

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

**Present:**

**Mr. Justice S.M. Masud Hossain Dolon**

**Civil Revision No. 4590 of 2022.**

Mst. Hasina Banu and others  
..... Plaintiffs-Petitioners  
-Versus-

Md. Hedayat Ullah and others.  
.... Defendants-opposite parties

Mr. Sanjoy Kumar Kundu, Advocate.  
..... for the petitioners.

Mr. Razib Kumar Chakrabarty.  
..... For the opposite parties.

**Heard on: 15.05.2024 &**

**Judgment on 16.05.2024.**

This Rule has been issued calling upon the opposite parties to show cause as to why the judgment and order No. 2 dated 02.10.2022, passed by the learned District Judge, Dhaka in Miscellaneous Appeal No. 215 of 2022 rejected the appeal summarily and affirmed the order No. 09 dated 28.07.2022 had passed by the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka in Title Suit No. 121 of 2022 rejected an application under Order 39, rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of this Rule, are that the petitioners as plaintiffs filed Title Suit No. 121 of 2022 before the learned Joint

District Judge, 5<sup>th</sup> Court, Dhaka for declaration of title and partition the schedule land. During the pendency of the suit plaintiffs filed an application under Order 39, Rule 1 and 2 read with section 151 of the Code of Civil Procedure prayed for temporary injunction till disposal of the suit.

The defendant No. 1 filed written objection against the temporary injunction and contended inter alia that the plaintiffs appellants have no right to seek temporary injunction since the schedule land is an ezamali property and as such the temporary injunction application should be rejected.

The learned trial Court after scrutinized relevant papers had appended with record submitted by the parties in support of their respective claims rejected the application for temporary injunction. Against this order plaintiffs filed Miscellaneous Appeal No. 215 of 2022 before the learned District Judge, Dhaka who rejected the appeal summarily and thereby affirmed the order had passed by the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka against which the plaintiffs petitioners filed the instant Revisional application and obtained Rule.

Mr. Sanjoy Kumar Kundu, learned Advocate on behalf of the petitioners submits that both the courts below failed to consider that since the plaintiffs-appellants have been possessing the suit property and the defendants opposite parties have no right, title and interest

over the schedule land. Thus the balance of convenience and in convenience regarding the suit land is also in favour of the plaintiffs-petitioners. It is clearly proved that the defendants neither have prima facie case nor have possession of the schedule property. But the courts below without going through the record and without assigning any cogent reasons rejected the temporary injunction application which is against the principles of granting temporary injunction and as such committed an error of law resulting in an error in the order occasioning failure of justice.

Mr. Rajib Kumar Chakrabarty, the learned Advocate on behalf of the opposite party No. 15 submits that both the two courts below concurrently found that the petitioners failed to prove their case in consequence of which the application for temporary injunction was rejected and as such, the revisional Court will not interfere with concurrent finding of both the courts below unless the petitioners can show any misreading of evidence, non consideration of material evidence on record and misconception of law.

I have heard the learned Advocates for both the side, perused all the other relevant papers appended thereto. It appears from the record that predecessors of plaintiffs Md. Atikullah and defendant No. 1 Md. Hedayat Ullah are the full brother and the schedule land is an ezamali property. It also appears that it is necessary to observe that the plaintiffs claimed that defendants fraudulently created fake

documents and mortgaged plaintiffs' property. It also appears that original suit was filed for declaration of title and partition of the schedule land and both the courts below concurrently found that whether the plaintiffs-petitioners have actually transferred their property to the defendants or whether the defendants have fraudulently taken a loan by mortgaged the plaintiffs' property is a matter to be proved by adducing evidence in the partition suit. In the broad balance of convenience if the suit land is called in auction and third party will purchase the suit land then the plaintiffs-petitioners will suffer irreparable loss, therefore, ends of justice would be sufficiently met if I dispose of this civil revision giving both the parties a direction to maintain status quo in respect of the possession and position of the suit land till disposal of the partition suit.

In the result, the Rule is disposed of without any order as to cost. Both the parties are directed to maintain status quo till disposal of the partition suit in respect of the possession and position of the land in the suit. The learned Trial Court is directed to dispose of the Title Suit No. 121 of 2022 expeditiously after receiving the Judgment and order in accordance with law.

Send a copy of this judgment to the court concerned at once for information and necessary steps.