Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 2990 OF 2023.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Abu Bakar Talukder and others.

....Plaintiff-petitioners.

-Versus –

Belayet Hossain Talukder and others.

....Defendant-opposite parties.

Mr. Alok Kumar Bhowmik, Advocate.

..... For the petitioners.

Mr. Md. Shahidul Islam, Advocate with
Mr. Md. Riaz Hossain Sikder, Advocate with
Mr. S.M. Zakir Hossain, Advocate.

..... For opposite parties.

Heard and Judgment on 05.03.2024.

On an application of the petitioners Abu Bakar Talukder and others under section 115 (1) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 02.11.2022 passed by the learned Joint District Judge, 2nd Court, Jhalokathi in Miscellaneous Appeal No. 01 of 2022 dismissing the miscellaneous appeal and thereby affirming the judgment and order dated 15.12.2021 passed by the learned Senior Assistant Judge, Rajapur, Jhalokhati in Title Suit No. 211 of 2021 rejecting the application under Order XXXIX Rule 1 read with section 151 of the Code of Civil Procedure should not be set aside.

Facts necessary for disposal of the Rule, in short, is that the petitioners as plaintiffs instituted Title Suit No. 211 of 2021 before the

Senior Assistant Judge, Rajapur, Jhalokhati against the defendant for partition of “ka” schedule land.

Thereafter, the plaintiff petitioner filed an application for temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure against the defendant Nos. 1-5 and 17 on 04.11.2021.

The defendant Nos. 1-2 enter appeared and filed written objection against the said application for temporary injunction.

The trial court after hearing the parties and considering the facts and circumstances of the case rejecting the said application by its judgment and order dated 15.12.2021.

Against the judgment and order of the trial court the plaintiff petitioner preferred Miscellaneous Appeal No. 01 of 2022 before the learned District Judge, Jhalokathi.

The appeal was heard by the Joint District Judge, 2nd Court, Jhalokathi who after hearing the parties and considering the facts and circumstances of the case as well as the papers and documents as available on record dismissing the appeal and affirming the judgment and order of the trial court by its judgment and order dated 01.11.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order of the courts below the plaintiff-petitioners filed this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Md. Shahidul Islam, the learned Advocate along with Mr. Md. Riaz Hossain Sikder and Mr. S.M. Zakir Hossain, Advocate enter appeared on behalf of the defendant-opposite-party Nos. 1-6 through vokalatnama and also filed a counter affidavit.

Mr. Alok Kumar Bhowmik, the learned Advocate appearing on behalf of the defendant-petitioners submits that both the courts without considering the material facts of the case erroneously passed the impugned judgment. He submits that the courts below did not consider that the petitioners succeed to prove their right, title and interest of the suit land and also specifically mentioned that the defendant Nos.1-5 and 7 trying to grab the said property of the plaintiffs by illegal way and the defendants threatened them that they would establish a Madrasah in the suit land thus the plaintiffs are constrained to file this application for injunction but both the courts did not consider the said material facts, erroneously passed the impugned judgment. He prayed for making the Rule absolute.

On the contrary Mr. Md. Shahidul Islam, the learned Advocate appearing on behalf of the opposite-parties submits that plaintiffs filed a partition suit and in the plaint as well as the application they specifically mentioned that the suit land was gifted land for establishing a Madrasah and accordingly a "Nirupon potro" was executed and Madrasah. He further submits that in the application the plaintiff petitioners mentioned that no existence of the said Madrasah for 15-20 years and the plaintiffs claimed the said land stating that the "Nirupon potro" has already been revoked by the act of the defendants thus it is clear that the plaintiffs admitted that the said land was gifted for establishment of a Madrasah and the name of the Madrasah was also mentioned as Ôg`xbZý Djyg ‡KivZý †KviAvb KIgxgv`vv in such a case no scope to obtain any temporary injunction and both the courts rightly passed the impugned judgment. He further submits that the application is misconceived one since in the

application the plaintiffs admitted that their predecessor gifted the land and claimed that the said “Nirupon potro” is no more in existence and in such a case the plaintiffs ought to have obtained an order from a competent court that the said “Nirupon potro” is no more in existence by the act of the defendants, as such no question of temporary injunction and both the court rightly passed the impugned judgment. He prayed for discharging the Rule.

I have heard the learned Advocates of both the sides, perused the impugned judgment and order of the courts below and the papers and documents as available on the record.

