

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

**First Miscellaneous Appeal No. 362 of 2021  
With  
(Civil Rule No. 105 (FM) of 2021)**

**In the matter of:**

Hazi Abdus Sattar Khan, son of late Abdul Hye  
Khan of village- Asrabpur, Post Office- Shibpur,  
Police Station- Shibpur, District- Narsingdi.  
... Appellant

-Versus-

Md. Mozammel Hoque Khan and others.  
... Respondents

Mr. Md. Golam Farid, Advocate  
... For the appellant-petitioner

Mr. Ashfaqur Rahman, Advocate  
... For the respondents-opposite-parties

**Heard on 29.05.2024 and  
12.06.2024.  
Judgment on 12.06.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

Since the point of law and fact 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 30.09.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Narsingdi in Title Suit No. 19 of 2020 rejecting an application for injunction.

The short facts leading to preferring this appeal are:

The present appellant as plaintiff originally filed the aforesaid suit seeking following reliefs:

- “(ক) নালিশী তফসিল বর্ণিত সম্পত্তিতে বাদীগনের প্রাপ্য ৫৭৬ (পাঁচশত ছিয়াত্তর) শতাংশ সম্পত্তি বাদীগনের অনুকূলে বন্টনের এক প্রাথমিক ডিক্রী দিতে;
- (খ) পক্ষগনকে নালিশী সম্পত্তি প্রাথমিক ডিক্রী মোতাবেক আপোষ বন্টনের জন্য এক সংকীর্ণ সময় দিতে;
- (গ) আদালত কর্তৃক প্রদত্ত সময়ের মধ্যে পক্ষগণ প্রাথমিক ডিক্রীর মর্মমতে আপোষে বিভাগ বন্টন করিয়া দিতে ও নিতে ব্যর্থ হইলে একজন বিজ্ঞ সার্ভে জানা এডভোকেট কমিশনার নিয়োগক্রমে বাদীগনের অংশ বাবদ তুল্য মূল্যের এক গৌরবজনক কমপেঙ্ক ছাহাম প্রস্তুত করিয়া প্রতিবেদন পেশ করিতে;
- (ঘ) বিজ্ঞ এডভোকেট কমিশনারের প্রতিবেদন অনুসারে বন্টনের এক চূড়ান্ত ডিক্রী প্রদান করিতে;
- (ঙ) বিবাদীগনের যাবতীয় বাধা বিঘ্ন অপসারণে বাদীগনকে তাহার ছাহাম ভুক্ত সম্পত্তির দখল আদালতের মাধ্যমে প্রদান করিতে;
- (চ) মোকদ্দমার যাবতীয় খরচ বাদীগনের অনুকূলে এবং বিবাদীগণের প্রতিকূলে ডিক্রী দিতে আজ্ঞা হয়;
- (ছ) আইন ও ইকুইটির বিধান মতে বাদীগন আর যে যে প্রতিকার পাইতে হকদার তাহা ডিক্রী দিতে আজ্ঞা হয়।”

The said suit was filed for the suit land measuring an area of 576 decimals. Long after eight months of filing the said suit, the self-same

plaintiff filed an application for injunction under order XXXIX, rule 1 read with section 151 of the Code of Civil Procedure for restraining the defendant nos. 1-7, 9-10 and 12-18 from making any hindrance in enjoying the suit property or to dispossess the plaintiff from the suit property or to change the nature and character of the same stating *inter alia* that, on 12.09.2020 at 10.00 a.m., the defendant nos. 1-7, 9-10 and 12-18 being led by defendant no. 15 and other goons of the locality tried to enter into the suit property when the plaintiff-appellant resisted them when the said defendants retreated though threatened that they will take possession of the suit property at any cost. Out of such threat, the plaintiff then filed an application for injunction. Though the defendants neither filed written statement nor filed written objection against the application for injunction, the learned Judge of the trial court then vide impugned order rejected the same holding that, though in the schedule of the plaint, the plaintiff has been mentioned the C.S. khatian and plot number but the corresponding R. S. Khatian number as well as the plot number has not been mentioned even though the said impugned order was passed on an off date.

