son of Chan Miah, Jamirunnessa widow of Chand Miah, Sofurunnessa daughter of Late Chan Miah on 9.11.1965 by registered deed of sale transferred 5 khatas of land to plaintiff no. 5. One Imanul Haque Chowdhury transferred 6 decimals of land in favour of plaintiff no. 6 and 5 decimals of land in favour of his son S. K. M. Saleh Ahmed Chowdhury. Thereafter the said Saleh Ahmed Chowdhury again transferred 5 decimals of land in favour of plaintiff no. 6. Thus plaintiff no. 6 became owner and possessor of the said 11 decimals of land. After purchase, the plaintiff nos. 1-6 have mutated their names and have been paying rent to the government and upon obtaining the approval of RAJUK constructed six numbers of six storied buildings and possessing the same with their family which have been recorded in separate city corporation holding nos. KA-46/F, 32/4/B, KA-72/4-B and KA 21/A Shajahadpur, Police Station Gulshan, District- Dhaka.

On 20/11/2014 few people came to the suit plots and attempted to take possession of the suit land owned by the plaintiffs. However, they left the suit land then the plaintiffs came to know that a suit being Title Suit No. 321 of 1985 had been filed by three daughters of Chan Miah, son of Nazar Mahmood claiming partition over the property of Nazar Mahmood where the predecessors-in-interest of plaintiff nos. 1 and 6, plaintiff nos. 4 and 5 were not made parties in that Title Suit as no notice

was served upon the predecessor in interest of the plaintiff no. 2 and the defendants had obtained the judgment and decree in Title Suit No. 321 of 1985 on 22.11.1988 by practising fraud. Hence the plaintiff instituted Title Suit No. 1100 of 2014. After filing of the suit, the defendants have been constantly threatening to execute the decree of Execution Case No. 16 of 2000 filed against the alleged judgment and decree passed in Title Suit No. 321 of 1985 and thereby trying to dispossess the plaintiffs by demolishing their buildings and in such a circumstance, plaintiffs filed an application under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure.

On 03.03.2016 the defendants filed written objection against the application denying all the material averments made in this application and prayed to rejecting the application for injunction.

Upon hearing the parties, the learned Joint District Judge, First Court, Dhaka rejected the application for temporary injunction on 15.01.2017 holding that the schedule of land on which the injunction was prayed was vague and unspecified and no injunction can be granted against a judicial proceeding under the provision of section 56 of the Specific Relief Act.

Being aggrieved by and dissatisfied with the said order passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 1100 of 2014 the plaintiffs as appellants preferred the instant appeal. After preferring the appeal, the appellants as petitioners then filed an application for injunction on which this Court issued Rule and passed an

order of ad-interim injunction which gave rise to Civil Rule No. 67(FM) of 2017.

Ms. Tahmina Polly, the learned Advocate appearing for the appellants-petitioners contends that the plaintiffs-appellants were not made party in the Title Suit No. 321 of 1985 and the decree was passed *ex parte* in collusion with the heirs of Nazar Mahmood, who had sold their interest long before initiation of the suit while the plaintiffs purchased the suit land by different registered deeds and mutated their names in the khatian on paying land development tax and constructed as many as six residential buildings of six-storey each on obtaining permission from RAJUK and they have been enjoying the possession thereof.

Ms. Polly submits that the trial Court failed to appreciate that no judicial proceeding has been challenged in the suit and hence, section 56 of the Specific Relief Act is not applicable in the case.

She further submits that C.S, S.A, R.S and City survey in respect of the suit land have been specifically described in the plaint and the application for temporary injunction, yet the learned judge of the Court below has committed a serious error holding that the suit land is vague and unspecified and finally prays for allowing the appeal and making the Rule absolute.

Per contra, Mr. Md. Zahangir Kabir, learned Advocate appearing on behalf of the respondent nos. 1-6 contends that, the present suit is not maintainable as the plaintiff should have preferred appeal against the

judgment and decree which has been challenged in the present suit and prays for dismissing the appeal and discharging the Rule.

We have considered the submission so advanced by the learned counsels at length, perused the memorandum of appeal, application for injunction, impugned order and other materials on record.

It appears that the plaintiff described the numbers of C.S and City Jarip Khatian and Plot numbers of the suit land in the plaint and application for temporary injunction. They also mentioned the City Corporation Holding numbers and the boundaries as well.

Record further shows that, the plaintiffs-appellants did not challenge the judicial proceeding and they did not pray for staying any judicial proceeding and thus section 56 of the Specific Relief Act is not applicable in this matter. For ready reference section 56 of the Specific Relief Act is reproduced below:

56. An injunction cannot be granted-

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restraint persons from applying to any legislative body;

- (d) to interfere with the public duties of any department of the Government, or with the sovereign acts of Foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (j) when the conduct of the applicant on his agents has been such as to disentitle him to the assistance of the Court;
- (k) where the applicant has no personal interest in the matter.

It appears from the record that after purchasing the suit land the plaintiffs-appellants mutated their names in the khatian and have been paying land development tax. They have also constructed buildings in the suit land upon obtaining approval from RAJUK and they have been paying city corporation tax, gas, electricity bills and water bills. All these aspects clearly show that they have been enjoying possession of

the suit land with their family since long. So, we find that the plaintiffs-appellants have good *prima facie* and arguable case in obtaining a restrain order. We also find that the balance of inconvenience is also in favour of the plaintiffs-appellants and they shall suffer irreparable loss and injury if they are dispossessed from the suit land otherwise than in due course of law.

Record further shows that the instant appeal was admitted and the order of ad-interim injunction was passed by this Court on 02.02.2017 while the respondents entered appearance in this appeal on 19.04.2017 but they did not raise any objection or by filing any application for vacating the order of ad-interim injunction granted by this Court or moved in the Honourable Appellate Division.

However, we are of the considered view that a substantive relief has been granted to the appellant by the earlier order of ad-interim injunction dated 02.02.2017 which should be modified for the ends of justice. Hence, justice will be best served if we grant an order of *status quo* in respect of the position and possession of the suit land till disposal of the suit in place of order of injunction. Given the above discussion and observation however, we do not find any substance in the impugned order which is liable to be set aside.

Accordingly, the appeal is disposed of, however without any order as to cost.

The order dated 15.01.2017 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 1100 of 2014, is thus set aside.

Since the appeal is disposed of, the connected rule being Civil Rule No. 67 (FM) of 2017 is also disposed of.

The order of ad-interim injunction granted at the time of issuance of the Rule stands modified.

The parties are hereby directed to maintain *status quo* in respect of position and possession of the suit land till disposal of the Title Suit No. 1100 of 2014.

The learned Joint District Judge, First Court, Dhaka is hereby directed to dispose of Title Suit No. 1100 of 2014 as expeditiously as possible, preferably within a period of 06 (six) months from the date of receipt of the copy of this order.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.