

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

Present

Madam Justice Kashefa Hussain
with
Madam Justice Kazi Zinat Haque

Civil Rule No. 587 (F.M) of 2021

(arising out of F.M.A.T No. 228 of 2021)

In the matter of :

Dhaka Fisheries Limited

.....petitioner

-Versus-

Marina Park & Resort Limited and
others

----- Respondents.

Mr. Sayed Ahmed, Senior Advocate with
Mr. Md. Abdullah Al Mamun, Advocate with
Mr. Abu Zobair Hossain Sajib, Advocate

----- For the appellant

Mr. Probir Neogi, Senior Advocate with
Mr. A.M Amin Uddin, Senior Advocate with
Mr. Muntasir Uddin Ahmed, Advocate

----- For the respondent No.1

Mr. Meah Mohammad Kausar Alam, Advocate
... for the respondent No. 2

Mr. Jamir Uddin Sirkar, Senior Advocate with
Mr. Md. Shahbuddin, Advocate

..... for the added respondent No.5.

Heard on: 04.01.2023, 10.01.2023,
19.01.2023, 14.02.2023 and Judgment
on 19.02.2023.

Kashefa Hussain,J:

The instant First Miscellaneous Appeal is directed against an order No. 47 dated 30.06.2021 passed by the court of learned Joint District Judge, Additional Court, Gazipur in Title Suit No. 671 of 2012 subsequently renumbered as Title Suit No. 58 of 2020. During pendency of the suit the plaintiff filed an

application for temporary injunction praying before the court to restrain the defendants from withdrawing any money under the L.A case No. 04/2019-2020 in respect of suit land till disposal of the appeal.

The trial court upon hearing the application however rejected the application of the plaintiff by its order No. 47 dated 30.06.2021. Being aggrieved by the order of rejection of the application for temporary injunction under order 39 Rule 1 of the Code of Civil Procedure, 1908, the plaintiffs as appellants preferred the Miscellaneous Appeal before this division. The appeal was admitted on 08.11.2021 by another bench of this division and simultaneous Rule was also issued in Civil Rule No. 587 (F.M) of 2021. Rule and stay was passed in the following terms:

“Let a rule be issued calling upon the respondents-opposite parties to show cause as to why they should not be restrained by an order of temporary injunction from withdrawing any money under the L.A. Case No. 04/2019-2020 in respect of the suit lands till disposal of the appeal and/or pass such other or further order or orders as to this court may seem fit and proper.

The Rule is made returnable within 6(six) weeks from date.

Pending hearing of the rule, the opposite parties are directed to maintain status-quo in respect of withdrawing any payment of money under the L.A. Case No. 04/2019-2020 of the suit land for a period of 3(three) months from date.”

Pursuant to the order passed by another bench of this division by order dated 8.11.2021 the defendants in the suit being respondents (here) filed an application for stay of the order of the High Court Division before the Judge-in-Chamber of the Appellate Division. The defendants in the suit (respondents in this appeal) as petitioners preferred the civil miscellaneous petition before the Judge-in-chamber against the interim order dated 08.11.2021 passed by the High Court Division in Civil Rule No. 587(F.M) of 2021 and obtained the order of stay from the learned Judge-in-chamber. Subsequently the matter was heard by a full bench of the Appellate Division by way of Civil Petition for Leave to Appeal No. 381 of 2022. The Appellate Division pursuant to hearing of the Civil Petition for leave to Appeal No. 381 of 2022 passed the order in the following terms:

“ Delay in filing the petition is condoned.

The petitioner preferred this petition against the interim order dated 08.11.2021 of the High Court Division in Civil Rule No. 587 (F.M) of 2021 and obtained the order of stay from the learned Judge-in-chamber.

We have heard the learned Counsel of both the parties and perused the impugned order of the High Court Division and other materials on record. Upon hearing the parties, we are of the view that the ends of justice would be best served, if the Rule itself is disposed of on merit by the High Court Division.

Let the Rule be heard and disposed of by the Division Bench of the High Court Division presided over by Kashefa Hussain, J., as expeditiously as possible preferably within 03(three) months from the date of receipt of this order.

