

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST MISCELLANEOUS APPEAL NO.283 of 2019

with

CIVIL RULE NO.18(FM) OF 2019

Jannatul Ferdous

.... Appellant

-Versus-

Samina Sabiha (Ria) and others

.... Respondents

Mr. Shahabul Alam Chowdhury, Advocate with

Mr. Md. Saiful Bari, Advocate

Mr. Md. Mathin, Advocate

.... For the appellant.

Mr. M. A. Quddus Shaikh, Advocate with

Mr. Kamruzzaman, Advocate

Dr. Shahe Alam Dewan, Advocate

Mr. Md. Munsor, Advocate

.... For the respondent Nos.1-3.

Heard and Judgment on 14.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and order dated 28.11.2018 passed by the learned Joint District Judge, 2nd Court, Dhaka in Civil Suit No.761 of 2017.

Civil Rule Nos.18(FM) of 2019 having arisen out of this First Miscellaneous Appeal on an application for order of stay this First

Appeal and above Civil Rule are heard together and being disposed of by this single judgment.

Facts in short are that respondent No.2 as plaintiff instituted above suit for partition of $2\frac{1}{2}$ katha land along with six storied building seeking a separate saham alleging that above property belonged to Suja Md. Khaleque Dad who died leaving two daughters, the plaintiffs and one wife defendant No.1 as heirs.

In above suit plaintiffs submitted a petition under order 40 Rule 1 of the Code of Civil Procedure, 1908 for appointment of receiver for above property for collection of rental and distribution among the plaintiffs and defendant No.1 according to their shares and payment of bills and tax. It was alleged that the plaintiffs reside in one flat and defendant No.1 lives in another flat and from remaining apartments and shops monthly rent of Taka 1,76,793/- is collected by defendant No.1. But she pays only Taka 26,000/- per month to the plaintiffs. The plaintiffs demand for legitimate share of above rental has been denied by the defendant.

Defendant No.1 contested above petition by filling a written objection alleging that Suja Md. Khaleque Dad, the owner of above property had transferred the same to defendant No.1 by oral gift in 2004 and in support of above oral gift executed a notarized Affidavit in 2005. Plaintiffs do not have any right, title and interest in above property.

The learned Joint District Judge allowed above petition and appointed a receiver for above property.

Being aggrieved by and the dissatisfied with above judgment and order of the learned Joint District Judge defendant No.1 as appellant moved to this Court and preferred this First Miscellaneous Appeal.

Mr. Shahabul Alam Chowdhury, learned Advocate for the appellant submits that in above petition under Order 40 Rule 1 of the Code of Civil Procedure, 1908 plaintiffs have admitted that they and defendant No.1 reside in two separate apartments and defendant No.1 collects rent of above building and pays service bills, taxes and rents to the Government. There is no allegation of mismanagement, wastage or destruction of above property against the defendant. Above property was transferred to defendant No.1 by her husband Suja Md. Khaleque Dad in 1984 by oral gift and plaintiffs have no title in above property. Above property is being used for both residential and commercial purposes. As such appointment of a receiver shall amount to invasion of privacy of above women. In the absence of specific allegation of wastage or mismanagement or destruction of above property by defendant No.1 the learned Joint District Judge had no jurisdiction to appoint a receiver. In support of above submissions the learned Advocate refers to the case law reported in 36DLR (AD) (1984) Page-97. As far as respondent No.3 is concerned the learned Advocate submits that the plaintiffs have admitted in the plaint that their mother was divorced by their father in 2012 and she was not impleaded as a

defendant in above suit. Respondent No.3 has no locus standi to seek appointment of receiver for above property.

On the other hand Mr. M. A. Quddus Shaikh, learned Advocate for respondent Nos.1-3 submits that the claim of oral gift of above property by father of the plaintiffs to defendant No.1 totally false. In the petition under Order 40 Rule 1 of the Code of Civil Procedure the plaintiffs have made out a specific case of mismanagement of rental income of above property by defendant No.1. The total rental income from above property is Taka 1,76,593/- per month but the plaintiffs are given only Taka 26,000/- which is inadequate and not in accordance with their legitimate shares. The plaintiffs demanded legitimate shares of above rental income but defendant No.1 threatened to endanger their lives. The learned Advocate lastly submits that there are several cases, both civil and criminal between the plaintiffs and defendant No.1 centering above property. On consideration of all above facts and circumstance of the case and evidence on record the learned Joint District Judge rightly allowed above petition under Order 40 Rule 1 of the Code of Civil Procedure and appointed a receiver which calls for no interference.

We have considered the submissions of the learned Advocate for the respective parties and carefully examined all materials on record.

Respondent Nos.1 and 2 as plaintiffs instituted above suit for partition of disputed $2\frac{1}{2}$ katha land along with the six storied building

which was owned, held and possessed by Suja Md. Khaleque Dad. It is admitted by the plaintiffs and defendant No.1 that above Suja Md. Khaleque Dad died leaving plaintiff's, two daughters and defendant No.1 wife as heirs. The plaintiffs claim title in above property as heir of Suja M K Dad but defendant No.1 claims that above Suja M K Dad transferred above property to her by oral gift in 2004. Above dispute as to title of above property be determined by the trial Court on consideration of evidence.

