

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

Present:

**Mr. Justice Md. Khairul Alam**

**First Miscellaneous Appeal No. 416 of 2025 &**

**Civil Rule No. 291 (FM) of 2025**

Md. Alamgir Hawlader and others

..... Appellants.

-Versus-

Md. Ibrahim Hawlader and others.

..... Respondents.

Mr. Ali Imam Khaled Rahim, with

Mr. K.M. Reyad Salimullah, Advocates

..... For the appellants.

Mrs. Syeda Nasrin, Advocate

.... For the respondents.

Heard on: 19.08.2025 and  
**Judgment on: 20.08.2025.**

Since the appeal and the Rule involved the same point of law and facts have been heard together and are being disposed of by this common judgment.

This First Miscellaneous Appeal, at the instance of the plaintiffs-appellants, is directed against the order dated 21.04.2025 passed by the learned District Judge, Barishal in Title Appeal No. 289 of 2024 rejecting the application filed under Order XXXIX rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) for temporary injunction.

The case of the plaintiffs-appellants, in short, is that the present appellants as plaintiffs filed Title Suit No. 10 of 2018 in the Court of Assistant Judge, Bakerganj, Barishal impleading the present respondents as defendants for a declaration of title contending, inter

alia, that the suit land originally belonged to Azahar Ali Hawlader and the plaintiffs are the descendants of said Azahar Ali Hawlader. Though the land was lost by the diluvion (*shikast*) of the river Meghna in the year 1330 B.S., but the same was re-appeared on account of alluvion (*paiwast*) in the situ before 1350 B.S., so the title of the plaintiffs was not extinguished. During R.S. and S.A. operation, the record was wrongly prepared with the note “*shikast*”. Inadvertently, the suit land was recorded in the khash khatian of the Government vide Miscellaneous Case No. 1229/92-93, but subsequently, the same was corrected and the name of Azahar Ali was restored in the khatian vide Miscellaneous Case No. 1/2014-15. Defendant No. 8, Osman Gani purchased some land from the said khatian from the plaintiffs and he is still in possession of the said land by erecting a homestead thereon. The defendants denied the title of the plaintiffs, hence the suit. The suit was contested by the Government and the rest of the defendants separately by filing two sets of written statements denying the material allegations made in the plaint. The case of the said two sets of written statements is more or less similar. The case of the defendants, in short, is that the suit land originally belonged to Azahar Ali, but the same remained *shikast* during R.S. and S.A. operation, hence in the record it was rightly noted “*shikast*” and subsequently, by operation of law the suit land vested absolutely upon the Government vide Miscellaneous Case No. 1229/1992-93. After vesting the land in the Government, the Government leased out the same to the defendants. Ultimately, the suit was dismissed and the plaintiffs preferred an appeal in the Court of District Judge, Barishal. In the appeal, the plaintiffs-appellants as applicants filed an

application for temporary injunction under Order XXXIX, rule 1 of the Code restraining the respondents from dispossessing the appellants from the suit property.

Defendants-Respondents contested the application by filing a written objection denying the material averments made in the application for temporary injunction.

Upon hearing the submissions advanced by the learned Advocates for contending parties, perusing the application for injunction, the written objection and other materials on records the learned District Judge, Barishal, however on 21.04.2025, was pleased to reject the application for injunction holding, inter alia, that since the trial court after considering the evidence on record found that the plaintiffs had no title or possession over the suit property, and thereby dismissed the suit, therefore, at the stage of pendency of the appeal, the appellants are not entitled to any order of injunction.

Challenging the said order the plaintiffs as appellants preferred the instant first miscellaneous appeal with an application for temporary injunction stating the same averments so have been made in the application for temporary injunction filed before the Court of appeal below and after hearing the application this Court was pleased to issue a rule and vide its order dated 06.11.2022 also pleased to direct the parties to maintain status-quo in respect of possession and position of the suit property for a period of 6 (six) months.

Mr. Ali Imam Khaled Rahim, the learned Advocate appearing for the appellants at the very outset submits that the appellants having a clear cause of action and cogent grounds for filing the application for temporary injunction, the learned Judge of the Court of

Appeal below came to a wrong findings that there is no substance for granting injunction and thereby erred both in law and facts in passing the impugned order rejecting the application for temporary injunction and as such the same is liable to be set aside.