However, the parties are directed to maintain status-quo till disposal of the Rule.”

Pursuantly the matter was sent to be heard by this bench sent by the Hon’ble Chief Justice for purpose of disposal of this Miscellaneous Appeal. And consequently the matter is instantly before this bench for disposal.

The appellant as plaintiff filed the Title Suit for declaration and cancellation of the Sale deed Nos. 24654, 24656, 24657, 24658 and 24659, all registered in the sub-registry office of Gazipur on 28.12.2011. Upon transfer the suit was being heard by the learned Joint District Judge, 1st Court, Gazipur being registered as Title Suit No. 58 of 2020.

The case of the appellants inter alia is that the appellant obtained credit facility from the opposite party No. 2, NCC Bank

Limited, for purpose of financing its business activities. The said credit finance facility was secured by creating a registered mortgage over the Scheduled Land in favour of the bank. However, the then Board of Directors of the petitioner company, Dhaka Fisheries Limited did not pass any resolution resolving to mortgage the scheduled Land, being the only immovable asset that can sustain the business of the company. Thereafter it came to be known to the present appellant that the opposite party No. 2, NCC Bank Limited was colluding with the former Managing Director of the Petitioner Company to sell the scheduled property by means of practicing fraud. The minority shareholders of the appellant company as petitioners filed an application before the High Court Division, the matter being registered as Company Matter No. 18 of 2012 praying for restraining the majority shareholders of the company from disposing of or selling out the scheduled properties to any third party. After hearing on 16.01.2012 the company court of the High Court Division was pleased to pass an order of injunction restraining the respondents from transferring the scheduled land to any third party, and which order is still in force/operation. Meanwhile, the opposite party No. 2 in collusion with others illegally sold the scheduled Property to the opposite party No. 1, Marina Park and Resort Limited, under Sale Deeds Nos. 24654, 24656, 24657, 24658 and 24659, all registered in the sub-registry office of Gazipur on 28.12.2011 and the auction notice was published in a newspaper

namely, Daily Bhorer Dak, which is not a widely circulated newspaper as required under the Artha Rin Adalat Ain, 2003. Thereafter being aggrieved by the collusive and unlawful sale of the scheduled property the plaintiff filed Title Suit No. 671 of 2012 subsequently renumbered as Title Suit No. 58 of 2020. During pendency of the suit the appellant filed Miscellaneous Case No. 168 of 2015 for cancellation of the illegal mutations in the name of respondent No. 1 by Assistant Commissioner (Land), Gazipur Sadar, Gazipur vide namjari and Jomabhag file Nos. 2180/11-12, 2179/11-12, 2181/11-12, 2254/11-12, 596/13-14, 256/13-14, and 1511/13-14. Upon rejection of the same, the petitioner company filed Miscellaneous Appeal No. 325/2017 before the Additional Deputy Commissioner (Revenue), Gazipur, which is still pending. The Deputy Commissioner, Gazipur, meanwhile initiated an acquisition process and acquired the suit property by issuing notice to the present respondent No. 1, Marina Park and Resort Limited, instead of serving notice to the original owner, the present plaintiff-appellant. During pendency of the suit the instant plaintiff filed an application for temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure 1908 read with section 151 of the Code inter alia for restraining the respondents from withdrawing the compensation amount arising out of the L.A Case No. 04/2019-2020 with the plaintiff's additional prayer that meanwhile till disposal of the Rule the compensation amount be kept with the Deputy Commissioner,

Gazipur, respondent No. 4. However the court below by its order No. 47 dated 30.06.2021 rejected the application for injunction. Being aggrieved the plaintiffs as appellants filed the instant First Miscellaneous Appeal which is before this court for disposal.

Learned Senior Advocate Mr. Sayed Ahmed along with Mr. Md. Abdullah Al Mamun, learned Advocate with Mr. Abu Zobair Hossain Sajib, learned Advocate appeared for the appellant. While learned Senior Advocate Mr. Probir Neogi along with Learned Senior Advocate Mr. M.A Amin Uddin along with learned Advocate Mr. Muntasir Uddin Ahmed appeared for the respondent No. 1, Learned Advocate Mr. Meah Mohammad Kausar Alam appeared for the respondent No. 2 and Learned Senior Advocate Mr. Jamir Uddin Sirkar with learned Advocate Mr. Md. Shahbuddin appeared for the added respondent No. 5.

