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

First Miscellaneous Appeal No. 272 of 2022
with
(Civil Rule No. 597(FM) of 2022)

In the matter of:

Khaleda Yasmin @ Khaleda Begum, wife of Salimullah Ahmed, At Present: Flat No. 3-201, Eastern Eden, 3/A, Purana Paltan, P.O.-G.P.O, P.S. Shahbag, District- Dhaka and another.

… Appellants-petitioners

-Versus-

Md. Abdul Kader Khan, son of late Dil Mohammad Khan alias Deen Mohammad Khan of Village- Amulia (West Side of Abdur Razzak High School), P.O. and P.S. Demra, District- Dhaka and others.

…Respondents-opposite parties

Mr. A.S.M. Rahmatullah with
Mr. Khaled Saifullah, Advocates

…For the appellants-petitioners

Mr. Suprakash Datta, Advocate

....For the respondent-opposite party no. 1

Heard on 07.01.2025 and 20.01.2025.
Judgment on 20.01.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have heard together and are being disposed of with this common judgment.

At the instance of the plaintiffs in Title Suit No. 292 of 2021, this appeal is directed against the judgment and order dated 15.02.2022 passed by the learned Joint District Judge, 4th Court, Dhaka in the said suit rejecting an application for injunction filed under order XXXIX, rule 1 and 2 of the Code of Civil Procedure.

The short facts leading to preferring this appeal are:

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

> *''**(ক)** নালিশা 'গ' ও 'গ(১)' তপছিল সম্পত্তির ওয়ারিশ হিসাবে বাদীগণ ৩/১০ অংশে ১ ষোল আনা মালিক মর্মে বাদীপক্ষের স্বত্ব, স্বার্থ অধিকার আছে মর্মে বাদীপক্ষের অনুকূলে এবং বিবাদী পক্ষের প্রতিকূলে ঘোষণামূলক ডিক্রি দিতে;*
>
> ***(খ)** নালিশা 'গ' ও 'গ(১)' তপছিলে বর্ণিত সম্পত্তি হইতে বাদীগণ পিতা ও মাতার ওয়ারিশ হিসাবে ৩/১০ অংশ সম্পত্তি বাদীগণ ওয়ারিশ সূত্রে একক কমপেক্ট ছাহাম পাওয়ার অধিকারী মর্মে বন্টনের প্রাথমিক ডিক্রি দিতে;*
>
> ***(গ)** আদালত কর্তৃক নির্দিষ্ট সময়ের মধ্যে বিবাদীপক্ষ প্রাথমিক ডিক্রি মতে ভাগ বন্টন করিয়া দিতে ও নিতে ব্যর্থ হইলে মাননীয় আদালত সার্ভে জানা একজন অভিজ্ঞ এডভোকেট কমিশনার নিয়োগ করতঃ নালিশা 'গ' ও 'গ(১)' তছছিলের সম্পত্তি প্রাথমিক ডিক্রির মর্ম মতে চিঠা নকশা, ডৌল, ইত্যাদি প্রস্তুত করতঃ মাননীয় আদালতে তৎসহ রিপোর্ট দাখিল করার নির্দেশ দিতে এবং উক্ত এডভোকেট কমিশনার এর রিপোর্ট, ম্যাপ, চিঠা, ডৌল, ইত্যাদি গ্রহণ করতঃ উহা ফাইনাল ডিক্রির একাংশ গণ্য করার আদেশ ও নির্দেশ দিতে;*

(ঘ) নালিশী 'খ' তপছিল বর্ণিত ডেমরা সাব-রেজিস্ট্রি অফিসে রেজিস্ট্রিকৃত তথাকথিত হেবা বিল এওয়াজ দলিল নং ৯৮৪, তারিখ ২৪.০২.২০০০ অবৈধ, তঞ্চকী, জাল, বাতিল ও অকার্যকর মর্মে ঘোষণামূলক ডিক্রি দিতে এবং অত্র ডিক্রির কপি প্রয়োজনীয় আইনানুগ ব্যবস্থা গ্রহণের জন্য সংশ্লিষ্ট সাব-রেজিস্ট্রি অফিসকে প্রেরণের নির্দেশ দিতে;

(ঙ) 'ক' তপছিলে বর্ণিত আর, এস ৩৩৪ খতিয়ানের ১৬৯৩ দাগের ৪.২৫ শতক সম্পত্তি সিটি জরিপে আমুলিয়া মৌজার সিটি জরিপে ১ নং খতিয়ানে ৫০০২ নং দাগের ৪.২৫ শতক সম্পত্তি ৪৯ নং বিবাদী নামে;

আমুলিয়া মৌজার আর, এস ২০৩ নং খতিয়ানের আর, এস ১৫৬৩ দাগের ১.৭৫ শতক সম্পত্তি সিটি জরিপে ২৩ নং খতিয়ানে ২৭৭৮ দাগে ১.৭৫ শতক সম্পত্তি ৫১ নং বিবাদীর নামে;