The first wife of above Suja Md. Khaleque Dad was added as respondent No.3 in this First Miscellaneous Appeal although she was not made a defendant in above suit for partition. At paragraph No.5 of the plaint plaintiffs have stated that their father divorced their mother respondent No.3 on 13.09.2012. The learned Advocate for respondent Nos.1-3 has claimed that the alleged divorce given by Suja Md. Khaleque Dad to respondent No.3 was not lawful and effective. Above claims of respondent No.3 as to legality of divorce effected by her husband cannot be considered nor determined in this interlocutory petition.

The provision of Order 40 Rules 1(1) and (2) are reproduced below:

"1. (1) Where it appears to the Court to be just and convenient, the Court may by order-
(a) appoint a receiver of any property, whether

before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove."

It turns out from Rule 1 that the Court may appoint receiver for an immovable property if it thinks the same as just and convenient and thereby may remove the person in possession of the property and

confer upon the receiver all rights of the lawful owner. But Sub Rule (2) restricts above unfettered power of the Court by stating that the power for appointment of receiver shall not authorize the Court to remove any person from possession or custody of property whom any party to the suit has not a present right so to remove.

The plaintiffs have filed above suit for partition and impleaded impleaded defendant No.1 as a co-sharer. It has been admitted that the defendant lives in one apartment and manages and controls the remaining apartments and shops and collects total rents of Taka 1,76,593/- and pays Taka 26,000/- to the plaintiffs. In a suit for partition a co-sharer who is admittedly in possession and control of the property cannot be removed from such possession or control at the instance of another co-sharer until partition by meets and bounds is effected. The plaintiffs sought appointment of receiver for collection of the rents and distribution of the same to the plaintiffs and defendant in accordance with their legitimate share. The disputed title or legitimate shares of the plaintiffs and defendant in above property will be determined by Court in above suit for partition. Order 40 Rule 1 of the Code of Civil Procedure does not authorize a receiver to make such determination.

In the case of Foyez Ahmed Chowdhury and another and Baktiar Ahmed Chowdhury and others reported in 36 DLR (AD) (1984) at Page-

97 as referred to above by the learned Advocate for the appellant the Appellate Division of the Supreme Court of Bangladesh held as follows:

“As a general Rule, the appointment of receiver in a Partition Suit has not met the approval of the Court. The existence of a dispute offers no ground whatsoever for appointing a receiver. In *Govinda N R Desai Vs. V N Desai*, AIR 1920 Bom, 321, it has been observed that in a Partition Suit between members of a joint family the Court will not appoint a receiver except by consent and specially where the family property consists of land.The plaintiff must satisfy the Court that the property in possession of the defendant is in danger of being wasted. Appointment of receiver cannot be claimed as a matter of course without allegations of wastage or destruction of property. It requires to be proved that not merely the plaintiff's interest but also the interest of all the parties in the suit and the property concerned need be protected.”

It was further held by the Appellate Division that the provision for the appointment of receiver is to be considered as one of harshest remedies for the enforcement of rights to property. It should therefore be exercised only in extreme cases where there is not only mere apprehension of possible danger but the peril or danger to the property in question to be great and imminent.

On the basis of an interlocutory petition under Order 41 Rule 1 and 2 of the Code of Civil Procedure, 1908 a legitimate possessor is removed from possession of the immovable property and a third person is handed over possession and management. Above exceptionally harse remedy should only be granted if the Court is satisfied that appointment of receiver is necessary to protect the property from destruction or decline and appoint of receiver servers the interest of all the parties to the suit. The Court needs to be extremely cautious in appointing receiver without consent of the parties in a suit for partition.

We have carefully examined the petition under Order 40 Rule 1 of the Code of Civil Procedure but find no allegation of danger of destruction or decline of above property by defendant No.1. The plaintiffs sought appointment of receiver so that they can get their legitimate share in the rents but as mentioned above the disputed title or legitimate share of the plaintiffs can only be determined by the Court not by the receiver.

On consideration of above facts and circumstance of the case and evidence on record we hold that the learned Joint District Judge completely failed to understand the facts of above case and the true meaning of Order 40 Rule 1 and 2 of the Code of Civil Procedure and most illegally allowed above petition and appointed receiver for above property which is not tenable in law.

In above view of the materials on record we find substance in this First Miscellaneous Appeal which deserves to be allowed.

In the result, this First Miscellaneous Appeal is allowed.

The impugned judgment and order dated 28.11.2018 passed by the learned Joint District Judge, 2nd Court, Dhaka in Civil Suit No.761 of 2017 is set aside and the petition filed by the plaintiffs under Order 40 Rule 1 and 2 of the Code of Civil Procedure is rejected.

The learned Joint District Judge is directed to conclude the trial of above suit within a period of 6 (six) months from the date of receipt of this order in accordance with law.

The connecting Civil Rule No.18(FM) of 2019 is hereby made absolute.

However, there will be no order as to costs.

Tamanna Rahman Khalidi, J:

I agree.