

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

First Miscellaneous Appeal No. 77 of 2023

**With
(Civil Rule No. 736 (FM) of 2022)**

In the matter of:

Alhaj Joynal Abedin Jamal and others
... Appellants

-Versus-

Mohammad Jasim Uddin, son of Azizul Haque
and others.
... Respondents.

Mr. Dipayan Saha with
Mr. M. Masud Alam Chowdhury, Advocate
...For the appellants-petitioners

Mr. S. M. Azmal Hossain, Advocate
....For the respondents-opposite-party nos. 31-32

Heard on 25.02.2024 and 27.02.2024.
Judgment on 27.02.2024.

Present:

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

Md. Mozibur Rahman Miah, J.

Since the point of law and facts 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.

This appeal is directed against the judgment and order dated 20.11.2022 passed by the learned Joint District Judge, 3rd Court,

Chattogram in Other Class Suit No. 296 of 2020 rejecting an application filed by the plaintiffs dated 11.09.2022 for injunction under order XXXIX, rule 1 and 2 of the Code of Civil Procedure and thereby set aside the order of status quo so passed earlier on 17.10.2022.

The precise case of the parties so figured in the application for injunction filed before this court are:

The present appellants-petitioners as plaintiffs filed the aforesaid suit for declaration of title, recovery of khas possession as well as for permanent injunction, the prayers of which are as under:

“(ক) নালিশী ১(ক) নম্বর তফসিলের সম্পত্তিতে বাদীপক্ষ খরিদা সূত্রে স্বত্ববান মর্মে বাদীগণের অনুকূলে ও বিবাদীগণের বিরুদ্ধে ঘোষণার ডিক্রী হউক।

(খ) ১ নম্বর তফসিলের আন্দর নালিশী ১(ক) নম্বর তফসিলের সম্পত্তি হইতে বিবাদী পক্ষকে উচ্ছেদক্রমে বিবাদী পক্ষের সৃষ্ট যাবতীয় অবরোধ উৎপাঠনে বাদী পক্ষকে খাস দখল প্র দানের জন্য বাদীপক্ষের অনুকূলে ও বিবাদীগণের বিরুদ্ধে ডিক্রী হউক।

(গ) বিবাদীগণ মাননীয় আদালতের নির্ধারিত সময়ের মধ্যে নালিশী সম্পত্তির খাস দখল বাদীপক্ষের বরাবরে বুঝাইয়া না দিলে বিবাদীগণের সকল বাধা-বিষয় অপসারণ পূর্বক আদালত যোগে নালিশী সম্পত্তির খাস দখল বাদীগণকে বুঝাইয়া দেওয়ার নিমিত্তে বাদীগণের অনুকূলে ও বিবাদীগণের বিরুদ্ধে ডিক্রী হউক।

(ঘ) নালিশী ১(ক) নম্বর তফসিলের সম্পত্তিতে বিবাদীগণ যাহাতে কোন প্র কার কাঁচা পাঁকা গৃহ নির্মান করিতে না পারে কিংবা কোন প্র কার নির্মাণ কার্য কিংবা কোন প্র কার স্থায়ী অস্থায়ী স্থাপনা সৃষ্টি করিতে না পারে কিংবা নালিশী সম্পত্তি অন্যত্র বয়, বিক্রয় ও হস্তান্তর করিতে না পারে কিংবা নালিশী তফসিলের সম্পত্তি ব্যাংক কিংবা অন্য কোন ঋণ দান সংস্থার নিকট দায়বদ্ধ করিয়া কোন প্র কার ঋণ

প্র হণ করিতে না পারে তৎজন্য বারণপূর্বক বাদীগণের অনুকূলে
ও বিবাদীগণের বিরুদ্ধে স্থায়ী নিষেধাজ্ঞার ডিক্রী হউক।

(ঙ) অত্র মোকদ্দমার খরচ প্র তিদ্ধিন্দিতাকারী বিবাদীগণের বিরুদ্ধে ডিক্রী হউক।

(চ) বাদীগণ আইনতঃ ও ন্যায়তঃ অন্যায় যেসকল প্র তিকার পাইতে পারে
বাদীগণকে তাহা প্র দানের বিহিত আজ্ঞা হউক।”