আমুলিয়া মৌজার আর, এস ৩৩৪ খতিয়ারে ১৫৪৩ দাগের ৪.০০ শতক সম্পত্তি সিটি জরিপে ৮৮০ নং খতিয়ানে ৫৪৫৫ নং দাগে ৪.০০ শতক সম্পত্তি ৫২-৫৮ নং বিবাদীর নামে;

সুন্না মৌজার সিটি জরিপে ৬৯৩ নং খতিয়ান ৫৯ নং বিবাদীর নামে;

উক্ত খতিয়ানসমূহে সিটি জরিপ ভুলক্রমে ৪৯, ৫১, ৫২-৫৯ নং বিবাদীর নামে প্রস্তুত ও রেকর্ড হইয়াছে মর্মে এক ঘোষণামূলক ডিক্রি প্রদান করিতে;

(চ) 'গ-১' নং তপছিলে বর্ণিত সিটি জরিপের সুন্না মৌজার ৬৯৩ নং খতিয়ান আব্দুর রহিম খান সংশোধন হইয়া দীন মোহাম্মদ খান হইবে এবং উক্ত খতিয়ানে ফজলুল করীম খানের নাম এবং আমুলিয়া মৌজার সিটি জরিপের ১২৮৪ নং খতিয়াদে আব্দুল গণি খানের নাম ভুলভাবে রেকর্ড হইয়াছে মর্মে ডিক্রি প্রদান করিতে;

(ছ) বাদী আইনতঃ ও ন্যায়ত আরও যে সকল প্রতিকার পাইতে পারে তৎমর্মে আদেশ দিতে;

(জ) অত্র মামলার সমুদয় খরচ বাদীর পক্ষের অনুকূলে এবং বিবাদী পক্ষের প্রতিকূলে আদেশ দিতে মহোদয়ের মর্জি হয়।''

The suit land comprises a total area of 192.54 acres on which the plaintiffs claimed to be co-sharers in respect of 'ga' and 'ga-1' schedule of land as $\frac{3}{10}$ sharer and in the suit amongst others, a specific prayer was made as prayer 'gha' for cancellation of a deed of *heba* (gift) bearing no. 984 dated 24.02.2000 executed and registered in favour of the defendant no. 1 by his father named, Deen Mohammad Khan. However, on the date of filing of the suit, the plaintiffs also filed an application for injunction under order XXXIX, rule 1 and 2 of the Code of Civil Procedure for restraining the defendant no. 1 from transferring the lands scheduled in the schedule 'ga' and 'ga-1' by any means, that is, deed of exchange, mortgage, gift or in any other form as well as to change its nature and character. Against that application praying for injunction by the plaintiffs, the defendant-respondent no. 1 filed written objection denying all the material averments so made in the application for injunction and finally prayed for rejecting the same.

The said application for injunction was ultimately taken up for hearing by the learned Judge of the trial court and vide impugned judgment and order rejected the same holding that the plaintiffs could not prove their *prima facie* and arguable case in the application for injunction.

It is at that stage, the plaintiff nos. 1 and 2 as appellants preferred this appeal. On the date of preferring appeal, the self-same plaintiffs as petitioners filed an application for injunction on which this court vide

order dated 31.08.2022 issued rule and directed the parties to maintain status quo in respect of position and possession of the suit property for a period of 6(six) months which then gave rise to Civil Rule No. 597(FM) of 2022. However, the said order of status quo was subsequently extended from time to time and lastly on 14.03.2023 it was extended till disposal of the rule.

Mr. A.S.M. Rahmatullah along with Mr. Khaled Saifullah, learned counsels appearing for the appellants-petitioners upon taking us to the memorandum of appeal including the impugned order and all the documents annexed therewith in the application for injunction, at the very outset submits that the learned Judge of the trial court erred in law innot taking into consideration of the fact that the plaintiffs have got a *prima facie* and arguable case to get an order of injunction and the trial court was obliged to pass an order of injunction in favour of the plaintiffs restraining the defendant no. 1 from transferring the property which he got from his father by deed of *heba*.

The learned counsel by taking us to the written objection so filed by the defendant no. 1 in particular, paragraph no. 23(cha) ২৩(চ) also contends that it has been asserted by that defendant that after transferring 104 decimals of land by virtue of the *heba*, there remains .8854 decimals of land which proves that the plaintiffs have got a *prima facie* case but the learned Judge of the trial court misconstrued the said aspect and therefore, the impugned judgment and order cannot sustain in law.

The learned counsel upon taking us to the paragraph no. 23(dha) ২৩ (ঢ) to the written objection next contends that out of 104 decimals of

land which the defendant no. 1 got from his father by way of *heba* deed as well as the property he inherited as co-sharer in the suit property, he already transferred 7027 decimals of land which proves that the plaintiffs have got a good arguable case for being apprehended of dispossession vis-à-vis the cause of action in filing the application for injunction has also been proved yet the learned Judge of the trial court did not take into consideration of those material facts and thus erred in law in not granting an order of injunction against the defendant no. 1.

