

I Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 181 of 2018

IN THE MATTER OF:
Mosammot Bilkis Ara Begum
...Plaintiff/Appellant

Versus
Md. Masud Sarkar (Kanak) and others
...Defendant /Respondents

Mr. Imran A. Siddiq, Senior Advocate
.... For the Appellant

Mr. Md. Aminul Islam, Advocate
... For the Defendant/Respondent No. 2

Heard on 12.01.2026, 18.01.2026,
08.02.2026, and judgment on: 15.02.2026.

Md. Iqbal Kabir, J:

This appeal is directed against the judgment and decree dated 25.01.2018 passed by the 1st Court of Joint District Judge, Bogura, in Other Suit No. 320 of 2011, insofar as it relates to rejecting the appellant's prayer for a mandatory injunction for dismantling and removing the structures constructed by the defendant No. 3 on the suit land and delivering vacant possession thereof to the appellant.

Facts in a nutshell, for the disposal of the appeal are that the appellant, being the plaintiff, filed suit for a permanent injunction to restrain the defendants from interfering with the peaceful possession of the suit land, and from changing the nature and character of the suit land or transferring the suit land. However, during pendency of the suit, the appellant/plaintiff instituted an application for temporary injunction against defendant Nos. 1 and 2 which was granted in favour of plaintiff on 28.05.2012 and it was ordered that the defendants are restrained from entering the property described in the schedule, evicting the plaintiff, obstructing plaintiff's peaceful possession, changing the nature of the property or transferring it to anyone till disposal of the suit. But, on 19.02.2013, defendant No. 1 transferred 6 decimals from the suit property vide kabala deed no. 4165 in favour of Most. Jasimon Nesa, who was added as defendant No. 3 vide an order dated 30.10.2013. However, on 17.01.2015, the appellant/plaintiff was dispossessed of 6 decimals of the suit land. The

defendant No. 3 passed away; therefore, the heirs of the defendant No. 3 were substituted based on an application for substitution of heirs filed by the appellant plaintiff. Subsequently, on 16.11.2017 plaintiff made an application for amendment the plaint praying that "বাদিনীর আরজির প্রার্থনার ৮(ঘ) দফার শেষে ৮(ঙ) বাদিনীর দখলীয় স্থানে ৩ নং বিবাদী কর্তৃক নির্মিত ও অত্র মোকদ্দমার কমিশনার কর্তৃক ১২/৪/১৫ ইং তারিখের প্রস্তুতকৃত হাত নকশার চিহ্নিত স্থানের দোচালা টিনের ঘর যাহা নীল রং দ্বারা চিত্রিত করা হইয়াছে তাহা By way of Mandatory Injunction দ্বারা অপসারণ পূর্বক বাদিনীকে খাসদখল দেওয়ার আদেশ পায়। প্রার্থনাটি সংযোজিত হইবে।" which was allowed on 26.11.2017.

The defendants' case in brief is that the property of plot No. 1356 of the said C.S. Khatian No. 177, respectively, divided into survey plots 1, 2, and 3. 10 decimals of survey plot No. 2 were allocated to Mohajer Solaiman Ali, and 8 decimals of survey plot No. 3 were allocated to Abul Mia; they built houses there and started living there. Solaiman Ali died, leaving 2 sons, namely Md. Abbas Ali and Md. Mostafa, who became the possessor of the said property. Thereafter, when Abdul Mia died, his son Abdur Rahim, two daughters, namely Mosammat Nazma Khatun and Mosammat Salma Khatun, were the possessors of the said property. Thereafter, Abbas Ali and Mostafa verbally gifted their owned property to their uncle Abdur Rahim, and similarly, Salma Khatun verbally gifted her share of the property to her sister Nazma Khatun and transferred possession. Shabana is the heir of Abdur Rahim. Shabana and Nazma, having received the total 18 decimals of land in survey plots No. 2 and 3 of CS Khatian No. 177, became owners and possessors, and due to their need for money, executed a registered kabala (sale deed) No. 15170 on 19.07.2010. sold to the 2nd defendant, and defendant No. 2 has 2 tin houses there. Plaintiff's deeds No. 3526 and 3527, dated 31/08/1994, are without jurisdiction and fictitious.

It is further mentioned that the defendant No. 3 was added as a party in the suit, who filed a written statement stating 5 decimals out of 10 decimals of C.S. Khatian No. 172 C.S. Dag No. 1357 Survey Plot No. I was sold by Asma Begum, daughter of Jamal Khan, to one Azizar Rahman, and that Azizar Rahman sold it to the defendant No. 1. Subsequently, defendant No. 1 sold it to the defendant No. 3 by way of deed of sale dated 19/02/2013 and executed and registered the same. The defendant No. 3, after purchasing the decimals of

land of the constructed infrastructure thereon, and enjoying and possessing the same.

However, in the course of the trial, the learned Joint District Judge, Bogura, framed as many as 4(four) issues, examined 3(three) witnesses adduced by the Plaintiff, marked his documents as exhibit 1-4, and also examined two witnesses adduced by the defendant No. 1 and marked his documents as exhibit 'Ka' to 'uma'.