That suit was filed for an area of 60 decimals of land so described in schedule ‘1(ka)’ to the plaint. After 7(seven) days of filing the suit, that is, on 14.10.2022, the plaintiffs filed an application for temporary injunction restraining the defendant nos. 1-6, 8-9, 11-21, 23-27 and 29-30 from erecting any homestead or to avail loan by mortgaging the suit land to any bank stating *inter alia* that, while the plaintiffs have been enjoying title and possession over 60 decimals of land in respect of B.S. Plot No. 12081, the said defendants encroached the same on 06.05.2020 even though those defendants had earlier tried to enter into the suit properties by evicting the plaintiffs on 25.03.2020 when a GD entry was lodged with Bayezid Bostami Police Station and since then the said defendants had been keeping on threatening the plaintiffs for erecting permanent structures on the suit properties. On the basis of that application, the learned Judge of the trial court vide order dated 28.02.2022 passed an interim order of injunction restraining those defendants from dispossessing the plaintiffs from the suit land till filing of the written objection of the defendants fixing next date on 15.05.2022. After that, on an application so filed by the plaintiffs, the defendant nos. 31-34 was added as parties to the suit vide order being no. 23 dated 24.08.2022. Thereafter, the plaintiffs again on 11.09.2022 filed another (second) application for injunction against those defendant nos. 31-

34 seeking self-same reliefs so made earlier against other defendants that is to say, defendant nos. 1-6, 8-9, 11-21 and 23-27 stating *inter alia* that, in spite of having an order of temporary injunction over the suit property dated 28.02.2022, the defendant nos. 31-32 on 09.09.2022 in collaboration with the defendant nos. 33-34 tried to inter into the said land to erect homestead and will erect a permanent structure over the suit property. Against that application, both the defendant nos. 31 and 32 filed separate written objections denying all the material averments so made in the application for injunction and prayed for rejecting the same. It has been stated by the defendant no. 32 that the predecessor of the plaintiffs, Md. Solaiman Alam Sheth by registered sale deed transferred 150 auzutangsho of land in favour of one, Md. Humayun Kabir who subsequently by registered sale deed being no. 8476 dated 02.06.2016 transferred that land to defendant no. 32. After purchasing the same, the defendant no. 32 also mutated his name in the khatian and has been enjoying the said land for more than 7 years by erecting a two-storey building thereon upon approving a plan passed by the Chattogram Development Authority (CDA). It has further been stated in the written objection that, the boundary of suit land and that of the purchased land of the defendant no. 32 is totally different and this defendant has never possessed the suit land or tried to dispossess the plaintiffs from the suit land. When the defendant no. 31 in his written objection stated that, he got 450 auzutangsho of land from his predecessor, Pourajit Barua Mutshuddi vide registered sale deed being no. 9014 dated 21.07.2019. After purchasing the same, he also mutated his name in the khatian in respect of the said purchased land and after

purchasing the same, he got the plan approved from CDA and enjoying title and possession upon erecting a four-storey building thereon. Unlike the defendant no. 32, the defendant no. 31 also asserted that, the property so claimed by the plaintiffs and that of his purchased land is totally different and after purchasing the same, he has been living his purchased property as homestead. However, the learned Judge of the trial court took up the application for hearing and upon considering the materials on record rejected the same and vacated the order of status quo so passed earlier on 17.10.2022.

It is at that stage, the plaintiffs as appellants came before this court and preferred this appeal. After preferring the appeal, the appellants as petitioners also filed an application for injunction and this court vide order dated 08.12.2022 issued rule and passed an interim order directing the parties to maintain status quo in respect of possession and position of the suit property which gave rise to the above Civil Rule No. 736 (FM) of 2015. That very order of status quo was subsequently extended from time to time and it was lastly extended on 29.01.2024 for another 6(six) months.

Mr. Dipayan Saha, the learned counsel 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, though it has been asserted in the plaint that the plaintiffs had been dispossessed from the suit property so mentioned in schedule '1(ka)' to the plaint on 25.01.2011 by some of the defendants but since on the basis of the application for injunction dated 14.10.2020, the learned Judge of the trial court passed an order of injunction till filing of

the written objection of the defendants, so the plaintiffs have still been possessing the suit property and therefore, they are entitled to hold on the suit land by an order of injunction but the learned Judge of the trial court has not appreciated that very legal aspect of the case of the plaintiffs.

The learned counsel further contends that, since filing of the application dated 14.10.2020 an order of status quo remains in place over the suit properties so the order of status quo passed by this Hon'ble court may be continued till disposal of the original suit and in that event, none of the parties to the suit would have been prejudiced.

The learned counsel finally contends that, since there has been a sketch map in the plaint as well as the application for temporary injunction showing the boundary of the lands on which the temporary injunction was sought and there has been order of injunction by this court except for defendant nos. 31 and 32 so the order of status quo passed by this court may be continued and the appeal may kindly be allowed and that of the rule absolute.