Learned Senior Advocate Mr. Sayed Ahmed on behalf of the appellant submits that the impugned order passed by the court below rejecting the application for injunction is absolutely unlawful and ought to be set aside. He argues that the court without appreciating and comprehending the crux of the prayer in the application unjustly refused the plaintiff the order of restraint. Taking us through the facts of the case he argues that the court below upon misreliance on section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017

wrongly issued the order and thereby caused serious injustice to the plaintiff. He takes us to order No. 47 dated 30.06.2021 passed by the court of learned Joint District Judge. He draws upon the operating and finding portion of the judgment and there from points out that the court without examination and scrutinizing the background and factual matters of the suit only relied upon section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 in an isolated manner. He argues that it is evident that the Title Suit was filed for declaration and cancellation of some deeds. He relies on the prayer portion of the Title Suit No. 671 of 2012 (later renumbered as Title Suit No. 58 of 2020) and shows that the prayer is for a decree in favour of the plaintiffs and against the defendants be passed declaring that the Sale Deeds Nos. 24654, 24656, 24657, 24658 and 24659 all registered in the Sub-Registry Office of Gazipur on 28.12.2011 are illegal, invalid and without any legal effect. Upon drawing us to the prayer portion he points out that the prayer is substantively for declaration that some deeds are illegal and invalid. He argues that there is no mention of the L.A case in the prayer portion of the suit and therefore the grounds taken by the learned Joint District Judge drawing upon Section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 is totally misplaced. Against this argument there was a query from this bench upon the learned Advocate for the appellant regarding the application for

injunction arising out of L.A case No. 04/2019-2020. The learned Advocate for the appellant replies that although admittedly the appellant filed the application for injunction under order 39 rule 1 and 2 of the code but however relying on the application for injunction dated 27.06.2021, he points out that the application for injunction under order 39 rule 1 read with section 151 of the code of Civil Procedure, 1908 has a direct bearing on the ultimate fate of the suit and which is evident from the factual history of the matter.

He next submits that the original suit for cancellation of deed was filed by the plaintiffs appellant evidently alleging that the defendant respondents here are not genuine purchasers of the property in question. He continues that it is also evident that the plaintiff company still claims to be genuine owners of the property inspite of mortgage to the bank whatsoever. He continues that therefore when the L.A case was filed in the year 2019-2020 the ownership of the property was still a matter of fact in dispute pending in civil court. He continues that it goes without saying that whatever compensation may be awarded in the L.A case must ultimately go to the legal and lawful owner of the property. He argues that therefore since ownership of the property is yet a matter of dispute in the Title Suit therefore the issue of payment of compensation in the LA case has a direct bearing on the suit. He submits that if the compensation is

already paid to either party whatsoever the whole purpose of the suit shall be frustrated. He asserts that it is obvious that although the Title Suit does not originally arise out of any L.A case, but however there is a direct nexus between the fate of the suit and the payment of compensation in the L.A case. He agitates that a civil court also being a court of equity, therefore while considering the application for injunction it ought to have considered the main aspect of balance of convenience or inconvenience pending the suit. He asserts that it was the lower court's duty to first and foremost evaluate the issue of prima facie balance of convenience and inconvenience in the application for injunction under Order 39 Rule 1 of the Code of Civil Procedure. He submits that however the court without applying its judicious mind very unjudiciously only isolatedly relied upon Section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017. He assails that the court did not at all discuss the prima facie facts and circumstances of the case. He points out that it is clear from the Order No. 47 dated 30.06.2021 that the court did not discuss the application for injunction from its real perspective. He continues that the court overlooked the pivotal aspect of an application for injunction such pivotal aspect being the issue of balance of convenience and inconvenience. He contends that thereby upon ignoring the pivotal aspect the court committed total illegality.

