

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

First Miscellaneous Appeal No. 392 of 2015

**With
(Civil Rule No. 91 (FM) of 2015)**

In the matter of:

Liaquat Ali, son of late Mohammad Ali, Village-
Rampur, Upazilla- Feni Sadar, District- Feni.

... Appellant

-Versus-

Mohammad Musa and others.

... Respondents.

Mr. Mohammed Zakir Hossain, Advocate

... For the appellant-petitioner

Ms. Joya Bhattacharjee, Advocate

.... For the respondents-opposite-party nos. 1-6

Heard and Judgment on 25.02.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

Since the point of law and facts 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 26.11.2014 passed by the learned Joint District Judge, 1st Court, Feni in Title Suit No. 15 of 2012 filed for partition rejecting an application filed by

the defendant no. 12 for temporary injunction under order XXXIX, rule 1 and 2 of the Code of Civil Procedure.

The short facts leading to preferring this appeal are:

The present respondents-opposite-party nos. 1-6 as plaintiffs filed the aforesaid suit for partition simpliciter measuring an area of 111 decimals of land against the present appellant-petitioner who is the defendant no. 12 and other defendants.

After filing of the suit, the defendant no. 12 filed an application under order XXXIX, rule 1 and 2 of the Code of Civil Procedure for injunction restraining the plaintiffs-respondents from dispossessing him from 27 decimals of land described in the schedule to the application for injunction. Against that application, the plaintiffs-respondent nos. 1-6 entered appearance and filed joint written objection denying all the material averments so made in the application for temporary injunction and ultimately prayed for rejecting the same. The learned Judge of the trial court after hearing the parties to the said application vide impugned order rejected the same holding that, the defendant-appellant-petitioner could not prove his exclusive possession in the land, he prayed for injunction that is, in respect of 27 decimals of land.

It is at that stage, the defendant no. 12 as appellant preferred this appeal. After preferring this appeal, the same appellant as petitioner again filed an application for temporary injunction under order XXXIX, rule 1 and 2 of the Code of Civil Procedure on the self-same averments so made in the application for temporary injunction before the trial court and this court vide order dated 01.03.2015 issued rule and passed interim order

directing the parties to maintain status quo in respect of possession and position of the suit property which gave rise to the above Civil Rule No. 91(FM) of 2015. That very order of status quo was subsequently extended from time to time and it was lastly extended on 08.12.2015 till disposal of the rule.

Mr. Mohammed Zakir Hossain, the learned counsel appearing for the appellant-petitioner upon taking us to the impugned order as well as the application for temporary injunction made a sole submission contending that, since the appellant has been in possession in suit property so if an order of status quo remains in place then no parties to the suit would have been prejudiced and then prays for allowing the appeal as well as making the rule absolute.

Per contra, Ms. Joya Bhattacharjee, the learned counsel appearing for the respondents-opposite-party nos. 1-6 by taking us to the application for temporary injunction as well as written objection filed thereagainst by the respondent nos. 1-6 at the very outset submits that, since the predecessor of the defendant no. 12 already transferred his share of land who is the heir of Mohammad Ali, so the appellant ceased to have any property in the scheduled land left by his father.

The learned counsel by referring to the written objection so filed against the application for temporary injunction also contends that, the plaintiffs-respondents-opposite-parties are the heirs of Abdur Razzaque and since they were denied of enjoying their rightful share in the suit properties, they filed the suit for partition in respect of 111 decimals of land claiming

27 decimals of land as the descendants of their predecessor, Abdur Razzaque.

The learned counsel by referring to the impugned order next contends that, the learned Judge has perfectly arrived at a finding that since the defendant no. 12 as appellant failed to prove his exclusive possession in the undivided property so in a suit for partition, the defendant no. 12-appellant is not entitled to get any interim order and finally prays for dismissing the appeal and that of the discharging the rule.

We have considered the submission so advanced by the learned counsels for the appellant-petitioner and that of the respondents-opposite-party nos. 1-6 at length.

We have also gone through the application for temporary injunction filed before this court and those of the application for temporary injunction as well as written objection so filed by the defendant no. 12 and the plaintiffs respectively. On going through the application for temporary injunction, we find that, the defendant no. 12-appellant expressed his apprehension that, the plaintiffs by accumulating earth in the suit land were trying to erect a boundary wall over the lands of the defendants and since he has been residing in Dhaka so taking advantage of his staying out side of the suit properties, the plaintiffs are trying to erect the boundary wall over the suit properties. But there has been no mentioned in the said application when the plaintiffs were trying to dispossess the defendant no. 12 by erecting that very boundary wall so in absence of any cogent apprehension with regard to dispossession, the defendant no. 12 is not entitled to get any equitable reliefs from any court of law.

Furthermore, on going through the schedule so have been described in the application for temporary injunction, we don't find that, there has been any specification by drawing any sketch map of 27 decimals of land, the defendant no. 12 was supposed to be dispossessed by the plaintiffs-respondents. The learned counsel for the respondents has rightly pointed out that, since there has been no specification in 27 decimals of land, the defendant no. 12 is allegedly being dispossessed by the plaintiffs, so in absence of such specification, there has been no scope for the court to pass any restrain order against the plaintiffs.

It is a settled proposition of law that, in a suit for partition simpliciter every co-sharer of the suit land has got the right to possess every inch of the land until and unless, it is partitioned through metes and bounds. But when any co-sharer of the suit property is able to prove that, he or she has got exclusive possession in a specific portion of the undivided land in that event, he/she can get a restrain order but the case in hand from the materials on record, we don't find any cogent assertion of apprehension of dispossession of the defendant no. 12 by the plaintiffs vis-à-vis any exclusive possession of the said defendant no. 12-appellant in his claimed land.

All in all, we don't find any illegality or impropriety in the impugned order passed by the learned Judge of the trial court holding that there has been no exclusive possession of the defendant-petitioner in getting an order of injunction.

Regard being had to the above facts and circumstances, we don't find any substance in the grounds taken in the appeal as well as in the application for temporary injunction to get an order of injunction.

Accordingly, the appeal is dismissed however without any order as to costs.

Since the appeal is dismissed, the connected rule being Civil Rule No. 91 (FM) of 2015 is hereby discharged.

At any rate, the order of status quo granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1st Court, Feni forthwith.

Mohi Uddin Shamim, J.

I agree.