When we pose a question to the learned counsel for the appellants-petitioners since the plaintiffs could not specify in their application about the quantum of land, the defendant was going to transfer he got from his father, the learned counsel then contends that the application for injunction was filed so that the defendant no. 1 cannot transfer the lands any further having no reason for the defendant to be prejudiced if an order of injunction is granted against him.

The learned counsel lastly contends that the defendant no. 1 has already filed written statement as well as written objection and the suit is ready for hearing so a direction may be given to the trial court to dispose of the suit expeditiously by giving it a time frame and till then, the order of status quo so passed by this Hon'ble court be continued when none of the parties to the rule will be prejudiced and finally prays for allowing the appeal and making the rule absolute.

Conversely, Mr. Suprakash Datta, learned counsel appearing for the respondent-opposite party no. 1 by filing a counter-affidavit annexing a voluminous of documents at the very outset submits that the

learned Judge of the trial court has very perfectly rejected the application for injunction which warrants no interference by this Hon'ble court.

The learned counsel then contends that since the defendant admitted in his written statement that out of 104 decimals of land, he got from his father by way of *heba* a lion's share of the same has already been transferred before filing of the suit, so if an order of injunction even an order of status quo is granted in that case, the person or persons who had purchased the property out of that 104 decimals of land, will be highly prejudiced since the plaintiffs have not mentioned any quantum of land they apprehended to be dispossessed by the defendant let alone no specification has been there in the application for injunction.

The learned counsel finally contends that since the plaintiffs had every knowledge about transfer of 104 decimals of land in favour of the defendant-respondent no. 1 and the suit was filed after 21 years of the execution of deed of *heba* and there is no assertion in the application that the plaintiffs have been in possession in any part of 104 decimals of land, so there has been no *prima facie* case in granting any interim order in absence of which, no injunction can be passed in favour of the plaintiffs-appellants-petitioners and finally prays for dismissing the appeal and discharging the rule.

Be that as it may, we have considered the submission so placed by the learned counsel for the appellants-petitioners and that of the respondent-opposite party no. 1.

There has been no gainsaying the facts that, in the application for injunction though the appellants-petitioners have described as many as

4(four) schedules as schedule nos. ‘ka’ to ‘ga-1’ and junction was sought in respect of ‘kha’ schedule thereof but in the said schedule only description of *heba* deed has been mentioned having no mention about the quantum of land from which the plaintiffs-appellants apprehended to be dispossessed by the defendant no. 1 or transfer the land in absence of which the application itself is not tenable in law. Further, the suit has not only filed for cancellation of a deed of *heba* dated 24.02.2000 rather for partition in respect of ‘ga’ and ‘ga-1’ schedule of land which comprises the lands, the defendant no. 1 acquired by virtue of the said *heba.* So in those 4(four) schedules, the portion of land which was transferred by way of *heba* has also been included. But fact remains, there has been no specification let alone any sketch map on which part of the suit land injunction has to be given in favour of the plaintiffs-appellants that also clearly goes against the mandatory provision of order VII, rule 3 of the Code of Civil Procedure. Because, if the land sought for injunction is not specified, in that case no injunction can be granted on such unspecified land.

Furthermore, there has been no assertion in the application for injunction how the plaintiffs have been enjoying possession over ‘kha’ schedule property even though it has been asserted by the defendant no. 1 in his written objection, that by this time (before filing of the suit) he transferred the lands he got from his father by way of *heba* deed dated 24.02.2000. So if it is so, then the plaintiffs cannot claim injunction over 104 decimals of land. In that regard, we find ample substance to the submission so placed by Mr. Suprakash Datta that if any interim order be

it an order of injunction or status quo is given, in that case, the person or persons who purchased the property out of that 104 decimals of land from the defendant no. 1 will be highly prejudiced. However, the learned counsel for the appellants-petitioners submits that there has been no scope for the defendant no. 1 to be prejudiced since the plaintiffs sought injunction so that the defendant cannot transfer the suit property any further. But we don't find any substance in such submission because in absence of any specification of land and quantum thereof no injunction can be granted upon the defendant no. 1.

Though it is the contention of the learned counsel for the appellants-petitioners that from paragraph no. 23(cha) of the written objection it proves *prima facie* case of the plaintiffs but the alleged *prima facie* case relates to suit for partition not for the application for injunction. The apprehension so have been described in the application for injunction claimed to have arisen on 27.06.2001 stating that the defendant no. 1 was trying to transfer the property he got by way of *heba* inviting the prospective buyers but such fact does not construe any *prima facie* case in restraining the defendant from transferring the property.

In the above panorama, we find that the learned Judge of the trial court has rightly found no *prima facie* and arguable case in favour of the plaintiffs in granting injunction in respect of 'kha' schedule of land.

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

Since the appeal is dismissed, the connected rule being Civil Rule No. 597(FM) of 2022 is hereby discharged.

The order of status quo granted at the time of issuance of the rule stands recalled and vacated.

However, the learned Judge of the trial court is hereby directed to dispose of the Title Suit No. 292 of 2021 as expeditiously as possible preferably within a period of 6(six) months from the date of receipt of the copy of this judgment.

Let a copy of this judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.

Abdul Kuddus/**B.O.**