There were some contentions and arguments raised by the learned counsel for the respondents on the issue of maintainability of the application under Order 39 Rule 1 of the Code of Civil Procedure, 1908. In response to such contention, the learned Advocate for the appellant asserts that the first miscellaneous appeal is not the forum to decide on the issue of maintainability of the suit. He submits that the issue of maintainability ought to have been raised by the respondents before the trial court at the initial stage in Trial before entering into the factual aspects and factual issues of the suit. He submits that evidently the defendants (Respondents here) did not raise the issue of maintainability before the trial court and therefore they cannot raise the issue of maintainability here. He reasserts that particularly the issue of maintainability cannot be a subject matter in an application under Order 39 Rule 1 of the Code of Civil Procedure, 1908. In support of his contentions he relies on a decision in the case of *Dacca Match Factory Lt. Vs. Bangladesh Match Company Ltd.* reported in 30 DLR(1978) Page-244. On his submissions on the principle of balance of convenience and inconvenience he relies on two decisions one in the case of *Sekandar and another Vs. Janata BANK Ltd.* and others reported in 22 BLC (AD)(2017) page-53 and another in the case of *Modern Talkies Vs. Chowrangee Cinema Hall and others* reported in 28 DLR (1976) Page-414.

He agitates that for ends of justice it is necessary that till disposal of the original suit the compensation amount should remain in the custody of the Deputy Commissioner as is statutorily prescribed under section 11 of the Acquisition and Requisition of Immovable Properties Act, 2017. He concludes his submissions upon assertion that the Civil Rule bears merit ought to be made absolute and the F.M.A.T No. 228 of 2021 may be allowed.

On the other hand learned Senior Advocate Mr. Probir Neogi for the respondent No. 1 oppose the rule and the Miscellaneous Appeal. At the onset of his arguments mainly revolved around the issue of maintainability. The gist of his argument is since the original title suit is not maintainable therefore the instant First Miscellaneous Appeal is also not maintainable. He argues that the court correctly rejected the application for injunction and the ground on which it was rejected is also absolutely correct. He submits that the court correctly relied upon Section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 given that Section 47 contemplates a clear bar in filing any application for injunction- He submits that it is clear from the language of section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 that no suit nor any application which includes an application under order 39 rule 1 of the Code of Civil

Procedure, 1908 cannot be entertained. He submits there is a clear bar in the Act of 2017. He agitates that it is evident from the application that the petitioner prayed for suspending the payment of the amount of compensation to the respondents. He continues that therefore such suspension under section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 arising out of any L.A case can not be prayed for in other forum and any such order of the L.A authorities cannot be interfered with.

He submits that it is divulged from the facts of the case that the Title Suit arises and also involves an auction sale under section 12 of the Artha Rin Adalat Ain, 2003. He submits that there is a clear bar in the law and which is also settled in the case of Banesa Bibi Vs. the Senior Vice President and others reported in 63 DLR(AD) 160 that no auction sale made under section 12 of Ortho Rin Ain can be challenged. He quotes from the relevant portion of this decision which is reproduced hereunder:

“No auction sale made under section 12 of the Artha Rin Adalat Ain, 2003 can be challenged even if it involves any purported illegalities and/or irregularities. Only forum remains with the aggrieved party to file a compensation suit before the competent court only against the bank for the irregularities, if any, occasioned in the

auction by dint of the provision of Section 12(8) of the Ain, 2003.”

He also refers to the case of AM Mostafiz Meah Vs. United Commercial Bank reported in 68 DLR 302. The relevant portion of this case is reproduced hereunder:

“Since there is a specific restriction in section 12(8) of the Ain, which is a special law, to challenge auction sale by filing any suit, the question of lenient construction of the law does not arise. The special law enacted for certain purpose and it shall always prevail over the general law. Suit being barred under section 12(8) of the Ain, rejection of plaint is justified under Order VII, Rule 119d) read with section 151 of the Code.”

He submits that the present suit would fail in its present form in view of the above mentioned judgments passed by both the divisions of the Supreme Court of Bangladesh and further the plaintiff appellant did not seek any kind of relief as to title, rather, sought a prayer to declare the Sale deeds as invalid only. He continues that therefore since the suit for declaration is not maintainable in view of the above law in as much as the judgments passed by the Appellate Division and High Court Division, thus no ad-interim order of injunction/status quo may be granted in favour of the appellant.

