

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

**CIVIL REVISION NO. 6528 OF 2023**

In the matter of:

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

AND

In the matter of:

Md. Zakir Hossain

.... Petitioner

-Versus-

Md. Abul Khair (Khoka) and others.

....Opposite-parties

Mr. M.M. Shafiullah, Advocate

... For the petitioner

Mr. Md. Zakir Hossain, Advocate

....For the opposite party nos. 1 and 2

**Heard on 20.05.2024**

**and Judgment on 21.05.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

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

At the instance of the defendant no. 4 in Title Suit No. 398 of 2023,  
this rule was issued calling upon the opposite-party nos. 1-3 to show cause  
as to why the order no.06 dated 29.08.2023 passed by the learned Joint  
District Judge, 1<sup>st</sup> court, Dhaka in Title Suit No. 398 of 2023 allowing an  
application dated 29.08.2023 filed by the plaintiff-opposite party nos. 1-3

under section 151 of the Code of Civil Procedure praying for maintaining order of status quo should not be set aside set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the operation of the impugned order initially for a period of 3(three) months which was lastly extended on 13.05.2024 for another 03(three) months.

The salient facts leading to issuance of the instant rule are:

The present opposite party nos. 1-3 as plaintiffs originally filed the aforesaid suit seeking following reliefs:

(ক) আরজির 'ক' তফসিল বর্ণিত ভূমি হই-ত 'খ' তফসিল বর্ণিত ১৬৭০ অযুতাংশ ভূমি আলাদা করিয়া তৎকা-ত 'গ' তফসিল বর্ণিত ০৮১১৭০৫ অযুতাংশ বাড়ী ভূমির পৃথক ও সুনির্দিষ্ট ছাটহাম প্রদান পৃথক এক প্রাথমিক ডিক্রি দিতে;

(খ) বিজ্ঞ আদালত কর্তৃক প্রদত্ত প্রাথমিক ডিক্রি মোতাবেক ১-৫ নং বিবাদীগণ, আদাল-তর নির্দিষ্ট সম-য়র ম-ধ্য বাদীগ-ণর ছাহাম ভাগ বন্টন করিয়া দিতে ব্যর্থ হইলে বিজ্ঞ আদালত একজন সার্ভে জানা অভিজ্ঞ এডভোকেট কমিশনার নিয়োগ করিয়া প্রাথমিক ডিক্রির মর্ম মত বাদীদের বরাব-র ০৮১১৭০৫ অযুতাংশ জমি/ভূমির ছাহাম সিটি জরি-পির নক্সা ভাড়াইয়া. সিটি জরি-পির ১৭১৯ দাগ বাদীগ-ণর দখল যতদূর ঠিক রাখিয়া ছাহাম, ফি নট বুক রি-পাট, ম্যাপ চিটা নক্সা ইত্যাদি প্রস্তুত করিয়া বিজ্ঞ আদাল-ত দাখি-লর এক নি-র্দশ দা-ন;

(গ) বিজ্ঞ আদালত কর্তৃক প্রদত্ত ডিক্রির মর্ম মতে বাদীগণের ছাহাম সুনির্দিষ্ট ও সুচিহ্নিত ভা-ব আদালত থে-ক বাদীর বরাব-র দখল বুঝাইয়া দি-ত;

(ঘ) এস,এ ৫৯৮ ও ৫৭১ দা-গর অংশ আর, এস ১নং খতিয়া-ন এবং ঢাকা সিটি জরি-পর ১নং খতিয়া-ন উ-ল্লিখিত হওয়ায় উহা ভুল ও অশুদ্ধ বাদীগণ প্রতি মধ্যকার ও কার্যকর. নয় মর্মে ঘোষণার ডিক্রি দিতে;

(ঙ) এডভোকেট কমিশনার কর্তৃক দাখিলী রিপোর্ট ও বিজ্ঞ আদালত কর্তৃক প্রদত্ত প্রাথমিক ডিক্রিকে চূড়ান্ত ডিক্রি রূপান্তরিত করার আদেশ দিতে;

(চ) মোকদ্দমার যাবতীয় খরচ বাদীগণের অনুকূলে ১-৫ নং বিবাদীগ-ণর প্রতিকূলে ডিক্রি দিতে;

(ছ) আই ও ইকুইটি ম-ত বাদীগণ যে যে, প্রতিকার যে ভা-ব যতটুকু পাইতে হকদার তাহাও বাদীগণের অনুকূলে ৫নং বিবাদীগণের প্রতিকূলে ডিক্রি দিতে বিজ্ঞ আদালতের আজ্ঞা হয় ।

