

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 121 of 2020

In the matter of:

Md. Ehsanul Abedin

... Appellant

-Versus-

Md. Minhajul Abedin and another

... Respondents

Mr. Meah Mohammed Kausar Alam, Advocae
with

Mr. Md. Joynul Abedin Bhuiyan, Advocate

... For the appellant

None represented

.... For the respondents

**Heard on 15.05.2024 20.05.2024 21.05.2024
and Judgment on 26.05.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the plaintiff in Title Suit No. 316 of 2017, this rule was issued calling upon the opposite party nos. 1 and 2 to show cause as to why the order No. 14 dated 25.02.2019 passed by the learned Joint District Judge, 1st Court, Dhaka rejecting the application for appointing a receiver should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper. Mentionable, since the order is an appealable order within the meaning of Order 43 of the Code of Civil Procedure, this court subsequently vide order dated 20.02.2022 converted the said revision into First Miscellaneous Appeal.

The short facts leading to preferring this appeal are:

The present appellant as plaintiff filed the aforesaid suit seeking following reliefs:

(A) Pass a preliminary decree in favour of the plaintiff against the defendant to the extent of 1/3 (one third) share of land i.e. 0.93 katha and commercial floor area measuring more or less 2,667 square feet by metes and bounds out of the total land measuring 2.79 kathas and the 4(four) stories commercial building measuring 8,000 sq, ft, on schedule-A property within the specified time given by the learned court;

(B) Pass a final decree in favour of the plaintiff against the defendants by appointing a survey knowing Advocate Commissioner followed by preparign separate chita, scath map, filed book, etgc, of the defendant fail to partition the schedule-A property by metes and bounds within the specified time give by the learned court.;

(C) Pass a preliminary decree in favour of the plaintiff against the defendants to submit accounts of arrear rents advances, and interest over the period of October, 1986 to February, 2017 for 2,667 sq, ft. commercial area mentioned in the schedule-B of the plaint and submit the same to the earned court within the specified time fix by the learned court.

(D) Pass a final decree in favour of the plaintiff against the defendants by appointing a Chattered Accountant's firm for examine and calculate all the arrear rents, advances and interest as gained by the plaintiff since October, 1986 to February, 2017 followed by preparing a calculation sheet if the defendant fail to submit accounts of arrear rents, advances and interest within the specified time give by the learned court; or

(E) Pass a decree in favour of the plaintiff against the defendants as arrear rents and advances over the period of October, 1986 to February, 2017 for 2,667 sq. ft. commercial area mentioned in the schedule-C of the plaint which is amounting to Tk. 7,37,69,220/- (Taka Seven Crore Thirty Seven Lac Sixty Nine Thousand Two Hundred and Twenty) only along with the Bank rate of interest and further advances, rents and interest till realization;

(F) Cost of the suit be decreed against the defendants;

(G) Pass such other or further order or orders for such relief and/or relives which the plaintiff is entitled to get as per Law and Equity.

The said suit was filed in respect of the suit land so have mentioned in schedule 'A' to the plaint measuring an area of 1.54 decimals of land

along with 4-storey, apartment with an area of 2667 square feet also described in schedule 'B' to the plaint. After filing of the suit, the plaintiff on 21.08.2017 filed an application under Order 40 Rule 1 read with section 151 of the Code of Civil Procedure for appointing a receiver mainly to collect the future advances and the rents of the commercial building so have been described in schedule 'A' to the plaint and to distribute the same proportionately in favour of the plaintiff appellant as well as the defendant opposite party nos. 1 and 2. The defendant did not file any written statement to contest the suit. However, the said application seeking receiver was resisted by the defendant no. 1 by filing a written objection denying all the material averment so made in the application and prayed for rejecting the same.

However, that very application was taken up for hearing by the learned judge of the trial court and vide impugned order rejected the same holding that, the plaintiff-appellant had not been in possession for long 31 years and there has been no averment in the application that the suit property was being damaged. It is at that stage, the plaintiff as appellant preferred this appeal.