He next submits that the appellants remained in possession of the suit land by way of inheritance which reflects in the deposition of the D.Ws, but that evidence has been ignored by the learned judge in rejecting the application for temporary injunction by the impugned order and as such the same is liable to be set aside.

The learned Counsel further contends that the learned Court of Appeal below illegally rejected the prayer for temporary injunction stating that the plaintiffs failed to prove the title and possession over the suit property and as such the impugned order cannot be sustained in law and is liable to be set aside.

The learned Counsel lastly contends that the suit land was inadvertently recorded in the khash khatian of the Government vide Miscellaneous Case No. 1229/92-93, but said error was rectified and the name of Azahar Ali was restored in the khatian vide Miscellaneous Case No. 1/2014-15 which is evident from the deposition of the D.W. 1 but the Court of Appeal below without considering this aspect of the case passed the impugned order and as such the impugned order cannot be sustained in law and is liable to be set aside.

Per contra, Mrs. Syeda Nasrin, learned Advocate appearing on behalf of the respondents vehemently opposes the contentions so made by the learned Advocate for the appellants and submits that the appellants have no right, title and interest over the suit land. On

elaboration of the submission, she contended that the suit land is the khash land of the Government, the Government leased out the same in favour of the respondents permanently, the land was mutated in the name of the respondents, and the respondents are paying the rent to the Government which clearly proves the title and possession of the respondents. Considering all the said aspects, the trial Court dismissed the suit, and the Court of Appeal below rejected the application for temporary injunction. She also submits that the appellants have no prima facie arguable case in their favour and the balance of convenience and inconvenience is in favour of the respondents and unless the instant appeal is dismissed, this respondents shall suffer irreparable loss and injury, thus the learned Advocate for the respondents prays for dismissing the appeal and discharging the rule for the end of justice.

We have heard and carefully considered the submissions so advanced by the learned Advocates for the contending parties, perused the memo of appeal, impugned order, and other connected materials available on record.

The issue to be adjudicated is whether the court of appeal below was justified in rejecting the application for temporary injunction of the appellants.

Now it is well settled that in considering the application for a temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, the Court must think about three essential elements, namely: (i) the prima facie case, (ii) the balance of convenience and inconvenience, and (iii) the likelihood of irreparable loss or injury.

In the present case, the appellants filed a suit for declaration of title, asserting exclusive possession over the suit property. Mere filing of a declaratory suit and a bald assertion of possession do not, by themselves, establish a prima facie case of possession unless supported by cogent documentary proof or clear possession over a specific, identified portion of the land. Noting of “*shikast*” in the R.S. and S.A. record, subsequent recording in the khash khatiaon of the Government and execution and registration of permanent lease deed by the Government in favour of the respondents, the mutation and paying the rent by the respondents prima facie indicate that the appellants have failed to prove their case, i.e., the prima facie title and possession over the suit property to sustain an order of injunction.

It appears that the trial court after considering the evidence on record found that the appellants failed to prove their title and possession over the suit property. Though the said judgment and decree is under challenge before the Court of Appeal below, but still then it suggests that the balance of convenience is not in favour of the appellants in granting an injunction in their favour.

Irreparable loss is the last element to be considered to grant a temporary injunction. In a case like declaration of title over an immovable property, to prove the irreparable loss, prima facie, the ownership and possession over the suit property have to be considered; therefore, in the absence of prima facie ownership and possession appellants failed to establish a case of irreparable loss for granting a temporary injunction.

The appellant contended that vide Miscellaneous Case No. 1229/92-93 the suit land was recorded in the khash khatian of the

Government, but vide Miscellaneous Case No. 1/2014-15, the name of Azahar Ali was restored in the khatian. From the record, it appears that the appellants did not try to prove the said contention by adducing documentary evidence.

As it appears that the trial Court as well as the Court of Appeal below did not find any substantive evidence of exclusive possession of the appellants over the suit land, therefore, the question of dispossession by the defendant was not justified to pass an order of injunction.

The impugned order is based on a proper appreciation of both facts and law, and I do not find any illegality, perversity, or misdirection that would warrant interference of the same sitting in an appellate jurisdiction.

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

Since the appeal is dismissed, the connected rule being Civil Rule No. 291 (FM) of 2025 is hereby discharged.

The order of status quo granted earlier by this Court is hereby recalled and vacated.

Communicate a copy of the judgment and order to the Court of learned District Judge, Barishal forthwith.