

Present:  
Mr. Justice Md. Iqbal Kabir  
And  
Mr. Justice Md. Riaz Uddin Khan

First Miscellaneous Appeal No. 94 of 2024  
(F.M.A.T No. 36 of 2024)

IN THE MATTER OF:

Tahira Ahad

....Appellant

Versus

Abu Sayed Sarwar alias Hasan Sarwar and others

....Respondents

Mr. Mohammed Asif Hasnine, Advocate

....For the Appellant

Mr. Shamsul Hasan, Advocate

....For the Respondent Nos. 5 and 6

Judgment on 18.05.2025.

Md. Iqbal Kabir, J:

This First Miscellaneous Appeal No. 94 of 2024 has been directed against the impugned order No. 34 dated 16.11.2023 passed by the learned Joint District Judge, Third Court, Dhaka in Title Suit No. 16 of 2023 wherein defendant-respondent Nos. 5 and 6 filed application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 which had been allowed on setting aside the Order dated 15.10.2023 and order of status quo had been granted allowing the application under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 in a modified manner.

The relevant facts for the disposal of the appeal are that the appellants-petitioners as plaintiffs filed Title Suit No. 118 of 2020 which was renumbered as Title Suit No. 16 of 2023 ("Title Suit") before the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka for declaration of title and partition against the instant applicants-opposite parties, amongst others in respect of the suit property measuring 33.52 decimals situated under Mouza: Dhanmondi, Plot No. 251/E

at present House No. 62/1, Road No. 22 (Old) Road No. 12/A New Dhanmondi Residential Area, Dhaka and with an application for injunction. The learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka on 15.10.2023 by an ex-parte order directed the parties to maintain a status quo as to sell/transfer the said property. Subsequently on an application under Order XXXIX Rule 4 filed by instant applicants, learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka on 16.11.2023 set aside its earlier order of status-quo passed ex-parte on 15.10.2023.

Facts remain plaintiff appellant petitioner aggrieved against such order filed this First Miscellaneous Appeal along with an injunction application and the Division Bench of this Court directed the parties to maintain status-quo in respect of the suit property. The respondent-opposite party Nos. 5 and 6 by filing an application prayed to vacate the order of status quo.

Mr. Shamsul Hasan, learned Advocate submits that the plaintiff-appellant-petitioner admittedly does not own the suit land and is not entitled to get equitable relief. According to him, the order of status quo needs to be vacated as the same no longer serves the interest of justice. Instead contributes to prejudice or inequity as the instant applicants/respondent-opposite party Nos. 5 and 6 along with other lawful owners and possessors of the suit land are being prevented from using their lawful rights.

He brought our notice that a temporary injunction, including an order of status quo, must be based on the establishment of a prima facie case, balance of convenience, and risk of irreparable loss. In this case, appellant/plaintiff has failed to put forward a prima facie case or possession of the suit land, the said Order of Status-quo becomes legally unsustainable and prejudicing the rightful owners and possessors i.e. the Applicants/respondent-opposite party Nos. 5 and 6 and the opposite party Nos. 1, 2, 3, 15 in whose favor balance of convenience lies.

He submits it is a settled principle of law that status-quo order must not be allowed to perpetuate injustice or serve as a tool to stall legal rights. According to him, order of status quo deserves to be vacated as per law and equity for the ends of justice.

Mr. Mohammad Asif Hasnine, learned Advocate for the plaintiff-appellant-petitioner by filing a counter affidavit submits that he has already established the prima facie case, balance of inconvenience, and risk of irreparable loss. According to him Court rightly passed the order.

We have heard both parties, perused the application along with documents on record, and considered their respective submissions.

It appears that Mr. Golam Sarwar was the original allottee and leasehold owner of the suit land. Following the law taking permission from the Ministry gifted the scheduled property in the year 1986 through Heba to his two sons and two daughters i.e., the Opposite Party No. 1, 2, 3 and Nazma Jesmin Chowdhury (mother of the instant Applicants/Opposite Party Nos. 5&6) and delivered the possession, thereafter the instant Applicants/Opposite Party Nos. 5 & 6 became owners of a portion of the suit land by way of inheritance and gift from the legal heirs of their mother in 1990. Since then, by recording their names with the concerned Ministry and in the records of rights the instant Applicants/respondent-opposite party Nos. 5 and 6 and the Opposite Party No. 1, 2, 3 have been enjoying their respective portions of the suit land upon paying rent, taxes, etc.

It transpires upon obtaining permission from the authority they entered into a development agreement with Defendant/Respondent No. 15 i.e., Navana Real Estate Ltd., and for constructing a multistoried building thereon. It transpired that by this time the construction work of a multistoried building had almost completed, only for finishing work is remain undone.

The dispute between the parties related to the title has to be decided in the trial, no one denied such a position of law. Therefore, they have to wait until the conclusion of the trial. Thus, we are of the view that justice would be met, if we direct the parties not to sell/transfer the scheduled property till disposal of Title Suit No. 16 of 2023.

In light of the above, the parties are directed not to sell/transfer the property in question till disposal of the Title Suit No. 16 of 2023 pending before the Joint District Judge, 3<sup>rd</sup> Court, Dhaka.

Accordingly, the order of status quo dated 12-02-2024 is hereby modified in the above terms.

Accordingly, the First Miscellaneous Appeal is disposed of.

There will be no order as to cost.

The trial Court is directed to conclude the trial expeditiously as early as possible and the parties are directed to cooperate in this regard.

Communicate the order.

Md. Riaz Uddin Khan, J:  
I agree.