

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 486 of 2020

Md. Rafiqul Islam and others

..... Petitioners

-Versus-

Most. Taslima Akter and others

.... For the opposite parties

Mr. Shamsuddin Babul, Advocate with

Mr. Kanai Lal Saha, Advocate

... For the Petitioners

Mr. Naim Ahmed, Advocate with

Mr. Shahin Alam, Advocate

... For the Opposite Parties

with

Civil Revision No. 487 of 2020

Most. Anesa and others

..... Petitioners

-Versus-

Most. Taslima Akter and others

.... For the opposite parties

Mr. Shamsuddin Babul, Advocate with

Mr. Kanai Lal Saha, Advocate

... For the Petitioners

Mr. Naim Ahmed, Advocate with

Mr. Shahin Alam, Advocate

... For the Opposite Parties

Judgment on 19.02.2025

These two Rules have arisen from same judgment and order of the appellate court and taken up for joint consideration and disposal by a single judgment, given that these pertain to the same parties and involve common facts and issues of law.

In these applications under section 115(1) of the Code of Civil Procedure, Rules were issued at the instance of the petitioners calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 06.11.2019 passed by the learned Additional District Judge, 1st Court, Kishoregonj in Miscellaneous Appeal Nos. 35 and 43 of 2015 dismissing those appeals and thereby affirming the judgment and order dated 08.04.2015 passed by the learned Senior Assistant Judge, Sadar Court, Kishoregonj in Partition Suit No. 393 of 2014 allowing an application for temporary injunction filed by the plaintiff should not be set aside or pass such other or further order or orders as to this court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The opposite party No.1, as plaintiff, filed Partition Suit No. 393 of 2014 in the Court of Senior Assistant Judge, Sadar, Kishoregonj, against the present petitioners along with others, as defendants, for a decree of partition the suit property. The plaintiff filed an application praying for temporary injunction against the defendant-petitioners in both the Civil Revision Nos. 486 and 487 of 2020. The defendants filed written objection against the application for injunction. The trial court heard the

application and the objection and after hearing by judgment and order dated 08.04.2015 allowed the application for injunction against the defendant Nos. 7-21, 24, 25 and 30 restraining them from dispossessing the plaintiffs and from disturbing in any way with the peaceful possession of the plaintiff in the suit property.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, defendant Nos. 7, 9, 11, 14, 15, 17 and 19 preferred Miscellaneous Appeal No. 35 of 2015, defendant Nos. 24, 25, 30, 31 and 32 preferred Miscellaneous Appeal No. 43 of 2015 before the District Judge, Kishoregonj. Eventually, both the appeals were transferred to the court of Additional District Judge, 1st Court, Kishoregonj for hearing and disposal who after hearing of both the appeals analogously by its judgment and order dated 06.11.2019 dismissed the appeal affirming the judgment and order of the trial court. At this juncture, the defendant Nos. 24, 25 and 30 filed Civil Revision No. 486 of 2020 and defendant Nos. 7, 9, 10, 11, 14, 15, 17 and 19 filed Civil Revision No. 487 of 2020 and obtained the present Rules and order of stay and subsequently, an order of status quo.

Mr. Shamsuddin Babul with Mr. Kanai Lal Saha, learned Advocates appearing for the petitioners in both the revisions submit that the trial court as well as the appellate court in granting injunction against these petitioners took into consideration a judgment and decree passed in earlier Partition Suit No. 45 of 1993 by virtue of which the predecessor of plaintiff in suit got saham for $5\frac{1}{2}$ sataks of land and delivery of possession in execution of the decree through court, but failed to consider that the plaintiff herself in the plaint admitted that she is not in possession of the entire property in question. She claimed possession in a portion of land without any specification by giving quantum of land and boundary, as such, the application for injunction is not maintainable on a vague and unspecified schedule.

He further submits that both the courts below did not take into consideration that the decree both preliminary and final passed in earlier Partition Suit No. 45 of 1993 declared null and void and not binding upon the plaintiff in a subsequent suit filed by the present petitioner being Other Class Suit No. 118 of 1999.

In this situation, learned Advocate for the petitioner very candidly submits that the order of injunction restraining the petitioners passed by

the trial court and affirmed by the appellate court may be modified into order of status quo directing both the parties for ends of justice.

Mr. Naim Ahmed with Mr. Shahin Alam, learned Advocate appearing for the opposite party No. 1 candidly agree and submit that in a partition suit till its disposal the order of status quo passed earlier may be continued for ends of justice.

In view of the submissions made by both the parties and agreed upon, I think that justice will be met and purpose of the parties to the proceeding will serve if the order of injunction is modified into order of status quo directing both the parties and directing the trial court to dispose of the suit as early as possible. Therefore, I am inclined to dispose of both the Rules modifying the order of injunction in the following terms.

Both the parties in Partition Suit No. 393 of 2014 are hereby directed to maintain status quo in respect of possession and position of the suit property till disposal of the suit. With this direction the order of injunction passed by the trial court and affirmed by the appellate court is hereby modified.

The trial court is hereby directed to dispose of the suit within shortest possible time giving top most priority preferably within 06 (six) months from the date of receipt of the judgment and order.

In the result, both the Rules are hereby disposed of, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned at once.