

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

Present:

Mr. Justice S M Kuddus Zaman

FIRST MISCELLANEOUS APPEAL NO.205 OF 2022
With

CIVIL RULE NO.456(FM) OF 2022

Md. Sahab Uddin Miah and others
.... Appellants

-Versus-

Md. Abu Taher and others
.... Respondents

Mr. Md. Mamun Kabir, Advocate
.... For the Appellant.

Mr. Abdullah Abu Sayeed, Advocate
.... For the respondent Nos.1-3.

Heard and Judgment on 08.07.2025.

This First Miscellaneous Appeal at the instance of the plaintiff is directed against the order dated 04.04.2019 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No.179 of 2017 rejecting the application under Order 39 Rule 1 of the Code of Civil Procedure for injunction ex-parte.

This Court admitted above First Miscellaneous Appeal and in the instant First Miscellaneous Appeal the appellant filed an application for an order of injunction and on that application the above mentioned Civil Rule No.456(FM) of 2022 was issued. Since the instant First Miscellaneous

Appeal and the Civil Rule relate to same matter above appeal and Rule were heard together and being disposed of by this single judgment.

Facts in short are that above 44 decimal land belonged to Abdul and in whose name C.S. Khatin No.11 was prepared and who died leaving only son Sukur Mahmud who in his turn died leaving only son Amanullah @ Amanatullah. Above Amanullah transferred above 44 decimal land to the plaintiffs by two separate kabla deed dated 18.06.1962 and delivered possession. Above land was correctly recorded in the name of the plaintiffs in S.A. Khatian Nos.11 and 12 and R.S. Khatian Nos.181 and 25 and City Khatian Nos.442 and 173.

Above Shukur Mahmud mortgaged above land to Lal Miah by a registered deed of mortgage dated 23.05.1939. It was agreed upon that if the mortgagee returns above money the mortgagor shall return back above land and above Shukur Mahmud returned above mortgage money and got back above possession of above land. Subsequently heirs of above Lal Miah claimed title in above land on the basis of above mortgage deed and the plaintiffs filed Title Suit No.18 of 1999 in the sixth Court of Assistant Judge, Dhaka and obtained a decree on contest on 06.06.2000.

Suppressing above facts the defendants on the basis of alleged purchase by registered kabla deed from heirs of above Lal Miah filed Title Suit No.331 of 12 and obtained an ex-parte judgment and decree on 27.10.2015 and on the basis of above judgment and decree denied title of the plaintiffs.

None appeared on behalf of the defendant to contest above petition for injunction and the learned Joint District Judge on consideration of submission of the learned Advocate for the plaintiff rejected above petition for injunction vide impugned judgment and order 04.04.2019.

Being aggrieved by and dissatisfied with above judgment and order of the learned Joint District Judge above plaintiffs as appellants preferred above First Miscellaneous Appeal.

Mr. Md. Mamun Kabir, learned Advocate for the appellants submits that the plaintiff filed above petition for injunction on 11.04.2017 and despite continuous endeavor could not get a hearing of above petition before 04.04.2019 and the learned Joint District Judge without discussing the case and documents of the plaintiffs disposed of above petition without application of judicial mind causing miscarriage of justice. Plaintiffs purchased above land from Amanullah a heir of the C.S. recorded tenant. The S.A., R.S. and City Khatian of above land stand in the name of Amanullah and the plaintiffs also obtained a judgment and decree against the cot kabla deed on contest against the defendant in Title Suit No.18 of 1999. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge should have passed an order of injunction against the defendants. But the learned Judge utterly failed to appreciate above materials on record and most illegally rejected above petition for injunction ex-parte which is not tenable in law.

On the other hand Mr. Abdullah Abu Sayeed, learned Advocate for the respondent Nos.1-3 submits that on the basis of judgment and decree dated 27.10.2015 passed in Title Suit No.331 of 2012 the respondents have purchased 14.5 decimal land out of disputed 44 decimal land and is in possession in above land by constructing boundary wall and by mutation of names and paying rent to the Government. The learned Advocate further submits that the respondents did not have any knowledge as to the contested judgment and decree passed on 30.05.2000 in Title Suit No.18 of 1999 which was passed against the predecessors of the respondents. The respondents are bonafide purchaser for value of above 14.5 decimal land and they are in possession of above land and summons of above suit having not been served upon them they could not contest above suit. The learned Advocate lastly submits that the respondents will appear before the trial Court and contest the suit and at this stage no order of injunction may be passed.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is not disputed that above 44 decimal land belonged to Abdul and in his name C.S. Khatian No.11 was rightly recorded. It is also not disputed that above Abdul died leaving only son Shukur Mahmud and Amanullah was the sole heir of Shukur Mahmud. It is also not disputed that relevant S.A., R.S. and City Khatian of above 44 decimal land were prepared in the name of Amanullah and the plaintiffs. It is also admitted

that above Shukur Mahmud transferred above 44 decimal land to Lal Miah by registered Kabla deed dated 03.05.1939 which provided for return of above land on repayment of the consideration money by the seller within 1-3 years. It has been claimed by the plaintiffs that the heirs of above Lal Miah having claimed title in above land on the basis of above kabla deed 23.05.1939 the plaintiffs as plaintiffs filed Title Suit No.18 of 1999 against heirs of above Lal Miah and predecessor of respondents and above suit was decreed on contest on 30.05.2000.

The plaintiffs produced above Khatians, judgment and decree of Title Suit No.18 of 2019 and their kabla deeds from Amanullah.

Defendants did not enter appearance in above suit nor they contested above petition for injunction.

The learned Joint District Judge took up above petition for injunction for ex-parte hearing. Above statements made by the plaintiff in the petition under order 39 Rule 1 of the Code of Civil Procedure establishes prima facie a clear chain of title in favour of the plaintiffs. Recording of S.A., R.S. and City Khatians in the names of the plaintiffs support their claim of possession. Above averments of the plaintiffs made in the petition for injunction and all documents submitted in support of above claims remained uncontroverted since no defendant contested above petition.

The learned Joint District Judge most illegally held that he considered the pleadings and documents of both the parties which shows

that the learned Judge did not apply his judicial mind and failed to realize that the defendant did not contest above petition.

The learned Advocate for the respondents submits that respondents did not have any knowledge as to the judgment and decree of Title Suit No.18 of 1999 which was obtained against their predecessors. But the fact remains that above judgment and decree was passed on contest and the same is binding not only on the parties to above suit but on their heirs and transferees. The respondent did not take any initiative to challenge above judgment and decree of Title Suit No.18 of 1999.

On consideration of above facts and circumstances of the case and materials on record I hold that the plaintiffs succeeded to establish their good prima facie title and possession in disputed 44 decimal land which entitled them to get an order of temporary injunction but the learned Joint District Judge failed to appreciate above materials on record and most illegally rejected above petition ex-parte which is not tenable in law.

I find substance in this First Miscellaneous Appeal and the Rule in this connection.

In the result, the First Miscellaneous Appeal is allowed and the Rule issued in connection of Civil Rule No.456(FM0 of 2022 is hereby made absolute.

The impugned order dated 04.04.2019 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No.179 of 2017 is set aside and the application for injunction filed by the plaintiffs under Order 39

Rule 1 of the Code of Civil Procedure is allowed on contest and defendant Nos.1-15 are hereby restrained by an order of temporary injunction from entering into the disputed land and disturbing the peaceful possession of the plaintiffs till disposal of above suit.

MD. MASUDUR RAHMAJN
BENCH OFFICER