However, by the impugned judgment dated 25.01.2018, the learned First Court of Joint District Judge, Bogura, was pleased to decree the suit in part, restraining the Defendants from interfering with the peaceful possession of the suit land. However, the learned Court held that the Appellant/Plaintiff was not entitled to an order for eviction of the Defendant No. 3 inasmuch as she had failed to adduce oral and documentary evidence to establish the nature and manner of her dispossession from the suit land. As such, the Appellant/Plaintiff has filed the instant appeal.

Being aggrieved by and dissatisfied with the judgment and decree passed by the learned Joint District Judge, Bogura, in Other Suit No. 320 of 2011, the plaintiff/ appellant preferred the instant appeal before this Court.

Mr. Imran A. Siddiq, learned Advocate appearing for the Appellant, has drawn our attention to the finding of the learned Joint District Judge that “তবে নালিশী সম্পত্তির কোন অংশে কিভাবে ৩নং বিবাদী দ্বারা বেদখল হইয়াছেন এই বিষয়ে বাদী দালিলিক ও মৌখিক সাক্ষ্য উপস্থাপন করিতে পারে নাই.” Relying on this observation, he submits that the said finding is erroneous, inasmuch as there was sufficient oral and documentary evidence on record to establish the fact and manner of dispossession of the Appellant/Plaintiff from the suit land. In elaboration, it is contended that on 26.11.2017, PW-1, Md. Afzal Hossain, upon recall, categorically deposed that “নিষেধাজ্ঞা বহাল থাকা অবস্থায় ১৭/০১/২০১৫ তারিখে ৬ শতক বেদখল করেছে।” and significantly, he was not cross-examined by the Defendant on this material aspect of dispossession. Furthermore, on 08.09.2015, the learned Advocate Commissioner submitted a report stating that a tin-shed house existed on the suit land, which appeared to have been constructed approximately 8-9 months earlier. The Advocate Commissioner subsequently deposed in support of this report on 19.07.2017, yet no cross-examination was directed to challenge the issue of dispossession.

It is further submitted that Defendant No. 3, in his written statement, expressly admitted having taken over possession of 6 decimals of land and having made infrastructural developments thereon. Such a clear admission, coupled with the uncontroverted oral testimony and the Commissioner's report, sufficiently establishes the fact of dispossession of the Plaintiff from the suit land.

He submits that there is ample oral and documentary evidence to establish that the Appellant/Plaintiff was dispossessed from the suit land during the pendency of an order of temporary injunction; therefore, she was entitled to pray for a mandatory injunction for restoration of the status-quo ante.

Mr. Siddiq, learned Advocate appearing for the Appellant, submits that the withdrawal of the Violation Miscellaneous Case filed by the Appellant does not, in any manner, affect the instant proceedings. He contends that the Violation Miscellaneous Case was instituted under Order XXXIX, Rule 2(3) of the Code of Civil Procedure for the purpose of punishing Defendant No. 3 for willful violation of the order of temporary injunction dated 28.05.2012. Such proceedings are independent of and distinct from the main injunction proceedings. He further submits that the said Violation Miscellaneous Case was withdrawn due to the death of Defendant No. 3. Consequently, such withdrawal cannot have any bearing on the merits of the present case. The order of temporary injunction passed by the learned trial Court remained valid and operative until the disposal of the suit, and its enforceability is in no way affected by the withdrawal of the Violation Miscellaneous Case.

Mr. Md. Aminul Islam, learned Advocate for the Defendant-Respondent No. 2, submits that he lawfully purchased a total of 18 (8+10) decimals of land under C.S. Khatian No. 177, Dag No. 1356, Survey Plot Nos. 2 and 3 from Shabana and Nazma by way of a registered sub-kabala deed being No. 15170 dated 19.07.2010. He duly produced all relevant documents before the learned Trial Court and, in his deposition, categorically stated that he has owned the said land. During cross-examination, he firmly denied the possession of the Plaintiff-Appellant.

It is further submitted that Defendant No. 3 has owned 6 (six) decimals of the suit land. Significantly, the Plaintiff-Appellant herself filed an application on 16.11.2017 before the learned Trial Court seeking a mandatory injunction for the recovery of possession of the said 6 decimals by removing the structures

erected thereon. This clearly establishes that the Plaintiff-Appellant did not have the entire suit land.

He claims it is evident that Defendant No. 3 had a portion of the suit land. The Plaintiff-Appellant admitted dispossession from that portion by seeking recovery through a mandatory injunction. Therefore, the suit land was under joint possession, and the Plaintiff-Appellant did not have exclusive possession over the entire 23 decimals. He submits that a suit for permanent injunction is maintainable only when the plaintiff is in exclusive possession of the suit property. In the present case, the Plaintiff-Appellant was admittedly dispossessed of 6 decimals; thus, exclusive possession was not established. Consequently, the suit for permanent injunction is not maintainable in law. In the above facts and circumstances, the instant appeal is not legally and factually maintainable and as such, the appeal is liable to be dismissed for the ends of justice.