For reference he draws us to Section 12(8) of the Artha Rin Adalat Ain, 2003. He points out that section 12(8) contemplates that notwithstanding any other law elsewhere no dispute can be raised over the sale of any property in any auction sale under the provisions of Artha Rin Adalat Ain, 2003.

He next submits that the instant F.M.AT also arises out of an application for injunction and it is evident that the matter arising out of an L.A case is not maintainable under section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017. He argues that the application for injunction arises out of an issue of payment of compensation amount against the acquired property and which is not maintainable in any civil court. He persuades that the application for injunction does not bear any nexus to the suit with prayer for cancellation of deed. He submits that such being the factual scenario the original suit itself is not maintainable given that the suit is barred under section 12(8) of the Artha Rin Adalat Ain, 2003. He reiterates that the application of injunction is also not maintainable since the application has no nexus to the prayer and ingredients of the original suit. He asserts that the court below correctly rejected the application for injunction on the ground of Section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 imposing a bar to any suit against any decision or order passed under the provisions of the Acquisition and Requisition of

Immovable Properties Act, 2017. He continues that section 47 created an express bar to any suit or application whatsoever against any decision passed under the provisions of the Act. He quoted from Section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 and which is reproduced below:

“৪৭। মামলা দায়েরের ক্ষেত্রে বিধি-নিষেধ।- আপাতত বলবৎ অন্য কোনো আইনে যাহা কিছুই থাকুক না কেন, এই আইন বা তদধীন প্রণীত বিধির অধীন প্রদত্ত কোন আদেশ বা গৃহীত কোন ব্যবস্থার বিরুদ্ধে, এই আইনের অধীন কোনো ব্যবস্থা গ্রহণ ব্যতীত, অন্য কোন আদালতে কোন প্রকার মামলা দায়ের বা আরজি পেশ করা যাইবে না এবং কোন আদালত উক্তরূপ কোন আদেশ বা ব্যবস্থা সম্পর্কে কোন প্রকার আদেশ বা নিষেধাজ্ঞা জারি করিতে পারিবে না।

He submits that the Acquisition and Requisition of Immovable Properties Act, 2017 is a special statutory enactment of law and the provision of law must be stringently interpreted. On the same strain of his argument he continues that therefore the plaintiff's prayer in his application of injunction praying for the compensation amount to remain in the custody of the Deputy Commissioner under the Acquisition and Requisition of Immovable Properties Act, 2017 such prayer is also misplaced and not entertainable. He concludes his submissions upon assertion that the Civil Rule and the F.M.A.T bears no merit

ought to be discharged and dismissed respectively for ends of justice.

Learned Senior Advocate Mr. M.A. Amin Uddin also appeared for the respondent No. 1 and opposes the appeal and the Rule respectively. He supports and substantively adopts the submissions of learned Senior Advocate Mr. Probir Neogi. He concludes his submission upon assertion that the Rule and the Miscellaneous Appeal bears no merit and for ends of Justice ought to be discharged and dismissed respectively.

Learned Senior Advocate Mr. Jamir Uddin Sirkar appeared for the added respondent No. 5. By way of his contention he relied on the statements made in the application. Relying on the statements the summary of his contention is that some portion from some dag of his land has been mistakenly or for whatsoever reason been included in the schedule of land in the plaint of the suit. He submits that if such mistake is allowed to remain it will cause serious injustice to his interests. He further submits that some portion of his land was also acquired during pendency of the instant Title suit and therefore the authority refused to pay him compensation pending the suit.

Upon a query from this bench he submits that at the compensation stage he learnt to know that some portion of his land was included in the schedule to the suit land in the Title Suit No. 671 of 2012 subsequently renumbered as Title Suit No. 58 of

2020 which is pending before the lower court. He submits that therefore for ends of justice it is absolutely necessary that he be included as added party in the suit. He also made some factual submissions regarding his ownership in some dag number. He concludes his submission upon assertion that some dag number has been mistakenly added in the schedule and therefore he is a necessary party to the suit.