It is at that stage, the plaintiff as appellant came before this court and preferred this appeal. After preferring this appeal, the self-same appellant as petitioner has filed an application for temporary injunction on which rule was issued that gave rise to Civil Rule No. 105(FM) of 2021. However, no interim order was passed at the time of issuance of the rule.

Mr. Md. Golam Farid, the learned counsel for the appellant-petitioner by reading out the impugned judgment and order at the very outset submits that, by passing the impugned order, the learned Judge has

not assigned any cogent reason for rejecting the application though the plaintiff in the application for injunction has categorically stated his apprehension of dispossession by the defendants and therefore, the said order cannot be sustained in law.

The learned counsel further contends that, since the suit property is located in the village area so at any point of time those defendants can dispossess the plaintiff from the suit property as they are very influential in the locality and if an order of injunction is not granted by this Hon'ble court, it is the plaintiff-appellant would be highly prejudiced.

The learned counsel finally contends that, since the learned Judge of the trial court has not discussed the possession of the suit property so held by the plaintiff-appellant yet the appellant has been possessing the suit property so this Hon'ble court may pass an interim order and finally prays for allowing the appeal and making the rule absolute.

On the contrary, Mr. Ashfaque Rahman, the learned counsel appearing for the respondents-opposite-parties opposes the contention so taken by the learned counsel for the appellant-petitioner and submits that, in the impugned judgment, there has been no discussion in regard to legal point laid down in order XXXIX, rule 1 of the Code of Civil Procedure but the same order has been passed by taking into consideration of the factual aspect since the suit was filed for partition.

The learned counsel further contends that, since the respondents did not get any opportunity to oppose the application even though the said impugned order was passed on an off date.

The learned counsel alternatively submits that, this Hon'ble court may set aside the impugned order directing the learned Judge of the trial court to hear the application afresh by giving opportunity to the defendants for which none of the parties to the said suit would have been prejudiced and prays for disposing of the appeal as well as the rule.

We have considered the submission so advanced by the learned counsel for the appellant-petitioner and that of the respondents-opposite-parties at length and also perused the impugned judgment and order.

On going through the impugned order, we find that, the same was passed on an off date without giving any opportunity to the defendants-opposite-parties to place their grievance or defence. Furthermore, though the learned Judge of the trial court found, no R.S. Khatian and Plot number in the plaint as well as in the application for injunction but on careful perusal of the schedule of the plaint as well as the application for temporary injunction, we clearly find that in the schedule R. S. Khatian and corresponding Plot number has clearly been stated which demonstrates, the unmindfulness of the learned Judge of the trial court while rejecting the application. On that very score, the impugned order cannot sustain in law.

Be that as it may, since the application has been disposed of on an off date without giving any opportunity to the defendants-respondents-opposite-parties so justice would be best served if we direct the trial court to consider the application afresh by giving opportunity to the defendants-opposite-parties to file written objection against the application but the impugned judgment and order cannot be sustained at all since no discussion has been made with regard to legal point as well as the learned

Judge has not perused the schedule of the plaint as well as the application for injunction.

Accordingly, the appeal is disposed of.

The impugned judgment and order dated 30.09.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Narsingdi in Title Suit No. 19 of 2020 is hereby set aside.

The learned Judge of the trial court is hereby directed to take up the application for injunction filed by the appellant or any separate application if filed by the plaintiff-appellant for hearing by giving opportunity to the defendants-opposite-parties to file written objection thereagainst.

Since the appeal is disposed of, the connected rule being Civil Rule No. 105 (FM) of 2021 is also disposed of.

However, the learned Joint District Judge, 1<sup>st</sup> Court, Narsingdi is directed to dispose of the application as stated above as expeditiously as possible preferably within 1(one) month from the date of receipt of the copy of this order by intimating the learned Advocates for the parties.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1<sup>st</sup> Court, Narsingdi forthwith.

**Md. Bashir Ullah, J.**

I agree.