

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

Present

Mr. Justice Md. Riaz Uddin Khan

First Miscellaneous Appeal No. 244 of 2000

With

Civil Rule No. 787 (FM) of 2000

IN THE MATTER OF:

Hilly Housing Co-operative Society Ltd

... Defendant-Appellant

-Versus-

Akhtaruzzaman Chowdhury and another

... Plaintiff-Respondents

None

... For the parties

Judgment on: 14.05.2026

Md. Riaz Uddin Khan, J:

This First Miscellaneous Appeal is directed against the order No.14 dated 10.07.2000 passed by the Sub-ordinate Judge, 1st Court, Sadar, Chittagong in Other Suit No.68 of 1999 allowing the prayer for extension of status-quo.

A Division Bench of this Court admitted this appeal by order dated 04.09.2000 and on 20.09.2000 issued Rule in Civil Rule No.787(FM) of 2000 and stayed the operation of the impugned order dated 10.07.2000.

Though this first miscellaneous appeal was admitted by a Division Bench of this Court as per the then rule of the Supreme Court (HCD) Rules, 1973 but as present as per Rule-1B of Chapter-II of the Rules, 1973 this appeal is to be heard by a Single Bench.

Facts for disposal of this Miscellaneous Appeal in brief are that the respondent no.1 as plaintiff filed Title Suit No.68 of 1999 against the defendant-appellant and proforma respondents herein impleading them as defendants for specific performance of contract of sale of the suit property scheduled in the plaint contending *inter alia* that the defendant no.1 became owner in possession of the suit property i.e. 11'96 acres of land by purchase from the original owners of the same by registered kabala dated 16.7.1985, 24.1.1985, 3.6.1985, 26.2.1992, 5.4.1984, 14.2.1984, 8.6.1981 and 2.7.1981 out of which 1'25 acres of land was acquired by the Government for Bakhrabad Gas Company and excluding the above said land the defendant no.1 had been in possession of 10'71 acres of land; the defendant no.1 is a registered Housing Co-operative Society and the members of the said Society took decision for transferring the suit property and the defendants 2 and 3 were given power for the purpose; the plaintiff was in search of a big plot for establishment of an industry and all of a sudden the defendants 2 and 3 proposed to sell the suit property to the plaintiff and the plaintiff agreed to purchase the same at the rate of Tk.80,000/- per kani (1 kani = .40 acres); the plaintiff paid Tk.25,000/= in cash to the defendants 2 and 3 on 17.9.1996 and Tk.1,75,000/= and Tk.3,25,000/= through Cheques dated 17.9.1996 and the defendants executed a Bainanama in respect of the suit property in favour of the plaintiff on 17.9.1996;

at time of execution of the above Bainanama dated 17.6.1996 the defendants 2 and 3 handed over the Photostat copies of all documents in connection with the suit property in favour of the plaintiff and delivered possession of the suit property to him; the defendant no.2 have withdrawn money from account of the plaintiff by using the above said two Cheques, that according to the terms of the contract the plaintiff tendered the balance amount of money to the defendants 2 and 3 on different occasions within two months from 17.9.1996 and asked them for execution and registration of the kabala in respect of the suit property but the defendants 2 and 3 on each and every occasion gave allurements to the plaintiff that they would execute and register kabala by a subsequent date as they were in various difficulties but on 12.5.1999 the defendants 2 and 3 asked the plaintiff to take back the amount of money which was taken by them at the time of execution of the said bainanama and while the plaintiff disagreed to receive the said amount of money, defendants 2 and 3 refused to execute and register kabala in respect of the suit property and as such the plaintiff was compelled to file the suit.

Golan Sarwar, Secretary of the defendant no.1 Society entered appearance in the suit by filing a Vokalathama through his learned Advocate.

The plaintiff filed an application under Order-XXXIX, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure before the trial court on 26.5.1999

praying for restraining the defendants from entering into the suit property or any part thereof by force and/or transferring the same to anybody else till disposal of the suit alleging inter alia that the defendants after getting notice of the suit have been giving out open threat to the plaintiff saying that they would take possession of the suit property by evicting the plaintiff from the suit property by force and that they would transfer the same to the interested person or persons; for taking possession of the suit property the defendants have been collecting terrorists and with their help they would take possession of the suit property by evicting the plaintiff therefrom by force; in the circumstances the defendants are required to be restrained by an order of temporary injunction.

The Sub-ordinate Judge, First Court, Sadar, Chittagong by his order dated 27.6.2000 was pleased to pass an order of injunction restraining the defendants 1-3 from entering into the suit property by force and transferring the same to anybody else till filing of the written objection against the application for temporary injunction by the defendants. Thereafter, on 6.7.2000 the plaintiff filed an application praying for extending the period of temporary injunction granted on 27.6.2000 and on the other hand the defendant no.1, appellant herein also filed written objection against the application for temporary injunction filed under Order-XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure contending inter alia that the

