

**Present:**

**Mr. Justice Sheikh Abdul Awal**

**And**

**Mr. Justice Md. Mansur Alam**

**First Miscellaneous Appeal No. 148 of 1999**

**with**

**Civil Rule No. 79(F.M) of 1999**

**In the matter of:**

Memorandum of appeal against original order

-and-

**In the matter of:**

Md. Akinuddin Mandol and others

Plaintiffs-Appellants

Versus

People's Republic of Bangladesh

represented by the Deputy Commissioner,

Dinajpur and others

Defendants-Respondents

Mr. Giusuddin Ahmed, with

Mr. Shah Ahmed Badol, Advocates

for the plaintiffs-appellants

Mr. Md. Yousuf Ali, D.A.G

for the defendants-respondents

**Heard on: 27.02.2025**

**Judgment on: 09.03.2025**

**Md.Mansur Alam, J**

This miscellaneous appeal as well as rule are heard together as the similar question of fact and law are involved in it as well as the parties are same and now disposed of by a single judgment.

The brief facts of this first miscellaneous appeal are that being aggrieved and dissatisfied the plaintiff appellant preferred this miscellaneous appeal against the judgement and order dated 06.01.1999 passed by the Learned Subordinate Judge, 1<sup>st</sup> Court

Dinajpur in Title Suit No.09 of 1998 rejecting the applications under Order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure.

The plaintiff appellant brought Title Suit No.09 of 1998 for declaration of right, title and possession over the suit land and filed a separate petition under Order 39 rule 1 and 2 read with section 151 of Civil Procedure Code. The case of the plaintiff appellant in short is that the suit land was originally belonged to Kiamuddin Mondol and others who got the same by way of exchange based on different power of attorney in the year of 1953. Kiamuddin Mondol thereafter filed a Partition Suit No.22 of 1955 dated 24.03.1955 to have the suit land by mets and bound. A receiver is appointed for the maintenance of the suit land. Kiamuddin thereafter got final decree in the Partition Suit No. 22 of 1955 and have been possessing the suit land. The plaintiff-appellant for the first time came to know on 11.08.97 from a notice issued by Assistant Commissioner (land) that some vested people are attempting to get lease of the suit land. Hence the plaintiff brought the aforesaid title suit along with the petition under Order 39 rule 1 and 2 read with section 151 Code of Civil Procedure.

Defendant-respondent entered in the suit filing written objection denying all material allegations made in the petition under Order 39 rule 1 and 2 of Civil procedure code contending inter alia that S A khatian for the suit land is prepared in the name of the government as khash property in khatian no.1 long 37/38

years ago. Defendant-respondent was not the party to the Partition Suit No.22 of 1955 and was not aware about the appointment of receiver in that suit. So the present petition for temporary injunction is liable to be rejected.

At the time of hearing of this appeal learned Advocate Mr. Giusuddin Ahmed for the plaintiffs-appellants argued that learned Subordinate judge was misconceived the fact of the case and erred in law in rejecting the petition. Learned trial judge did not consider the final decree, commissioner's report and field book of Partition Suit No.22 of 1955 against a Co Sharer Diganta Kumar Shaha where this appellant got decree. The plaintiff-appellant got possession over the suit land by virtue of final decree dated 28.02.19876. Learned Judge very wrongly observed that the defendant government was not made party to the partition suit, so the defendant government is not bound by the judgement of the decree of the partition suit. But at the time of instituting the partition suit, the suit land was not in the name of government; rather the record was prepared in the name of Hemantakumar Saha, Sarat Kumar Saha and of others. Respondent opposite party No.3 Assistant Commissioner land Fulbari, Dinajpur though received notice of the partition suit on 19.04.1998, did not appear with a view to alienate the suit property to different landless people. Learned trial judge ought to have considered that the duty to pay rents of the suit lands was with the Receiver whose term was till 15.05.95. This appellant possessing the suit land for long

73 years. So the impugned order of the learned trial judge is illegal and baseless.

On the other hand the Learned Deputy Attorney General for the defendants-respondents contended that the present petition under Order 39 rule 1 and 2 is not all maintainable, the plaintiff appellants have no right, title and possession over the suit land, The suit land is recorded in khas khatian by the name of the defendant government, The defendant government has every authority to lease out the suit to the others preferably to the landless people.

We have heard the learned Advocate for the appellants as well as respondents. We have also perused the memorandum of miscellaneous appeal and materials on record.

On meticulous and close perusal of the impugned order and materials on record it is contended on the part of the plaintiff-appellant that they became owner of the suit land by way of registered power of Attorney deeds on different dates. It is found that they got decree of a Partition Suit No. 22 of 1955 as plaintiff and went on possession over the suit land by virtue of final decree dated 28.02.76. They have submitted final decree, advocate Commissioners report and field book in Title Suit No. 09 of 1998 in supporting their possession. The plaintiff-appellant contended that the suit land was under the management of Receiver Zinnat Ullah and he was totally unconcerned about the record of right and payment of rent of the suit land. It is found that the Zinnat Ullah

was appointed receiver for the suit land till 1995. So it was the duty of the Receiver to prepare S A khatian in the name of petitioner plaintiff and to pay the rent regularly. But on the failure of the Receiver these petitioner plaintiffs could not be harmed. Learned Subordinate Judge was quite wrong in holding the view that the Government defendant is not bound by the decree of Partition Suit No.22 of 1955. The plaintiff-appellant rightly submits that the government was not the owner of the suit property during the time of institution of that partition suit in 1955. According to the principle of jurisprudence that the aforesaid judgment and decree and the final decree thereof is binding upon the government opposite party. The defendant-opposite party has not been able to prove how the government acquired the suit land. The positive case of the plaintiff is that they acquired the land by way of registered power of attorney. The plaintiff-appellants title over the suit land may be derived from the agreement between the parties signed on 19.05.53 under the provisions of 53A of Transfer of Property Act. Despite that plaintiff-appellant submitted the registered power of Attorney deeds duly executed by the parties concerned. It also proves the right, title and possession of the plaintiff-appellants over the suit land. These plaintiff thereafter instituted the aforementioned suit 22 of 1955, got decree along with final decree. The plaintiff-appellant submitted decree, final decree, sketch map and field book etc. The plaintiff-appellant thus

proved the prima facie right title and possession over the suit land where the defendant-respondent failed.

From the above discussion and on appreciating the forgoing aspects we hold the view that the plaintiff-appellant has prima-facie right, title and possession over the suit land and balance of convenience and inconvenience is in favour of the plaintiff-appellant. Therefore, we are constrained to hold that the impugned order of the learned Sub-ordinate Judge deserve to be interfered with.

In view of our discussion made in above by now it is clear that the instant miscellaneous appeal must succeed.

**In the result, the instant miscellaneous appeal is disposed of as well as the connected Rule being No.79(F.M.) of 1999 is disposed of without any order as to costs.**

The impugned order dated 06.01.1999 passed by the learned Subordinate Judge, 1<sup>st</sup> Court, Dinajpur in Title Suit No. 09 of 1998 rejecting the prayer for temporary injunction is set aside and the defendant opposite party are directed to maintain status quo in leasing out the suit property to others.

In such circumstances, we are of the view that the ends of justice would be done if a direction be given upon the court below to hear and disposed of the suit expeditiously as early as possible.

The order of injunction granted earlier by this Court at the time of issuance of the Rule is hereby modified as above.

Communicate the order to the concerned Court below with a copy of the judgment at once.

**Sheikh Abdul Awal, J**

I agree