District-Kushtia.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 839 of 2024.

Kumarkhali Adibasi Kallyan Bahumukhi Samobay Samiti Ltd., represented by its president.
---- Plaintiff -Respondent-Petitioner.

-Versus-

Md. Tuhin Biswas and another.
---- Defendant-Appellant-Opposite Parties.

None appears.
----For the Plaintiff -Respondent-Petitioner.

Mr. Zaman Akter Bulbul, Advocate with
Mr. Farid Hossain, Advocate
----For the Defendant-Appellant-Opposite Parties.

Heard On: 04.11.2025, 06.11.2025.
And
Judgment Delivered On: 13.11.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 24.07.2023 passed by the learned Additional District Judge, 1st Court, Kushtia in Miscellaneous Appeal No. 11 of 2021, whereby the appeal was allowed and the judgment and order dated 14.01.2021 passed by the learned Assistant Judge, Kumarkhali, Kushtia in Title Suit No. 297 of 2019 granting temporary injunction was reversed, should not be set aside and/or

such other order or orders be passed as to this Court may seem fit and proper.

The Plaintiffs-petitioners, namely Kumarkhali Adibasi Kallyan Bahumukhi Samobay Samiti Ltd., represented by its President, instituted Title Suit No. 297 of 2019 before the learned Assistant Judge, Kumarkhali, Kushtia, seeking a decree of permanent injunction in respect of the suit land as described in the schedule to the plaint.

The plaintiffs' case, in brief, is that land measuring 2.97 acres under R.S. Khatian No. 340, comprising Plot Nos.1067, 1069, 1070, 1071, 1072, 1073, 1074 and 1075 of Mouza Bujrukh, Durgapur, District Kushtia, together with 1.34 acres under Plot No. 257 of R.S. Khatian No. 101, constitutes debottar property of the minor Adibasi (aboriginal) community. Although the said land stands recorded in the name of the Government of Bangladesh, the plaintiffs and approximately 400 members of the Kumarkhali Adibasi community claim to have been residing thereon for more than 80 years, paying rent and government revenues through nearly 60 DCRs. It is further claimed that 1.3825 acres of land under R.S. Khatian No. 101 was leased out in the name of Kumarkhali Degree College in Lease Case No. 2(X)/91, and that the plaintiffs had been cultivating fish in the said land.

According to the plaintiffs, while they were in peaceful possession of the suit land, the opposite party Nos. 1 and 2 suddenly threatened them on 28.11.2019 to vacate the land and, on 01.12.2019, attempted to evict them by asserting ownership on the basis of decrees passed in Title Suit Nos. 810 of 1969 and 811 of 1969 and subsequent mutation. The plaintiffs contend that the said decrees were passed ex parte during the political turmoil of the 1969 mass upsurge and are not binding upon them, as they were neither parties to nor represented in the said suits. Consequently, the plaintiffs instituted the suit along with an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking temporary injunction restraining the defendants from disturbing their possession.

The defendants-opposite parties contested the application by filing written objection, denying both the plaintiffs' title and possession. Their case is that the original C.S. tenants-Kartik Chandra Lahiri, Sukumar Chandra Lahiri and Ganesh Chandra Lahiri-transferred the land to Abdul Bari Sheikh on 10th Ashwin 1353 B.S. corresponding to 1946 A.D. As the S.A. record was not corrected accordingly, Abdul Bari Sheikh instituted Title Suit No. 810 of 1969, which was initially dismissed, but was decreed in his favour on appeal in Title Appeal No. 34 of 1974 by the learned District Judge, Kushtia. Abdul Bari Sheikh thereafter transferred 1.72 acres of land to Md. Tariq Hossain

Rana, Most. Naimun Nahar Zeba and Abdul Ahad Jinnah by registered Deed No. 106 dated 05.01.1988.

It is further stated that the property was subsequently recorded as vested (arpito) property. Challenging such enlistment, the defendants moved Writ Petition No. 11178 of 2014, which was made absolute directing the Assistant Commissioner (Land), Kushtia to effect mutation within 45 days. The Government preferred Civil Petition No. 3378 of 2015 before the Appellate Division, which was dismissed on 13.06.2016. As the Government again failed to mutate the property, the successors filed Writ Petition No. 10572 of 2016 before the High Court Division, which was made absolute directing the Assistant Commissioner (Land), Kumarkhali, Kushtia to mutate the property within 60 days. Pursuant thereto, the property was released from the vested list and transferred in favour of defendant No.1, Tuhinur Rahman, who claims to have mutated the land in his name, paid rents regularly, and remained in possession.