The said suit was filed for the suit property measuring an area of 0811705 *ojutangsho* of land so described in schedule 'ka' to the plaint. On the date of filing the suit, the plaintiffs also filed an application under Order 39 Rule 1 and 2 praying for injunction restraining the defendant opposite party no. 4 from entering into the land measuring an area of 032 *ojutangsho* appertaining to plot no. 1723 used as pathway (road) or to make hindrance in using the pathway or to change the nature and character of the same or to make any wall on the said road. Following that application, a show cause notice was issued upon the defendant opposite party no. 4 asking him to explain within 15 days as to why an order of injunction should not be granted. Since upon receiving the show cause notice the defendant no. 4, opposite party did not come forward to file any written objection and hear the application, the plaintiff then compelled to file an application under section 151 of the Code of Civil Procedure stating *inter alia* that, without taking any step in hearing the application, the defendant- opposite party no. 4 on 24.08.2023 started creating obstacle in using the pathway and

threatened to stop using the said pathway by the inhabitants of the locality for which there had been every possibility to create law and order situation in the area and ultimately prayed for interim injunction on 032 *ojutangsho* of land appertaining to plot no. 1723 corresponding to khas khatian no. 1. The said application was resisted by the defendant no. 4 by filing written objection denying all the material averment so made in the application filed under section 151 of the Code of Civil Procedure and finally prayed for rejecting the same. The learned judge of the trial court took up the said application for hearing and vide impugned order dated 29.08.2023 allowed the same. It is at that stage, the defendant no. 4 as petitioner came before this court and obtained instant rule and order of stay.

Mr. M.M. Shafiullah, the learned counsel appearing for the petitioner upon taking us to the revisional application in particular, the plaint and the injunction application filed under Order 39 Rule 1 of the Code of Civil Procedure at the very outset submits that, since the original application filed under Order 39 Rule 1 of the Code of Civil Procedure has still been pending and had no exigency to pass any interim order keeping pendency of the main application, the learned judge under misconception of law and facts allowed the application on an off day though the copy of the application filed under section 151 of the Code of Civil Procedure was served one day before and passed the impugned order *ex parte* and therefore the impugned order passed by the learned judge cannot sustain in law.

The learned counsel by referring to the scheduled so have been described in the plaint as well as the application for temporary injunction and that of the application filed under section 151 of the Code of Civil

Procedure also contends that, there has been no scope on the part of the plaintiff-petitioner to pray for injunction going beyond the schedule of the suit land described in the plaint but the learned judge of the trial court has clearly sidetracked that very core point by passing the impugned order on non-suited land and therefore the order impugned in the application is devoid of any legal substance. On those two legal scores, the learned counsel finally prays for making the rule absolute on setting aside the impugned order.

On the contrary, Mr. Md. Zakir Hossain, the learned counsel appearing for the plaintiff opposite party nos. 1 and 2 opposes the contention taken by the learned counsel for the petitioner and contends that, since there has been emergency on the heels of obstructing the residents of the locality to use the pathway described in the schedule of the application for injunction so under such compelling circumstances an application was filed under section 151 of the Code of Civil Procedure on which the learned judge has rightly passed the impugned order which is liable to be sustained.

The learned counsel in his second leg of submission also contends that, since the main application filed under Order 39 Rule 1 of the Code of Civil Procedure is still pending so the learned judge of the trial court be directed to dispose of the said application on merit and till that date the interim order of injunction granted and impugned in this revision be maintained.

We have considered the submission so advanced by the learned counsel for the defendant no. 4-petitioner and that of the plaintiff opposite party nos. 1- 2 and also gone through the impugned judgment and order.

There has been no gainsaying the fact that, the original application for temporary injunction is still pending and in the meantime the defendant petitioner entered appearance and filed written statement but for pendency of the revision, the application for temporary injunction could not be taken up for hearing. Since there has been order of stay on the operation of the impugned order so at the moment there has been no interim order which was granted in favour of the plaintiff. However, we have gone through the schedules of the plaint and that of the schedule of the application for temporary injunction vis-a-vis the application filed under section 151 of the Code of Civil Procedure. On going through the schedule of the plaint we find that, the plaintiff claimed 0811705 *ojutangsho* of land appertaining to plot no. 1719 corresponding to *city jorip* no. 121. On the contrary, the application for temporary injunction and that of the application under section 151 was filed in respect of 032 *ojutangsho* of land of khas khatian no. 1 of plot no. 1723 by giving a sketch map thereof. But there has been no scope to pass any interim order other than for the suit land by any court of law but that very legal point has clearly been missed by the learned judge of the trial court while passing the impugned order. Furthermore, the suit was filed for partition simpliciter and in a suit for partition it is the settled principle that, every co-sharer is entitled in enjoying the possess over every inch of the suit property until and unless the suit land is partitioned through meats and bounds. But the case in hand, the fact is totally different because the injunction was granted in a non-suited land which cannot be entertained at all.

Given the above facts and circumstances we find merit in the rule.

Accordingly, the rule is made absolute however without any order as to costs.

The impugned order no.06 dated 29.08.2023 passed by the learned Joint District Judge, 1<sup>st</sup> court, Dhaka in Title Suit No. 398 of 2023 thus stands set aside.

However, the learned Judge of the trial court is hereby directed to dispose of the application so filed by the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure as expeditiously as possible preferably within a period of 1(one) month from the date of receipt of the copy of this order.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this order be transmitted to the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka forthwith.

**Md. Bashir Ullah, J:**

I agree.

Kawsar /A.B.O