

*Present:-*

*Mr. Justice Mahmudul Hoque*

**Civil Revision No. 2831 of 2023**

Abidur Rahman Chowdhury and another  
... Petitioners

-Versus-

Mizanur Rahman Chowdhury and others  
...Opposite-parties

Mr. Bashir Ahmed, Advocate

...For the petitioners.

Mr. Jahangir Ahmed Khan, Advocate

...For the opposite-party No. 1.

**Heard and judgment on 4<sup>th</sup> July, 2024.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite party to show cause as to why the impugned judgment and order dated 04.04.2023 passed by the learned District Judge, Brahmanbaria in Miscellaneous Appeal No. 04 of 2023 rejecting the appeal summarily and affirming the judgment and order dated 16.02.2023 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria in Title Suit No. 116 of 2018 vacating the order of status-quo should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The petitioners, as plaintiff, filed Title Suit No. 116 of 2018 in the Court of Joint District Judge, 1<sup>st</sup> Court, Brahmanbaria against the opposite-parties, as defendant, for partition. In the suit the plaintiffs filed an application under Order 39 Rule 1 of the Code of Civil Procedure praying for temporary injunction against the defendant No. 1.

The trial court after hearing the application issued notice to show cause upon the defendants fixing 01.12.2022 for filing written objection. The defendant No. 1 appeared in suit on 01.12.2022 and prayed for time to file written objection. Prayer was allowed. The plaintiffs by filing an application prayed for an ad-interim order of injunction. The trial court after hearing allowed the same and directed both the parties to maintain status-quo till filing of written objection by defendant No. 1. Defendant No. 1 filed written objection on 16.02.2023. The trial court took the matter for hearing and heard the injunction matter in part and fixed on 30.04.2023 for further hearing. The plaintiffs filed an application praying for extension of order of status-quo. The trial court after hearing instead

of extending the order of status-quo by the impugned order dated 16.02.2023 vacated the order of status-quo passed on 01.12.2022.

Being aggrieved, the plaintiffs, filed Miscellaneous Appeal No. 04 of 2023 before the learned District Judge, Brahmanbaria. The appeal was fixed for admission hearing on 04.04.2023. On the date fixed the appellate court summarily rejected the appeal observing that the matter of injunction already heard in part and next date is fixed for hearing on 30.04.2023, therefore, there is no necessity of extension of order of status-quo. At this juncture, the petitioners moved this Court by filing this revision and obtained the present Rule and order of status-quo.

Mr. Bashir Ahmed, learned Advocate appearing for the petitioners submits that this is a suit for partition. Considering urgency of the matter in dispute, the plaintiffs prayed for temporary injunction against the defendants not to change the nature and character of the suit property by making construction. The trial court rightly issued notice to show cause and after appearance of defendant No. 1, the trial court considering urgency of the matter passed an order directing both the parties to maintain status-quo till filing of

the written objection by defendant No. 1. The trial court fixed the matter on 16.02.2023. On the date fixed defendant No. 1 filed written objection and the court also took the matter for hearing and heard in part. Since hearing of the matter could not be concluded on that date, the court fixed next date on 30.04.2023 which is ordinarily long, consequently, the plaintiffs prayed for extension of order of status-quo till that date, but the trial court instead of allowing the prayer most unfortunately vacated the order of status-quo passed on 01.12.2022 which has already expired on that date.

He submits that the appellate court could have passed an order of status-quo till hearing of injunction matter directing the trial court to dispose of the same positively on the date fixed, but failed to pass such an order, as such, the courts below has committed illegality and an error of law in the decision occasioning failure of justice.

Mr. Jahangir Ahmed Khan, learned Advocate appearing for the opposite-party No. 1 submits that application for injunction took up for hearing by the trial court on 16.02.2023 and heard in part and next date was fixed on 30.04.2023, as such, the plaintiffs in suit ought to have awaited for hearing and disposal of the application, but

they prayed for extension of order of status-quo. The trial court vacated the order of status-quo observing that since the matter has already been taken for hearing and heard in part there is no necessity of extension of the order of status-quo. He further submits that if the plaintiff in suit feel it necessary to get the injunction matter heard and disposed of on an urgent basis they could have filed an application before the trial court praying for advancing the date of hearing instead of moving before the appellate court in appeal.