In the instant case the plaintiffs instituted Title Suit No. 211 of 2021 for partition of the “ka” scheduled land. Thereafter, the plaintiffs filed an application for temporary injunction under Order XXXIX Rule 1 and 2 read with section 151 of the code of civil procedure. I have carefully examined the said application, fromwhere, it is found that the plaintiff side specifically mentioned that their predecessor gifted the said property for establishing a Madrasah and also a Mosque and Eidgah as well as the aforesaid Madrasah is situated in the said land. The said“Nirupon potro” was executed and registered by the predecessors of the plaintiffs in favour of the secretary of the “Modinatul Ulum Keratul Quran Karim Madrasah” on 15.06.1989. The plaintiffs stated the facts to the effect: ÔÔH 4816 `vwMi ce©cvwk© i vixcv viv¯—v 4816 `vwMi wM Ëi cvwk©48 1/48 /48 `vwM ev`xM‡bi 1/! b"#eev`xi cee©$ xM"$v%`vi ev xi ' vw((# ` e)c‡e©#b(vb ‡ib H ( # ‡`i $ *+#Ë ce©cvwk©cv viv¯—v; #M,vw‡-. (# ‡` e$(vwb /`vO$ v##i c12 *+#Ë bv3. (# `#4 5 6c7vk894 *v;5 6c,#k894> v *?@AvwM v(vbB *+#Ë C`MvD #D vwe 'vbv' vi 'bBeBeDvi D3,vEv#‡$‡-. $v3(v`Fv#eivb D ,v bv> vi vi‡b H

4816 `vwM E= ev`xMb‡bi E"‡ki *+#Ë $v%`vi ev xi H#$DBevDx( #‡`i /`vO$ vi ##i iG E' %@bv eVHiG ivi ' bB/1 c#(vb *+#Ë ev`xivcv3‡eb $vDv (B (#‡` `vb #evi 3I-vcJvk iy 1/! b"#eev`x Dv' vb‡$ cv#,vEbB `vM $v%`vi ev xi K' (vx *+#Ë‡$ `viG ((x(v`F vc#$L$v1b"#eev`xc#>v by v1BMiG #,vev`x‡`i / vb ($v($ ev *?$ bv#b,v/eOEv3#bAv‡e /' v ce© #biGb c‡=i k$© (‡$ i`Oi#D$ D ,v ‡ËN ev`xM‡bi E"‡ki *+#Ë E$ 0 vP ivi (vb‡Q /' v ce© `@ ivi cy$viv #‡$‡-.R

From the aforesaid statements it appears that the plaintiff side stated that since the defendants did not continue the said Madrasah as such the earlier “Nirupon potro” has been revoked and thus they have taken decision to transfer the said land in favour of the Mosque for the purpose of making washroom and for other purpose and then the defendant Nos. 1 and 2 disclosed that they will construct a building in the said portion thus the plaintiffs filed this application for injunction. From their statement it is clear that their predecessor gifted the said land for establishment of Madrasah and accordingly executed a “Nirupon potro”. In the written objection the defendant Nos. 1-2 claimed that the said Madrasah is running one. Furthermore, the defendant No.1 himself is the Hafiz-E-Quran and has been teaching the students in the said Madrasah since 2011.

However, in a partition suit there is no bar to allow the application for temporary injunction on an application of either party if they could make out a prima-facie case of possession of the suit land and any threat received by other side for dispossession.

It is admitted fact that the predecessor of the plaintiffs gifted the said land for establishment of a Madrasah and accordingly executed a

“Nirupon potro” and plaintiff claimed that no existence of the said Madrasah for a long time and when they took a decision to gift the said portion of land in favour of Mosque then the defendant side threatened them that they will construct a building for the Madrasah and thus prayed for injunction. On the other hand the defendant side claimed that the said Madrasah is running one.

Furthermore, no case that the “Nirupon potro” has been revoked by the plaintiffs side, and no case that they have taken possession of the land which has already been gifted by their predecessor long before.

Thus it is my view that both the court rightly passed the impugned judgment and no error in law in the judgment, thus I find no merit in the Rule.

However, considering the facts and circumstances of the case it is my view that all the matter should be considered by the trial court at the time of disposal of the suit considering the evidence on record and in accordance with law.

In the result the Rule is discharged without any order as to cost.

The order of status-quo granted earlier by this court is hereby recalled and vacated.

Communicated the order at once.

M.R.