We have heard the learned Counsels, perused the application and materials on record including the written submissions of the learned counsels. The instant F.M.A.T No. 228 of 2021 evidently arises out of Title Suit No. 671 of 2012 subsequently renumbered as Title Suit No. 58 of 2020. The Title suit was filed praying for declaration and cancellation of some sale deeds. The plaintiff appellant and respondent No. 1 both are private limited companies limited by shares. Upon an examination into the factual state of affairs it appears that the respondents purchased the property and they have claimed to have purchased the property an auction sale under the provisions of Artha Rin Adalat Ain, 2003. The respondent No. 1 apparently purchased the property from the NCC Bank who is respondent No. 2 and who are also defendants in the suit. The property was purchased in consequence of an auction sale preceded by a mortgage of the property to the bank by the plaintiff. The plaintiff's overall contention in the title suit is that the sale deeds

which were executed between the respondent No. 1 and the bank are inter alia collusive and not binding upon the plaintiffs. The plaintiffs alleged that the respondent No. 2 did not have the lawful right to sell the property on the date of purchase since there was a restraining order arising out of an order passed by this division. The plaintiffs also claimed that there are some miscellaneous appeal for mutation pending before the appropriate revenue authority. The plaintiffs' further contention is that therefore the deeds are all collusive deeds and not lawful and valid deeds since the ownership of the property belongs to the plaintiff.

On the other hand the defendants respondents claim that they purchased the property arising out of an auction sale under the provisions of Artha Rin Adalat Ain, 2003. They claim that it was a lawful and valid sale and the several deeds executed between the respondent No. 2 and the respondent No. 1 are also lawful and valid sale deeds. They claim that by dint of these sale deeds the title of the property was conferred upon the respondent No. 1.

The main issue in Title suit No. 671 of 2012 (subsequently renumbered as Title suit No. 58 of 2020) is to decide the fate of the deeds and which issue is still pending before the lower court. By fate of the Deeds we imply that the result of that suit will decide whether the Deeds were collusive and invalid, or

conversely whether they were valid and regular Deeds. Till the issue of the Deeds is decided, the dispute remains unresolved.

It may be pertinent to note that and as is revealed from the materials before us and also from the order No. 47 dated 30.06.2021 passed by the court of Joint District Judge, Additional Court, Gazipur pending the suit and application for injunction was filed by the plaintiff and which was rejected by the concerned court against which the instant F.M.A.T No. 228 of 2021 was filed. Upon examination into the order No. 47 dated 30.06.2021 it appears that the lower court rejected the application for injunction under order 39 Rule 1 read with section 151 of the Code of Civil Procedure mainly on the ground that the application of injunction involves payment of compensation amount in an L.A case. It further opined that following the provisions of Section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017, no suit or application is maintainable against any order passed under the Acquisition and Requisition of Immovable Properties Act, 2017. Relying on section 47 the Act of 2017, the learned Advocates for the respondent contended that the application for injunction to suspend the payment of compensation to the respondent No. 1 was correctly rejected. It was further argued by the respondents that since there is a clear bar in section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 barring

interference with any order under that Act by any civil court by way of any suit or application, therefore the court below correctly rejected the application.

To assess the arguments of the learned counsel for the respondents we have examined the relevant laws before us. It is pertinent to note that the instant F.M.A.T does not directly arise under any of the factual disputes and/or factual issues whatsoever in the original suit. The instant F.M.A.T also evidently does not arise out of any Judgment and decree passed in the suit. Rather the instant matter arises before us against an order passed in a pending suit, passed under Order 39 Rule 1 of the Code of Civil Procedure, 1908 rejecting an order of restraint. Order 39 Rule 1 and 2 of the Code of Civil Procedure is 1908 reproduced below:

Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted.- *Where in any Suit it is proved by affidavit or otherwise—*

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

Order-XXXIX, Rule-2. Injunction to restrain repetition or continuance of breach.- *(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

It goes without saying that any order in an application under order 39 Rule 1 is only a temporary order since Order 39 Rule 1 is inherently temporary in nature and does not contemplate finality. The very ingredients of Order 39 Rule 1 of the Code contemplate that any order passed under order 39 Rule 1 and 2 ought to be temporary in nature and nothing further. It is also a settled principle of law that while granting an order of injunction or rejecting an order of temporary injunction whatsoever the prima facie case of the parties must be taken into consideration as it appears on the surface. Further the most important aspect of any order arising out of such an application is to take into consideration the balance of convenience and inconvenience of the parties.