It is argued that the appellate court rightly held that since the matter has been taken by the trial court for hearing and heard in part fixing next date for hearing, there is no reason to prefer appeal against the order passed by the trial court, as such, both the courts below committed no illegality and error of law in the decision occasioning failure of justice. He submits that the property situated within the municipal area, as such, in a suit for partition no injunction can be passed restraining a co sharer from developing the property on the plea of pendency of the suit.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint, application for injunction,

written objection thereto and the impugned judgment and order passed both the courts below.

The plaintiffs filed the instant suit for a decree of partition of the suit property and also filed an application praying for temporary injunction against the defendant No. 1 not to change the nature and character of the suit property till disposal of the suit. The trial court after hearing rightly issued notice to show cause upon the defendant No. 1. The defendant No. 1, accordingly, appeared in suit and filed an application praying for time to written objection which was allowed. The plaintiffs filed an application praying for an ad-interim order in the like form till filing of the written objection. The prayer was allowed by the trial court by its order dated 01.12.2022 and fixed on 16.02.2023 for return of summons and filing written objection. On the date fixed the defendant No. 1 filed written objection and after filing the same, the trial court took the matter for hearing and heard in part. Thereafter, when the trial court adjourned the matter for further hearing fixing a date on 30.08.2023, the plaintiffs prayed for extension of order of status-quo till that date. The trial court ought to have allowed the prayer extending the order

of status-quo till next date, but unfortunately the court instead of granting or refusing such prayer passed an order vacating the order of status-quo. Thereafter, the plaintiffs ought to have moved before the District Judge by filing a revision against the order passed by the trial court vacating the order of injunction, but instead of preferring revision learned Advocate for the plaintiffs wrongly filed miscellaneous appeal by misconception of law. However, the appellate court rejected the appeal summarily not on the ground of filing appeal instead of revision, but on the ground that since the matter has already been heard in part and fixed next date on 30.04.2023 for further hearing the trial court neither rejected the prayer nor allowed the same, as such, there is no reason for preferring appeal against the order of the trial court. Then the plaintiffs moved this Court by filing this revision and obtained the present Rule and order of status-quo.

I find that the matter has not been properly dealt with by the learned Advocate for the plaintiffs before the trial court as well as before the appellate court. However, since at the time of issuance of the Rule this Court passed an order of status-quo for the time being

and extended by this Court till disposal of the Rule and the matter of injunction already pending before the trial court for hearing and disposal, it would be just and practicable for both the parties to get the application for injunction heard and disposed of on merit maintaining the order of status-quo passed by this Court within a definite time. Whether the plaintiffs have prima facie case, balance of convenience and inconvenience and will suffer irreparable loss are matters to be looked into by the trial court upon hearing of the application and written objection on merit, as such, without touching the merit of the application, the matter may be disposed of with the following direction.

The trial court is hereby directed to hear and dispose of the injunction application within 15(fifteen) days from the date of receipt of this judgment and order positively without allowing any unreasonable adjournment to the parties. Apart from this, since the question of development involved in the matter the trial court is directed to dispose of the suit within a shortest possible time giving top most priority.



The order of status-quo passed by this Court at the time of issuance of the Rule is hereby maintained till disposal of the application for injunction by the trial court.

Before parting with the case, I like to observe that in the event of hearing injunction application and order of status-quo is passed by the trial court for the time being, the trial court should keep in mind that if the order of status-quo is extended upto next date of hearing of the injunction application no injustice would be done to other party, but it will ensure justice for both the parties to get the matter in dispute heard and disposed of within a limited period and in the event of refusing such prayer, in one hand disposal of the application would be delayed for years together like the present one. In the instant case, had the trial court extended the order of status-quo till hearing of the injunction matter, the matter could have been disposed of before  $1\frac{1}{2}$  years, but for non application of mind and whimsical refusal of prayer by the trial court this matter has been dragged upto this Court causing financial loss to both the parties, delaying disposal of the matter for years together which is not at all expected from a court of law as the court is to do justice for all.

Further to note that, because of preferring an appeal against an order of the trial court or preferring revision before this Court, unless the proceedings of the suit is stayed there is no impediment for the trial court to proceed with the suit pending before it. Not only in the instant suit, but in every cases if a revision against an order is preferred before this Court, further proceedings of the suit before the trial court always remains stayed for the reason best known to them which is most unfortunate. Unless the proceedings of the suit is stayed by the appellate court or revisional court the trial court should proceed with the hearing of the suit in due process of law.

With the above direction and observations the Rule is disposed of, however, without any order as to costs.

Communicate a copy of the judgment to the Court concerned at once.