Mr. Meah Mohammed Kausar Alam along with Mr. Md. Joynul Abedin Bhuiyan, the learned counsels appearing for the appellant upon taking us to the memorandum appeal of the First Miscellaneous Appeal and all the documents appended therewith at the very outset submits that, since it is a suit for partition and account so there has been no reason to hold that the plaintiff has not been in possession of the suit property because it is the settled proposition that, in a suit for partition every co-

sharer has got possession in every inch of the suit property until and unless the same is partitioned through metes and bounds and the learned judge of the trial court under misconception of law came to a finding that, the plaintiff has got no possession in the suit land and not entitled to get a receiver for collecting the rents and advances and distribute the same to the parties to the suit.

The learned counsel further contends that, there has been nothing in Order 40 Rule 1 of the Code of Civil Procedure that if the properties is damaged only in that event the receiver can be appointed which is totally hypothetical observation of the learned judge of the trial court while rejecting the application for receiver. When we pose a question to the learned counsel for the appellant since in prayer 'C' to the plaint the plaintiff made the duration of rent and advances to be collected and if ultimately the suit is decreed then what would be the duty of the receiver, when an Advocate Commissioner will act as per the direction of the trial court. The learned counsel then contends that, it is the mistake of the learned Advocate who conducted the case before the trial court not to mention the period of which the receiver is to collect the rents and advances from the scheduled building for which the plaintiff cannot suffer and further submits that, since the suit has not yet been disposed of so a receiver can collect the advances and rents from the date of filing the suit till its disposal and finally prays that since Order 40 Rule 1 of the Code of Civil Procedure as well as section 151 of the Code of Civil Procedure authorizes this Hon'ble court to exercise its inherent power so by exerting that power this Hon'ble court may pass an order appointing receiver to

collect rents and advances from the schedule building (schedule-A) till disposal of the suit.

None represented for the respondent to oppose the appeal.

We have perused the memorandum of appeal and all other document appended therewith and considered the submission so placed by the learned counsel for the appellant. We have also gone through the provision so provided in Order 40 Rule 1 of the Code of Civil Procedure and that of the impugned order. On going through the impugned order we find that on two counts the learned judge rejected the application for appointing receiver that is, the plaintiff has got no possession over the suit property for long 31 years and there has been no apprehension ever expressed in the application that the suit property get damaged. But none of those assertions can be any basis not to appoint a receiver in a suit. Furthermore, though in prayer 'C' described in the plaint, the plaintiff claimed the rent and advances for a particular period of time that is, till filing of the suit but when the suit will be decreed an Advocate commissioner will be appointed and he/she will be assigned with certain tasks (by way of writ) basing on whose report, the preliminary decree will be made final (if the suit is ultimately decreed). But it is the apprehension of the plaintiff that, since the defendant no. 1 is collecting rents and advances from schedule 'A' property soon after filing of the suit and the same has not been distributed either to him or to the defendant no. 2 though they are entitled as per inheritance so in that event they would highly prejudiced. We find substance in the submission so placed by the learned counsel for the appellant and accordingly we are inclined to allow

the application seeking appointing a receiver to collect or to take account from the defendant no. 1 of the rent and advances for the period from filing of the suit till disposal of the same.

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

The impugned judgment and order is hereby set aside.

The learned judge of the trial court is hereby directed to appoint a receiver within a period of 30(thirty) days from the date of receipt of the copy of this order giving due intimation to the parties to the suit setting out terms and conditions that, receiver will collect rent and advances or to collect the same from the defendant no. 1 if the arrear of the same be retained with him for 'A' schedule property from the date of filing of the suit till disposal of the same and to deposit the same before it (the trial court) who will deposit it to a designated account to be disbursed after disposal of the suit.

The trial court is at liberty to fix the remuneration of the receiver on his own accord.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.