

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

**First Miscellaneous Appeal No. 13 of 2022**

**With  
(Civil Rule No. 311 (FM) of 2021)**

**In the matter of:**

Monowara Begum, daughter of late Amin Ullah  
and others.

... Appellants

-Versus-

Md. Yousuf and others.

... Respondents.

Mr. Md. Ziaur Rahman with  
Mr. Kazi Md. Arifur Rahman, Advocates  
...For the appellants-petitioners

Mr. Muhammad Salahuddin, Advocate  
....For the respondents-opposite-party nos. 1-3

**Heard on 16.01.2024.**  
**Judgment on 17.01.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Mohi Uddin Shamim

**Md. Mozibur Rahman Miah, J.**

Since the point of law and fact so figured in the appeal and that of the rule are intertwined, they have heard together and are being disposed of by this common judgment.

At the instance of the plaintiffs in Other Class Suit No. 37 of 2010, this appeal is directed against the judgment and order dated 21.01.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Chattogram in the said

suit rejecting an application filed for temporary injunction holding that, the plaintiffs have failed to prove their *prima facie* title in the suit land and the balance of inconvenience does not stand in their favour and if an order of injunction is not granted, the plaintiffs have nothing to be prejudiced.

It is at that stage, the plaintiffs as appellants preferred the instant appeal. After preferring this appeal, the self-same appellants as petitioners filed another application for injunction and this court vide order dated 13.06.2021 issued rule and directed the parties to maintain status quo in respect of possession and position of the suit land for a period of 3(three) months which gave rise to above Civil Rule No. 311(FM) of 2021. That very order of status quo was subsequently extended from time to time and it was lastly extended on 20.04.2022 for another 1(one) year.

The short facts leading to preferring this appeal so revealed from the application for injunction are:

The present appellants-petitioners as plaintiffs filed the aforesaid suit seeking following reliefs:

“(ক) নালিশী অফসীলের আন্দর .০০৮১ অযুতাংশ সম্পত্তিতে বাদীর স্বত্ব সাব্যস্ত্বে গোলাভাগের প্রাথমিক ও চূড়ান্ত ডিক্রী হয়;

(খ) ১-৫ নং বিবাদী কর্তৃক বিজ্ঞ প্রথম যুগ্ম জিলা জজ আদালতে আনীত ১৯৮১ সালের ১১১ নং বিভাগ মামলায় প্রচারিত ৩১/১২/১৯৮৮ তারিখের রায় ডিক্রী বেআইনী, ফেরবী, Null and void, Malafide, সীমা অকার্যকর, অকর্মণ্য ঘোষণাক্রমে রদ ও রহিতের ডিক্রী হয় এবং তৎ ধারাবাহিকতায় ৪র্থ অতিরিক্ত জেলা জজ আদালতের অপর আপীল ১১১/৮৯ নং মামলায় আমিন উল্ল্যাহ এর উপর সমন নোটিশ জারী না করিয়া গোপনে হাসিলকৃত ১৯/৩/২০০০ ও ২০/৩/২০০০ তারিখের

রায় ডিক্রী এবং সিভিল রিভিশন ১৮০৯/২০০০ এর ৫/৮/২০০২ তারিখের  
 রায় রদ ও রহিতক্রমে তৎ দ্বারা বাদীগণ বাধ্য নহে মর্মে  
 ঘোষণামূলক ডিক্রী হয়;  
 (গ) মামলার সম্যক ব্যয় প্রতিদ্বন্দিতাকারী বিবাদীগণের বিরুদ্ধে ডিক্রী হয়;  
 (ঘ) বাদী আইন ও ন্যায় নীতি মতে অপরাপর যে সকল প্রতিকার পাইতে  
 পারেন তাহাও বিবাদীগণের বিরুদ্ধে ডিক্রী হয়।”

However, the said suit was filed in respect of the suit land measuring an area of .0081 *Azutangsho* of land. Soon after filing of the suit, the plaintiffs on 05.12.2019 filed application under order XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure restraining the defendant nos. 2, 3 and 5 from dispossessing them from the suit land or to make any hindrance in enjoying peaceful possession over the suit property and that of from changing the nature and character though in respect of .2400 *Azutangsho* of land. Against the said application for temporary injunction, the present respondent-opposite-party nos. 1-3 filed written objection denying all the material averments so made in the application and finally prayed for rejecting the same. The learned Judge of the trial court took up the application for hearing and vide impugned judgment and order rejected the same.

It is at that stage, the plaintiffs as appellants came before this court and preferred this appeal and then obtained a rule and order of status quo as stated hereinabove.