suit is barred under Section 86,72 and 133 of the Co-operative societies Ordinance, 1984; that the alleged contract for sale of the suit property is a contingent contract and on the basis of such contract the plaintiff is not entitled to get decree in the suit and in the circumstances the plaintiff is not entitled to get an order of temporary injunction as prayed for; the application for temporary injunction is barred under Section 52 of the Transfer of Property Act; admittedly the defendant no.1 is a Housing Co-operative Society having registered with the Registrar of Co-operative Society under the Provisions of the Co-operative Societies Ordinance, 1984; that the suit property belonged to the defendant no.1 and the members of the defendant no.1 by investing a considerable amount of money purchased the property in the name of the defendant no.1; there is a restriction of transferring of possession or interest in the suit property without prior permission of the Registrar of Co-operative Societies; the suit property cannot be transferred by the defendants 2 and 3 and the bar has been provided in Section 72 of the said Ordinance and there is no decision for transferring the suit property taken in the General Meeting of the members of the committee; the plaintiff in collusion with the defendants 2 and 3 created a false, fraudulent and antedated contract for sale of the suit property dated 16.10.1996; that an adhoc committee was made on 18.3.1999 excluding the defendants 2 and 3 and as such the defendants 2 and 3

in collusion with the plaintiff created the alleged deed of contract dated 16.10.1996 only to grab the suit property; that the defendants 2 and 3 jointly responsible for creating such illegal and fraudulent deed of contract for sale of the suit property and for taking legal action against the defendants 2 and 3, present Committee has taken necessary action against them by filing allegation before Thana Co-operative Officer, Double-moorings, Chittagong who for taking lawful action against them issued show cause notice vide Memo No.363, dated 16.11.1999 and the said proceeding is still pending; the alleged deed of contract for sale of the suit property as filed by the plaintiff in the present suit shows that the same was executed on 17.9.1996 and at the time of handing over charges by the defendants 2 and 3 they deposited a copy of the said contract for sale of the suit property which shows to have been executed on 18.6.1996 and the Audit Report shows that the date of execution of the alleged deed of contract for sale of the suit property as 16.10.1996; that Section 86 of the Co-operative Societies Ordinance, 1984 speaks for any dispute towards the business or affaires of a co-operative society shall be referred to the Registrar if the parties thereto are among the societies, any past or present affair, or a Member or past Member or person claiming through a Member or past Member or any person having transaction with the concerned co-operative Society and if any dispute arises within the purview of

section 96 of the said Ordinance that shall be settled by the Registrar of the Co-operative Societies under section 67 of the said Ordinance; that in the circumstances stated above the present suit is absolutely barred by Section 133 of the Ordinance and the Civil Court has got no jurisdiction to entertain the instant suit with respect to the dispute within the meaning of Section 86 of the Ordinance and as such the plaintiff is not entitled to get an order of temporary injunction as prayed which is liable to be rejected.

The sub-ordinate Judge, First Court, Sadar, Chittagong by his order dated 10.7.2000 was pleased to extend the order of injunction passed on 27.6.2000 until further order. Thereafter, on 13.7.2000 the plaintiff filed an application before the learned Sub-ordinate Judge, First Court, Chittagong for correcting of the order dated 10.7.2000 for "temporary injunction" in place of "Status-quo" and the learned Sub-ordinate Judge by his order no.15, dated 13.7.2000 allowed the application and accordingly corrected his order dated 10.7.2000.

Being aggrieved by and dissatisfied with the aforesaid order no.14, dated 10.7.2000 the defendant-appellant preferred the instant FMA No. 244 of 2000 along with the Civil Rule No.787 (FM) of 2000 before this Court and obtained interim order as stated at the very outset.

No one appears for the appellant or respondents.

I have perused the memorandum of appeal and also gone through the impugned order. I have also perused the application for stay. The appellant-petitioner did not annex any document except the order sheet.

The appellant-petitioner stated that the suit properties belong to the appellant Society. The members of the appellant Society by investing a considerable amount of money purchased the suit properties in the name of the appellant-petitioner, Society. The plaintiff respondent being emboldened by the impugned order dated 10.7.2000 started to threaten petitioner's member's peaceful and long standing possession in the suit property. The members of the appellant-petitioner, Society came to know that the respondent-opposite party no.1 has started to hire terrorists for taking forcible possession of the suit property and also started to collect bulldozer and good quantity of construction materials such as bricks, cement, iron rods, sands etc. with a view to change the nature and feature of the suit property. The petitioner has reason to believe that the respondent-opposite party no.1 and his hired men will suddenly jump to the suit property at any time and carry out their threat. In the circumstances stated above the impugned order no.14, dated 10.7.2000 is required to be stayed otherwise there will arise various complications and open a flood gate of multifarious suits and proceedings by which the appellant-petitioner Society as well as its members will suffer irreparable loss and injuries. The suit

properties are still in the possession of the appellant-petitioner, Society.

It appears from record that this Court by order dated 20.09.2000 stayed the impugned order no.14 dated 10.07.2000. In the meantime, more than 25 years has been elapsed. Since on one appears for the parties for which this Court was not informed about the present position of the Title Suit No.68 of 1999. It is legitimate expectation that the suit would be disposed of within reasonable time.

Be that as it may, in my view, since the interim order was passed by this Court on 20.09.2000 and there is no information regarding the latest position of the suit, the parties should be maintained their possession till disposal of the Title Suit No.68 of 1999, if the suit is not already disposed of.

With this observation this appeal is **disposed of**. The connected Rule being No.787(FM) of 2000 is also disposed of in the light of this judgment. However, there will be no order as to cost.

Communicate this judgment at once.