Our considered view is that when an order of status-quo particularly is passed in an application for temporary injunction whatsoever it is generally an innocuous order. The order of status-quo and such other orders of same genre do not contemplate or confer any finality on any matter be it title, possession and/or position of any nature.

Such being the position of the law we have examined the materials before us and we have taken into consideration the arguments of the learned counsels. We have also examined the order of the court below. It appears that the court regrettably without taking into consideration the legal aspect of an application under order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 rather concentrated only on the express bar imposed under section 47 of the Acquisition and Requisition Act of 2017.

It is necessary to remind the learned counsels for the respondents that although the application for injunction was made by the plaintiff praying for withholding the payment of compensation money to the respondent No. 1, but however it must be kept in mind that the original suit does not involve any matter arising out of any L.A case. Evidently the original suit was filed with prayer for cancellation of deeds. However in a court of equity it is our duty to take all the factual and legal aspects of the case into our consideration. Particularly while granting or rejecting any order under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 the prima facie equitable balance of convenience and inconvenience must be paid heed to.

The learned Advocate for the respondents repeatedly argued that there is not nexus between the original suit which is a suit for cancellation of deeds and between the payment of

compensation amount. We are not in agreement with the learned Advocate for the respondent No. 1. In our opinion evidently there is a direct nexus between the fate of the suit and the payment of the compensation money. As mentioned elsewhere in this judgment between the parties here there are claims and counter claims regarding the ownership and consequently also claim and counter claims regarding Title to the property. The respondent No. 1 claim by way of purchase and the plaintiffs claim by way of being the original owner and claiming that the eventual sale deeds are collusive deeds. The sale deeds arise out of an auction held under section 12 of the Artha Rin Adalat Ain, 2003. It goes without saying that compensation in the L.A Case No. 04/2019-2020 or in any other L.A case such compensation in L.A case is always given to the legal rightful owner of the property having proper Title. It is also needless to state that in the instant case such ownership of the property is still a matter of dispute since the original suit for cancellation of deeds is still pending before the court below. Although the suit is superficially only for cancellation of deeds but however it also atleast covertly involves and comprise /ingredients of issues of ownership and Title to the property.

If the compensation money is paid prematurely to either party whatsoever, then the whole proceeding of the suit will be frustrated. Our view is that the fate of the suit will ultimately

decide the fate of the ownership and Title to the property. Consequently the fate of the compensation money also depends on the ascertainment and determination of the ownership of the property. What the fate of the suit will be we do not know since the suit is not before us. What we are dealing with here is only an application for injunction under order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 filed pending the suit.

Such being the legal position, the grounds taken by the court below that section 47 of the Acquisition and Requisition of Immovable Properties Act, 2017 creates a bar to any application ,suits etc whatsoever is incorrect and misplaced. Given that in a court of equity while dealing with of an application for injunction our duty is to evaluate whether the balance of convenience and inconvenience is weighed in a correct manner till the dispute in the matter is finally decided. Since the ownership of the property is yet a matter of dispute, therefore our considered view is that compensation money whatsoever ought to remain in the custody of the proper authority following the provisions of section 11 of the Acquisition and Requisition of Immovable Properties Act, 2017.

The learned Advocate for the respondent No. 1 made extensive submissions mainly on the merits of the case. We have heard his submissions and we have also read his written submissions. His main contention inter alia is that the original

suit is barred under section 12 of the Artha Rin Adalat Ain, 2003. He contends that since no decision of the Artha Rin Adalat Ain may be challenged in a suit therefore the original suit suffers from lack of maintainability.

