

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

Present:

Mr. Justice Md. Moinul Islam Chowdhury

Civil Revision No. 4335 of 2023

IN THE MATTER OF:

An application under section 115(1) of the Code of Civil Procedure. (Against Order)

And

IN THE MATTER OF:

Md. Robiul Islam

--- Plaintiff-Appellant-Petitioner.

-versus-

Md. Saifuddin Patowary and others

--- Defendant-Respondent-Opposite Parties.

**Mr. Raghbir Rouf Chowdhury with
Mr. K. M. Mamun-Or-Rashid and
Mr. M. Fazlul Karim Mondol, Advocate**

--- For the Plaintiff-Appellant-Petitioner.

**Mr. Mohammad Kamrul Hasan with
Ms. Asma Parveen, Advocates**

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

Heard on: 16.11.2023 & 28.11.2023.

Date of Judgment: 28.11.2023.

At the instance of the present plaintiff-appellant-petitioner, Md. Robiul Islam, this revisional application was filed under section 115(1) of the Code of Civil Procedure and the Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Order dated 24.08.2023 passed by the learned Senior District Judge, Dhaka in the Miscellaneous Appeal No. 104 of 2023 dismissing the appeal and thereby affirming the

Judgement and Order dated 26.01.2023 passed by the learned Joint District Judge, Court No. 1, Dhaka in the Title/Civil Suit No. 796 of 2022 rejecting the application for temporary injunction should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that one Kerala Sarder was the owner, thereafter, having to possess the scheduled land by his 2 sons, namely, Horicharan Sarder and Raj Chandra Chowkider by equal shares. Horicharan sold the land to Saed Ali and S. A. Record was prepared his name. Saed Ali died leaving behind his legal heirs: wife Jhunu Bibi, 2 sons, namely, Fazar Ali and Shohor Ali, 4 daughters, namely, Shokhina Bibi, Robila Khatun, Zamila Khatun and Zamina Khatun and R. S. Record was prepared in their names. Thereafter, Zamila Khatun transferred her share to 2 nephews Fazar Ali and Shohor Ali by way of a registered Heba Deed dated 21.12.1995. She also transferred the land earlier to Fazar Ali by way of a registered Deed dated 02.07.1985. Accordingly, the right of City Jorip was prepared in the name of Shohor Ali. The said Shohor Ali transferred the land by way of Heba Bill Ewaj in favour of the present plaintiff-petitioner. When the defendant-opposite parties tried to dispossess the plaintiff-petitioner and finally on 10.02.2018 the defendants dispossessed the plaintiff from the suit land.

During the pendency of the suit being the Title Suit No. 796 of 2022, the plaintiff-petitioner filed an application under Order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure praying for a temporary injunction upon the suit land.

The learned Joint District Judge, Court No. 1, Dhaka rejected the application for the temporary injunction against the opposite parties on 26.01.2023. Being aggrieved the present petitioner preferred the Miscellaneous Appeal No. 104 of 2023 in the Court of the learned Senior District Judge, Dhaka challenging the legality of the said order dated 26.01.2023 passed by the learned Joint District Judge, Court No. 1, Dhaka. After hearing the parties, the learned Senior District Judge, Dhaka rejected the appeal and affirmed the impugned judgment and order passed by his judgment and order dated 24.08.2023.

Mr. Raghiv Rouf Chowdhury, the learned Advocate, appearing along with the learned Advocate, Mr. K. M. Mamun-Or-Rashid on behalf of the learned Advocate, Mr. Mohammad Fazlul Karim Mondal, for the plaintiff-appellate-petitioner, submits that the learned courts below committed an error of law by rejecting the application for temporary injunction during the pendency of the title suit in order to restraining the defendant- opposite parties from construction of a building.

The learned Advocate also submits that there is a *prima facie* case on behalf of the present petitioner, thus, the interim order of injunction should have been allowed in order to stop the construction work.

The Rule has been opposed by the present defendant-respondent-opposite parties.

Mr. Mohammad Kamrul Hasan, the learned Advocate, appearing along with the learned Advocate, Ms. Asma Parveen, for the defendant-respondent-opposite parties, submits that the learned courts below considered the possession of the suit land and lawfully rejected the application for temporary injunction by causing huge financial loss to the defendant-opposite parties.

The learned Advocate also submits that the defendant obtained an approving plan from the RAJUK for the construction of a 6-storied building upon the suit land and this application was made for injunction with an intention to stop the construction work of a building lawfully, as such, the Rule should be discharged.

Considering the above submissions made by the learned Advocates for the respective parties and also considering the revisional application filed by the plaintiff-appellant-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and order

passed by the learned courts below, it appears to me that the present petitioner as the plaintiff filed a title suit against the present defendant-opposite parties regarding the suit land situated at Mouza-Diabari, total 9 C. S. Dags along with Dag Nos. 266 and 267, C. S. Khatian No. 47, Police Station- Uttara/Turag (former Police Station- Mirpur-Tejgaon-Keranigonj), District-Dhaka total land measuring 6.14 decimals praying for declaration of title and recovery of khas possession. The title suit is pending in the court of the learned Joint District Judge, Court No. 1, Dhaka for adjudicating the suit. The present petitioner filed an application under Order 39 rule 1 and 2 read with section 115(1) of the Code of Civil Procedure which was heard by the learned trial court and rejected the application for temporary injunction by his Order No. 6 dated 26.01.2023 and also the learned appellate court below by its Order No. 3 dated 24.08.2023 rejected the said application preferred by the present petitioner.

This Civil Revision has been filed praying for the ad-interim injunction for restraining the present opposite parties from constructing the building before deciding the title of the parties pursuant to the respective title.

In view of the above concurrent judgment and orders passed by the learned trial court and the learned appellate court below, I

consider that the original title suit being Title Suit No. 796 of 2022 should be disposed of by the learned trial court on the basis of the merit of the case after hearing the parties as early as quickly possible in order to make further complications. I, therefore, consider that the Rule should be disposed of with the following directions as to the possession and position of the suit land.

In the result, the Rule is hereby disposed of with the following directions:

The learned Joint District Judge, Court No. 1, Dhaka is hereby directed to hear the parties for adjudicating the title of the parties within 6 (six) months from the date of the receipt of this judgment and order without allowing any unnecessary adjournment by either of the parties.

The defendant-opposite parties are hereby directed not to undertake any construction work within this 6 (six) months time and the present plaintiff-petitioner is hereby also directed not to cause any interference during this 6 (six) months period of time.

The interim order of direction passed at the time of issuance of this Rule to maintain the *status quo* in respect of the possession and position of the suit land for a period of 3 (three) months and later on 15.11.2023 the same was extended for a further period of 6 (six) months is hereby recalled and vacated.

Thus, the concerned section of this court is hereby directed to communicate this judgment and order to the learned Joint District Judge, Court No. 1, Dhaka forthwith.