Mr. Md. Ziaur Rahman along with Mr. Kazi Md. Arifur Rahman, the learned counsels appearing for the appellants-petitioners upon taking us to the impugned order appeared in the memorandum of appeal as well as the

application for temporary injunction at the very outset submits that, the learned Judge of the trial court erred in law in not taking into account of the case of the plaintiffs who have title and possession in the suit land and since the suit has been filed for declaration of title as well as partition and that of challenging the propriety of the decree passed in Title Suit No. 111 of 1981 so in order to protect their share of the land so claimed in the suit, the learned Judge ought to have passed an order of injunction restraining the defendants from dispossessing them.

The learned counsel further contends that, the plaintiffs have been in possession over their respective share of land and they in the suit as well as in the application for temporary injunction clearly asserted so, but the learned Judge of the trial court committed an error of law in not passing an order of injunction finding *prima facie* case in their favour.

The learned counsel lastly contends that, since both the parties are in possession over the suit property and the plaintiffs have been threatened by the defendant nos. 2, 3 and 5 of dispossession from the suit property by virtue of a title execution case initiated by them so if an order of status quo is directed to be maintained by the parties, none of the parties to the suit will be prejudiced and then prays for allowing the appeal as well as making the rule absolute.

*Per contra*, Mr. Muhammad Salahuddin, the learned counsel appearing for the respondents-opposite-party nos. 1-3 very vehemently opposes the contention taken by the learned counsel for the appellants-petitioners and submits that, since the present respondents and others filed a suit being Title Suit No. 111 of 1981 (for partition), they got the decree

which had been challenged up to this court and after that, they initiated an execution case to execute the decree vide filing Other Execution Case No. 09 of 2014 and the notice of the case has duly been served upon all the judgment-debtors including the predecessor of the present plaintiffs, so in order to delay in getting *saham* out of the said partition suit, the instant application for injunction was filed.

The learned counsel by taking us to the schedule of the plaint as well as the application for injunction also contends that, though in the suit, the plaintiffs claimed an area of .0081 *azutangsho* of land but in the application for injunction, they prayed for restraining order for a greater portion of land that is, .2400 *azutangsho* of land and since there has been clear dissimilarity in respect of their claimed land in other words, in the injunction petition, they claimed more than the suit land, so their such claim cannot sustain in law.

The learned counsel by referring to the schedule of the application for temporary injunction also contends that, since there has been no boundary or any specification accompanied by schedule so no restrained order can be granted to an unspecified and vague land and that very proposition has correctly been addressed by the learned Judge of the trial court and rightly rejected the application which calls for no interference by this Hon'ble court.

The learned counsel by referring to the decision so have been reported in 43 DLR (HCD) 226 also contends that, similar point had also been raised in the cited decision and it has been held that, no injunction can

be granted in an unspecified and vague land and on those legal counts, the appeal is liable to be dismissed so does the rule be discharged he concludes.

We have considered the submission so advanced by the learned counsels for the appellants-petitioners and that of the respondents-opposite-party nos. 1-3 at length. We have also very meticulously gone through schedules so have been described in the plaint of the suit as well as the application for temporary injunction. On going through the schedules and comparing the same, we find that, the plaintiffs alleged to have been threatened for dispossession by the defendants over the land which has not been claimed in the suit and so such claim cannot be entertained because the plaintiffs cannot claim so which they did not even seek relief in the suit as of suit land.

Furthermore, in order VII, rule 3 of the Code of Civil Procedure, there has been mandatory provision that for getting a decree in a suit involving immovable property, the plaint must contain a description sufficient to indentify it by giving boundary but that very legal provision is clearly absent in the application for temporary injunction. That very legal proposition has also been settled in the decision reported in 12 MLR (AD) 105. In the above panorama, we don't find that the plaintiffs have got any *prima face* title over the suit property that enable them to get any interim order from the court of law.

Furthermore, since the plaintiffs in the prayer of the plaint also claimed partition apart from declaration, so it is a well-settled principle that, in a suit for partition all the co-sharer has got share in every inches of the suit property until and unless, it is partitioned through metes and bounds.

Since the plaintiffs have failed to specify in which portion of the suit land, the plaintiffs have been possessing, so without any specification, no order of injunction can be granted and if it is done, it will render a vague order.

Regard being had to the above facts and circumstances, we don't find any merit and substance in the submission so placed by the learned counsel for the appellants-petitioners rather we find ample substance and merit in the impugned judgment which is liable to be sustained.

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

Since the appeal is dismissed, the connected rule being Civil Rule No. 311 (FM) of 2021 is hereby discharged.

At any rate, the order of status quo granted at the time of issuance of the rule stands recalled and vacated.

However, the learned Joint District Judge, 1<sup>st</sup> Court, Chattogram is hereby directed to dispose of the Other Class Suit No. 37 of 2010 as expeditiously as possible preferably within a period 6(six) months from the date of receipt of the copy of this judgment.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1<sup>st</sup> Court, Chattogram forthwith.

**Mohi Uddin Shamim, J.**

I agree.