He mostly made other factual submissions mainly on the factual merits of the case and primarily on the issue of maintainability. It may be reminded that to decide the issue of maintainability is not our duty here sitting in this First Miscellaneous Appeal. As stated elsewhere we are here dealing with an order passed in an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure 1908. It is our primary duty to examine and adjudicate upon the propriety of the order passed by the lower court. Our considered view is that the learned counsel for the respondent No. 1 is not in a position to argue on the issue of maintainability at this stage in this Miscellaneous Appeal here. The engaged counsels for the respondents ought to have raised the issue of maintainability at the primary stage of the suit before ensuing trial and not here. Holding such view Order 14 rule 2 of the Code of Civil Procedure, 1908 is relied upon and reproduced below:

2. Court to pronounce judgment on all issues.- (1)

Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the

provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

Order 14 Rule 2 of the Code clearly distinguish the issue of law and fact and it clearly contemplates that issue of law must be decided first before going into the facts. Needless to state that the argument of maintainability pursued by the learned counsel for the respondents involve issue of law. Therefore since the respondents did not raise the issue of law before the concerned court below at the preliminary stage of the suit therefore such submissions cannot be entertained here particularly in an

F.M.A.T against an order arising out of an application under Order 39 Rule 1 of the Code of Civil Procedure.

There was a query from this bench upon the learned Advocate for the respondents as to whether they as defendants in the suit made an application under Order 7 rule 11 of the Code of Civil Procedure for rejection of plaint during the initial stage of the suit. Learned advocate for the respondent admits that no application under Order 7 rule 11 of the Code of Civil Procedure, 1908 was filed for rejection of plaint.

It is our further considered view that the submissions made by the learned Advocate for the respondents on the issue of maintainability whatsoever contain ingredients of an application under order 7 Rule 11 of the Code of Civil Procedure, 1908. But evidently no application under Order 7 Rule 11 was filed by the defendants (respondents here) at any stage although it is a long pending matter before the lower court.

Such being the circumstances, it may be reiterated that the respondents are not in a position to make such submissions here particularly those which constitute ingredients of an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. In an appropriate case the respondents might have pressed such arguments but regrettably we do not find any such circumstances in this case.

Our overall considered view is that the order No. 47 dated 30.06.2021 passed by the court below was not appropriate. Firstly without evaluating the primary aspect and ingredients of Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 which is the aspect of balance of convenience and inconvenience inter alia other factors the court below only discussed the bar against filing the application, suit etc against any order whatsoever arising out of any matters falling under the provision of the Acquisition and Requisition of Immovable Properties Act, 2017. We are of the considered view that the court without appreciating and upon non comprehension of the actual and underlying nexus between the real issue in the suit with the issue of payment of compensation amount upon misinterpretation arrived at an incorrect conclusion.

We are inclined to make observation that since the fate of the suit is yet to be decided consequently the fate of the ownership followed by the issue of who will receive the compensation amount also remains to be decided depending on the fate of the suit as to which way the pendulum will swing to including other factors.

Ends of justice and equity would be best served if the compensation amount remains in the custody of the appropriate authority till disposal of the suit including disposal of other

factors relating to the ownership of the property and followed by person lawfully entitled to receive compensation is decided.

Regarding the submissions of the learned Advocate for the added respondent No. 5 our considered view is that whether the part of the property he claimed to be his as to whether his dag has been mistakenly included in the schedule of the property in the suit are disputed matters of fact which must be decided in the court below. It is our also considered view that respondent No. 5 ought to be added as a defendant in the suit by the court below for proper adjudication of the matter.

Under the facts and circumstances we are inclined to dispose of the First Miscellaneous Appeal No. 29 of 2021 (arising out of F.M.A.T No. 228 of 2021) and Civil Rule No. 587(FM) of 2021 with some directions and relying on the observations made above.

In the result, the First Miscellaneous Appeal No. 29 of 2021 (arising out of F.M.A.T No. 228 of 2021) and Civil Rule No. 587(FM) of 2021 are disposed of respectively.

Meanwhile the order of status quo passed during issuance of the Rule shall continue till disposal of the Title Suit No. 58 of 2020 (previously Title Suit No. 671 of 2012) in the concerned court below.

The compensation amount shall remain in the custody of the respondent No. 4, Deputy Commissioner, Gazipur till disposal of the suit. The trial court is also directed to add the added respondent No. 5 as defendant in the suit as per relevant rules and law.

Communicate the judgment at once.

Kazi Zinat Haque,J:

I agree.

Arif(B.O)