On the contrary, Mr. S. M. Azmal Hossain, the learned counsel appearing for the respondents-opposite-party nos. 31 and 32 vehemently opposes the contention so taken by the learned counsel for the appellants-petitioners and submits that, the learned Judge of the trial court while rejecting the application for temporary injunction vide impugned order has very elaborately discussed the boundary of the property so held by the defendant nos. 31 and 32 which have no nexus with the suit land claimed by the plaintiffs and arrived at a correct finding that, the defendants have not been possessing in the suit land rather they have been possessing non-

suit land having no reason for the plaintiffs to pray for injunction in the suit property when it has been admitted by them that the defendants have encroached the suit land.

The learned counsel further contends that, since these defendants-opposite-parties purchased the property from the suit plot no. 12081 long after the suit property alleged to have purchased by the plaintiffs and at the time of passing first ad-interim injunction dated 28.02.2022, the defendant nos. 31 and 32 were not any party to the suit so the injunction so passed initially will not affect enjoying title and possession and position of the defendants over their purchased land and therefore, the plaintiffs are not entitled to get any order of injunction in the suit properties.

The learned counsel by referring to the written objection so filed by the defendant nos. 31 and 32 also contends that, since in the written objection they have clearly stated that, they have never dispossessed the plaintiffs from the suit properties nor they have ever threatened to dispossess the plaintiffs so the plaintiffs are not entitled to get any order of injunction against the defendants and the learned Judge has very perfectly rejected the said application for injunction. On those scores, the learned counsel finally prays for dismissing the appeal and discharging the rule.

We have considered the submission so advanced by the learned counsels for the appellants-petitioners and that of the respondents-opposite-party nos. 31 and 32 at length.

We have also perused the memorandum of appeal including the impugned order and all other documents so appended therewith in the application for temporary injunction on which the rule was issued.

There has been no gainsaying the fact that, the suit was filed for declaration of title, recovery of khas possession as well as for permanent injunction over the suit property measuring an area of 60 decimals of land so described in schedule '1(ka)' to the plaint as well as the application for temporary injunction. It is also admitted by the plaintiffs that they have been dispossessed by the defendants on 06.05.2020 from the suit properties for which they also prayed for recovery of khas possession. So from the very prayer, it is crystal clear that the plaintiffs have not been in possession over the suit properties so how come, they got an order of ad-interim injunction from the trial court is totally incomprehensible to us.

Furthermore, the plaintiffs in their two applications for temporary injunction have given two separate dates of their apprehension of being dispossessed by two sets of defendants though it is admitted fact, the plaintiffs have been dispossessed by the defendants on 06.05.2020 so if the plaintiffs are not found in possession, so no restrained order can be passed to sustain possession by the plaintiffs.

Moreover, from the assertion so made by the defendant nos. 31 and 32 respectively in their written objection filed against the application for temporary injunction that, on two different dates, they got their respective land from separate predecessors though those defendant nos. 31 and 32 purchased their land from the same B.S. Plot No. 12081. But since soon after purchasing the property, they have mutated their respective name in the khatian and got their plan passed by the respective authority (CDA) and have been enjoying title and possession over their purchased land by erecting building so there has been no occasion to assume that, the

defendants have threatened the plaintiffs for dispossessing them from the suit property because moment mutation has been done in respect of the property purchased by the defendant nos. 31 and 32 and plan was passed for erecting multi-storey building then mere giving an alleged boundary for the suit land by the plaintiffs in the application for temporary injunction will not render to get any interim order. So the learned Judge of the trial court has rightly found that, the defendant nos. 31 and 32 have been possessing non-suited property. Further, since it has been found from the written objection of the defendant nos. 31 and 32 that, they have neither purchased the property so alleged by the plaintiffs nor they have been possessing from the suit property so no injunction can be granted against them rather if such kind of order is passed in that case, the peaceful possession of the defendant nos. 31 and 32 will seriously be hampered and there will be multiplicity of litigation among the parties.

Furthermore, the plaintiffs have not able to prove any *prima facie* case and balance of inconvenience does not stand in their favour so there occurs is no reason for the plaintiffs to suffer irreparable loss and injury.

Given the above discussion and observation, we don't find any shred of illegality or impropriety in the impugned judgment and order 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. 736 (FM) of 2022 is hereby discharged.

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

Let a copy of this judgment be communicated to the learned Joint District Judge, 3rd Court, Chattogram forthwith.

Mohi Uddin Shamim, J.

I agree.