

Present:

Mr. Justice Sheikh Abdul Awal
and

Mr. Justice Md. Rafizul Islam

In the Matter of:

First Miscellaneous Appeal No. 229 of 2005

Badrunnessa and others.

....Plaintiff -appellants.

-Versus-

Fatema Rahman and others.

.....Defendant-respondents.

None appears

..... For both sides.

Judgment on 09.06.2026.

Md. Rafizul Islam, J:

This First Miscellaneous Appeal is directed against the impugned order dated 10.08.2005 passed by the court of learned Joint District Judge, 3rd Court, Dhaka in Title Suit No.37 of 2004 disallowing the application for temporary injunction filed by the plaintiffs under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908.

Facts, relevant for disposal of this Appeal, in brief are that, the plaintiffs instituted the suit being Title Suit No.37 of 2004 in the Court of the learned Joint District Judge, 3rd Court, Dhaka against the defendants for declaration of title in the disputed shop as stated in the schedule to the plaint. On 01.04.2004 the plaintiffs filed an application for temporary injunction under Order 39, Rule-1 and 2 of the Code of Civil Procedure, 1908. The defendants entered appearance and contested the injunction matter by filing written objection denying the material allegations made in the application.

Upon hearing the parties and on considering the materials on record, the learned Joint District Judge found that the plaintiffs failed

to establish a prima-facie arguable case in the disputed shop and consequently disallowed the application for temporary injunction.

Being aggrieved by and dissatisfied with the impugned order dated 10.08.2005 passed by the Joint District Judge, 3rd Court, Dhaka, the plaintiffs preferred the instant appeal before this Court.

No one found present to press the appeal on repeated calls.

In view of the fact that this petty old appeal arising out of an interlocutory order has been dragging before this Court over a period of 21 years, we are, inclined to take it up for disposal on merit.

We have perused the materials on record including the impugned order.

It is well settled that before granting temporary injunction the court must be satisfied regarding the existence of prima-facie case, balance of convenience and inconvenience and likelihood of irreparable loss and injury. Absence of any of these ingredients is sufficient to refuse the relief of temporary injunction.

It appears from the record that upon appearance of the parties and after considering the materials on record, the learned Joint District Judge disallowed the application for temporary injunction stating in the following language that “নালিশী দোকান ঘরটির অর্ধাংশের ৬৩ বর্গফুট জায়গার বর্তমান মালিক হইতেছেন ২ নং বিবাদীনি। তাহার মাতা ১ নং বিবাদীনি ভাড়াটিয়াদের নিকট হইতে ভাড়ার টাকা আদায় করিতেছে, ভাড়ার রশিদ বিবাদীপক্ষ হইতে দাখিল করা হইয়াছে। কাজেই বাদী পক্ষের প্রাইমাফেসী ও আরগুয়েবল কেস নাই। ফলে বাদীপক্ষ প্রার্থীত মতে অস্থায়ী নিষেধাজ্ঞার আদেশ হইতে পারে না।”

On scrutiny of the materials available on record specially the impugned order of the learned Judge, we find that the learned court meticulously considering the application, written objection and documents produced by the parties arrived at a finding that the

plaintiffs failed to establish a prima-facie arguable case in support of their claim. The court below also observed that the plaintiffs could not show prima-facie title and possession in the disputed shop which is a finding of fact based on the materials before the court.

An appellate court ordinarily does not interfere with an order granting or refusing temporary injunction unless it appears that the discretion exercised by the learned Judge was arbitrary, perverse or based on misreading or non consideration of the materials on record. We do not find any such infirmity in the impugned order. On the contrary the impugned order appears to have been passed upon proper appreciation of the relevant facts and materials. We are, therefore, unable to hold that the learned Judge committed any error of law warranting interference by this court. Accordingly, this appeal is liable to be dismissed.

In the result, the appeal is dismissed without any order as to costs. The impugned order dated 10.08.2005 passed by the Court of learned Joint District Judge, 3rd Court, Dhaka in Title Suit No.37 of 2004 is hereby maintained.

Since the suit is an old one of 2004 the trial Court concerned is directed to dispose of the same expeditiously in accordance with law, if any.

The order of stay granted earlier by this Court stands vacated.

Communicate this order at once.

Sheikh Abdul Awal, J:

I agree.