However, the case of the Appellant is that defendant No. 3 dispossessed her of 6 decimals of land during the pendency of the order of Temporary Injunction dated 28.05.2012, violating the Court's order. Appellant gave oral evidence in support of her claim; the Advocate Commissioner's report also supports that claim and defendant No. 3 admitted in written statements that she made construction in the disputed land in question.

Upon hearing the parties, it transpired that the trial court granted a temporary injunction vide its order dated 28.05.2012, thereby the trial Court restraining defendant Nos. 1 and 2 from entering into the property, evicting the plaintiff, or transferring the land. However, despite the injunction, on 19.02.2013, defendant No. 1 transferred 6 decimals to defendant No. 3. During the pendency of the suit on 17.01.2015, defendant No. 3 allegedly dispossessed the plaintiff of 6 decimals and erected a tin-shed house. The trial Court granted a permanent injunction for the whole property but refused the mandatory injunction to remove the structure and restore possession, claiming the plaintiff failed to provide evidence of dispossession. Though the defendant No. 3, in its written statement, has admitted that the land has been purchased and the subsequent construction of structures thereon during the subsistence of the order of temporary injunction. This admission is corroborated by the commissioner's report dated 08.09.2015, which confirms the existence of a newly constructed tin-shed structure upon the disputed land, thereby lending

strong support to the plaintiff's allegation of recent dispossession. Moreover, the testimony of P.W.1, Md. Afzal Hossain clearly establishes that the plaintiff was dispossessed on 17.01.2015, when the injunction order passed by the Court was still in force. The learned trial Court, having rightly found that the plaintiff possessed a prima facie title and exclusive possession over the suit property, proceeded to grant a decree of permanent injunction. However, it fell into patent error in failing to address the material issue of dispossession, particularly in light of the undisputed existence of newly erected structures on the suit land. In this context, it was forcefully contended that the transfer of the suit property during the pendency of the suit was in clear violation of the subsisting order of temporary injunction, as it directly contravened the express prohibition imposed by the court against any transfer or change in the nature and character of the property. Such an act is not only legally impermissible but also renders the subsequent construction and possession of the transferees wholly unlawful and liable to be set aside.

Further, in the question of joint possession, it was the claim of the respondent that the plaintiff did not have exclusive possession; the plaintiff had filed an application for a mandatory injunction to recover possession of 6 decimals of land. According to him, defendant No. 3 was physically occupying those 6 decimals and had built a structure there; "joint possession" existed between the parties. However, the trial Court concluded that the plaintiff had proven prima facie title and exclusive possession of the suit land. The trial Court reached this conclusion by holding that the plaintiff had failed to produce sufficient evidence (oral or documentary) to prove they had actually been dispossessed by Defendant No. 3. However, this Court addressed the claim of joint possession by examining evidence that the trial Court had reportedly overlooked, the Evidence of Dispossession. The Court looked at the Advocate Commissioner's report, which confirmed that a newly constructed tin-shed structure existed on the land. The defendant No. 3, in his written statement, admitted to the purchase and the newly constructed therein. The Court considered the testimony of P.W.1, who explicitly stated that dispossession occurred on 17.01.2015, while a temporary injunction was in place.

However, defendant No. 3, in his own written statement, admits that he purchased the disputed land and constructed structures thereon during the subsistence of the injunction order. The Advocate Commissioner's report dated

8.9.2015 further corroborates this position, confirming the existence of a newly constructed tin-shed structure on the suit property, which clearly aligns with the plaintiff's claim of recent dispossession during the pendency of the suit. Moreover, the testimony of P.W.1, Md. Afzal Hossain categorically states that the dispossession occurred on 17.01.2015, at a time when the Court's temporary injunction was in force. These facts, taken together, establish not only unlawful dispossession but also a deliberate violation of a subsisting Court order.

Notwithstanding such findings, the learned trial Court, while holding that the plaintiff had a prima facie title and exclusive possession, thereby granting a decree of permanent injunction, failed to address the crucial issue of dispossession as evidenced by the unauthorized structures erected on the suit land. This omission has resulted in a manifest inconsistency in the judgment. It is a settled principle of law that no party should be permitted to benefit from his own wrongful act, particularly where such an act constitutes a breach of a Court's injunction order. In the circumstances, the construction raised by the defendant, being in clear violation of the Court's order, cannot be allowed to subsist. Accordingly, a decree of mandatory injunction is not only justified but necessary to restore the status quo ante and to ensure that the authority of the court is upheld.

Accordingly, the appeal is allowed without any order as to cost.

The impugned judgment and decree dated 25.01.2018 passed by the 1st Court of Joint District Judge, Bogura, in Other Suit No. 320 of 2011, is thus set aside.

Send down the Lower Court Records at once, along with a copy of this judgment.

A.K.K. Zhirul Huq, J:
I agree