

District-Pabna.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1698 of 2023.

Md. Mostafa Sheikh and another.

..... Plaintiff- Appellant- Petitioners.

-Versus-

Md. Awal Kabir and others.

.....Defendant- Respondent-Opposite Parties.

Mr. Md. Aktaruzzaman, Advocate, with

Mr. Syed Altaf Hossain, Advocate

..... For the Plaintiff- Appellant- Petitioners.

Mr. Md. Kamrul Alam (Kamal), Advocate with

Mr. Md. Miniruzzaman Bhuiyan, Advocate

....For the Defendant- Respondent-Opposite Parties.

Heard and Judgment delivered on: 12.08.2025.

Md. Toufiq Inam,J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 30.01.2023 passed by the learned Additional District Judge, 3rd Court, Pabna in Miscellaneous Appeal No. 9 of 2021 dismissing the appeal and thereby affirming the judgment and order No. 11 dated 09.02.2021 passed by the learned Joint District Judge, 1st Court, Pabna in Partition Suit No. 149 of 2019 rejecting the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure should not be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court passed an interim order directing the parties to maintain status quo in respect of possession and position of the suit land for a limited period. The said order of status quo was subsequently extended from time to time and is still in force.

The petitioners herein as plaintiffs instituted Partition Suit No. 149 of 2019 before the Court of the learned Joint District Judge, 1st Court, Pabna seeking partition of the suit land and for allotment of saham. The plaintiffs' case, in short, is as follows:

a) That the Ka Schedule land originally belonged to Digombor Shaha Chowdhury, Gour Gobindo Shaha Chowdhury and Gobindo Shaha Chowdhury, who granted patta in favour of one Nonibala in 1340 B.S. and delivered possession to her. During the S.A. and R.S. operations, the land was accordingly recorded in her name.

b) That upon the death of Nonibala, she was succeeded by her only son, Nimai Chandra Pal @ Hor Kumar Pal, who also died leaving three sons, namely, Raton Kumar Pal, Nrepen Kumar Pal and Swapan Kumar Pal. In R.S. Khatian No. 388, the land was recorded in their names. They subsequently sold the Kha Schedule land to Ramjan Ali Kha, Abdul Kader Kha and Abdul Kuddus Kha by registered sale deed No. 3099 dated 30.03.1997, and their names were mutated accordingly. Ramjan Ali thereafter sold the Ka Schedule land to the present plaintiffs by registered sale deed No. 7504 dated 20.06.2011, upon which the plaintiffs' names were mutated and they came into possession, paying rents and taxes to the Government.

c) That the vendor of the plaintiffs, Ramjan Ali, mortgaged the suit land with Islami Bank Bangladesh Limited and obtained a loan without the knowledge of the plaintiffs. Upon default in repayment,

the bank auctioned the mortgaged property, where defendant No. 1 purchased the same on 16.07.2018. Thereafter, on 01.03.2019, the plaintiffs requested defendant No. 1 to partition the suit land, but he refused. Consequently, the plaintiffs instituted the present Partition Suit No. 149 of 2019 before the Court of the learned Joint District Judge, 1st Court, Pabna seeking partition and allotment of saham in respect of 5.766 acres of land described in the schedule to the plaint, impleading the opposite parties as defendants.

During pendency of the suit, the plaintiffs filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking temporary injunction restraining the defendants from forcibly entering into possession of the suit land, from cutting crops grown thereon, and from changing the nature and character of the property. The defendant-opposite parties contested the application by filing written objection. Upon hearing, the learned trial court rejected the application. Being aggrieved, the plaintiffs preferred Miscellaneous Appeal No. 9 of 2021 before the learned District Judge, Pabna. Ultimately, the appeal was heard and disposed of by the learned Additional District Judge, 3rd Court, Pabna, who, by the impugned order, dismissed the appeal and thereby affirmed the order of the trial court.

Mr. Md. Aktaruzzaman, learned Advocate appearing on behalf of Syed Altaf Hossain, at the very outset submits that the title of Ramjan Ali is admitted and that he sold the land in favour of the plaintiffs. Therefore, Ramjan Ali had no subsisting right, title or interest to mortgage the suit land with the bank.

He further submits that both the courts below committed serious error in not determining the question of possession of the plaintiffs, and thereby occasioned a failure of justice.

Per contra, Mr. Md. Moniruzzaman Bhuiyan, learned Advocate appearing for Mr. Md. Kamrul Alam (Kamal), for opposite party No. 2, Islami Bank Bangladesh Limited, submits that the bank conducted the auction strictly in accordance with law, and the property was duly sold to defendant-opposite party No. 1, who was put into possession through court process. Hence, both the courts below rightly rejected the prayer for injunction.

Having heard the learned Advocates for both sides and upon perusal of the revisional application together with the impugned judgment and order, it appears that both the trial court and the appellate court, upon proper assessment of facts and law, concurrently rejected the plaintiffs' application for temporary injunction. Such concurrent findings of fact cannot be interfered with in revisional jurisdiction in the absence of any perversity or miscarriage of justice.

It is well-settled that a suit for partition is essentially equitable in nature, wherein the Court bears the duty to balance the competing claims of all parties until a final allotment of saham is effected. An injunction restraining one side exclusively from enjoyment of the property would amount to a premature determination of possession and shares before evidence is duly assessed. Hence, unless a party establishes a clear and superior legal right, the prudent course is to preserve the property through a neutral order, such as maintaining status quo, and to ensure an expeditious trial so that substantive rights may be conclusively adjudicated.

It further appears that at the time of issuance of the Rule, this Court directed the parties to maintain status quo with regard to possession and position of the suit land, which order is still in force. The opposite party Bank has asserted that the auction-purchaser, defendant No. 1, is in possession of the suit land through court process. In such

circumstances, this Court is of the view that justice would best be served if the trial court is directed to dispose of the partition suit itself on merit within the shortest possible time.

Accordingly, **the Rule is disposed of.**

The learned trial court is directed to dispose of Partition Suit No. 149 of 2019 as expeditiously as possible, preferably within six (6) months from the date of filing written statements by the defendants, if they wish to file the same.

The parties are also directed to maintain status quo with regard to possession and position of the suit property until disposal of the suit.

There will be no order as to cost.

Let the order be communicated at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.