Upon hearing both sides and considering the materials on record, the learned trial court granted temporary injunction by order No. 11 dated 14.01.2021, restraining the defendants from interfering with the plaintiffs' alleged possession. Being aggrieved, the defendants preferred Miscellaneous Appeal No. 11 of 2021, which was allowed by the learned Additional District Judge, 1st Court, Kushtia by

judgment and order dated 24.07.2023, thereby setting aside the order of injunction. The appellate court held that the plaintiffs failed to establish a prima facie case or produce any cogent documentary evidence in support of their alleged possession, whereas the defendants' documents prima facie established lawful title and possession derived from valid transactions and judicial pronouncements. The appellate court further observed that the trial court failed to examine whether the balance of convenience and irreparable injury lay in favour of the plaintiffs. Against the said judgment and order, the plaintiffs obtained the present Rule.

The matter appeared in the daily cause list for hearing, but none appeared on behalf of the petitioners to press the Rule. On the other hand, Mr. Zaman Akter, learned Advocate, appeared for the opposite parties. Nevertheless, this Court proceeds to examine the Rule on merits.

It has been contended in the revisional application that the appellate court failed to appreciate that the suit land is debottar property of the Adibasi community since the C.S. period, as reflected in the remark column of the C.S. record, and that the plaintiffs' predecessors have been in possession thereof for more than 80 years. It is further contended that the appellate court overlooked the alleged lease in favour of the Adibasi community under V.P. Case No. 30(X)

Kumarkhali/81 and the fact that about 400 Adibasi families have been residing on the land peacefully for decades. The petitioners also assert that the decrees passed in Title Suit Nos. 810 of 1969 and 811 of 1969 were ex parte and not binding upon them. Lastly, it is argued that the release order in Misc. Case No. 45/V.P. Release/2017–18 released only 0.46 acre without directing delivery of possession, particularly when the land consists of ponds and canals.

Conversely, Mr. Zaman Akter, learned Advocate for the opposite parties, submits that the plaintiffs' claim of possession is unsupported by any valid documentary evidence of title or lease. He argues that the defendants' title and possession stand fortified by judicial decrees and judgments passed in writ petitions, and that mutation and rent payment further corroborate their lawful possession. According to him, continuation of injunction would unjustly restrain the lawful owner and cause irreparable loss.

Upon careful perusal of the impugned judgment and the materials on record, it appears that although the plaintiffs have asserted long possession of the Adibasi community claiming the land to be debottar property, they have failed to produce any substantive documentary evidence-such as lease deeds, settlement records, or rent receipts issued in their favour-establishing either legal right or settled possession. Mere production of DCRs, without establishing the nexus

between such payments and lawful possession over the suit land, cannot by itself confer an enforceable right warranting injunctive relief.

On the contrary, the defendants have produced a chain of documentary evidence including judicial decrees, registered deeds, writ orders of this Division, and release orders from the vested property list, which prima facie establish lawful title and possession. The appellate court correctly noted that such documents emanating from competent courts and statutory authorities carry greater evidentiary value at the interlocutory stage.

It further transpires that the learned trial court, while granting injunction, did not undertake a meaningful evaluation of the three well-settled conditions governing grant of temporary injunction, namely: (i) existence of a prima facie case; (ii) balance of convenience; and (iii) likelihood of irreparable injury. The appellate court rightly corrected this jurisdictional error by reassessing the materials and recording reasons as to why the plaintiffs failed to satisfy these mandatory requirements.

It is trite law that temporary injunction is an equitable and discretionary relief and cannot be granted merely on sympathetic considerations or long-standing occupation unaccompanied by lawful

right. Where the defendant establishes prima facie title and possession through judicially recognized documents, an injunction restraining such possession would amount to granting the final relief at an interlocutory stage, which is impermissible in law.

In the present case, refusal of injunction does not result in irreparable injury to the plaintiffs, as their alleged rights are yet to be adjudicated in the suit, whereas continuation of injunction would seriously prejudice the defendants' lawful enjoyment of property recognized by competent courts and authorities. Therefore, the balance of convenience clearly tilts in favour of the defendants.

Accordingly, the findings of the appellate court are based on proper appreciation of evidence and settled principles of law, and do not suffer from any illegality, material irregularity, or jurisdictional infirmity warranting interference under section 115 of the Code of Civil Procedure.

In view of the foregoing discussions, I find no merit in this Rule. Accordingly, **the Rule is accordingly discharged**.

The judgment and order dated 24.07.2023 passed by the learned Additional District Judge, 1st Court, Kushtia in Miscellaneous Appeal No. 11 of 2021 is hereby affirmed.

The Trial Court is directed to dispose of the suit **as expeditiously as possible**, preferably within six (6) months, in accordance with law.

Let this judgment be communicated to the trial court at once for information and compliance.

(Justice Md. Toufiq Inam)

Ashraf/ABO.