

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

First Miscellaneous Appeal No. 55 of 2024

**With
(Civil Rule No. 894 (FM) of 2023)**

In the matter of:

Rafiqul Hossain, son of late Akkas Ali and Jamirun Nesa of 87, Kazi Nazrul Islam Avenue, Police Station- Tejgaon, District- Dhaka. At Present: House No. 14-16, Flat No. E-5, Road No. 12, Sector- 10, Uttora Model Town, District- Dhaka represented by the constituted power of attorney Aminul Hoque.

... Appellant

-Versus-

Rubina Tabassum, wife of Abrar Hossain, House No. 14-16, Flat No. E-5, Road No. 12, Sector- 10, Uttora Model Town, District- Dhaka.

...Respondent

Mr. Md. Shakhawat Hussain Khan, Advocate

...For the appellant-petitioner

Ms. Shajeda Arif, Advocate

...For the respondent-opposite-party

**Heard on 25.08.2024 and
27.08.2024.**

Judgment on 27.08.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and fact 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.

At the instance of the plaintiff in Title Suit No. 700 of 2018, this appeal is directed against the judgment and order dated 27.08.2023 passed by the learned Joint District Judge, 4th Court, Dhaka in the said suit rejecting an application filed for temporary injunction.

The short facts leading to preferring this appeal are:

The present appellant as plaintiff originally filed the aforesaid suit seeking following reliefs:

“(ক) নিম্ন ‘ক’ তফসিল বর্ণিত সম্পত্তিতে বাদীর ‘ক’ ১
 ষোল আনা মালিক দখলকার মর্মে এক
 ঘোষণামূলক ডিক্রী দিতে,
 (খ) নিম্ন ‘ক’ তফসিল বর্ণিত সম্পত্তি সম্পর্কে ‘খ’ তফসিল
 বর্ণিত ডিক্লারেশন অব হেবা বা হেবা বিষয়ক ঘোষণা পত্র
 দলিল যাহা ঢাকা জেলার তেজগাঁও সাব রেজিস্ট্রী অফিসে
 রেজিস্ট্রিকৃত বিগত ১৩/১২/২০১৫ ইং তারিখে
 রেজিস্ট্রিকৃত ডিক্লারেশন অব হেবা বা হেবা বিষয়ক ঘোষণা
 পত্রের দলিল নং ৫৬৮৬ ও বিগত ০৬.০৩.২০১৭ ইং
 তারিখের তেজগাঁও সাব-রেজিস্ট্রী অফিসের ৮৯২ নং হেবা
 দলিল খানা যোগাযোগী, অবৈধ, অকার্যকর (void ab
 initio) তৎক্ষণাতমূলে বাদীর ইচ্ছার বিরুদ্ধে রেজিস্ট্রী মূলে
 সৃজিত বিধায় উহা বাদীর উপর অকার্যকর, বাধ্যকর নয়
 মর্মে এবং বাতিল মর্মে ঘোষণামূলক ডিক্রী দিতে,

- (গ) অত্র মোকদ্দমার রায় ও ডিক্রীর কপি বিবাদীর বরাবরে প্রেরণ পূর্বক ভলিউমে ঠিকা প্রদানের আদেশ দিতে;
- (ঘ) বিবাদী কর্তৃক তঞ্চকতামূলক হেবা দলিল মূলে নামজারী জমাভাগ বাতিলের এক ডিক্রী দিতে;
- (ঙ) মোকদ্দমার যাবতীয় খরচ বাদীর অনুকূলে এবং বিবাদীর প্রতিকূলে ডিক্রী দিতে;
- (চ) আইন ও ইকুইটিমতে বাদী আর যে প্রতিকার পাওয়ার হকদার তাহারও ডিক্রী দিতে হুজুরের মর্জি হয়।”

Soon after filing of the suit, the plaintiff on 10.08.2020 filed an application for temporary injunction under order XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction restraining the defendant no. 2 from forcefully dispossessing the plaintiff from the suit property/apartment and transfer the same to anybody else stating *inter alia* that, by virtue of the *heba* deed dated 06.03.2017, the defendant no. 1 transferred the suit property in favour of his wife that is, defendant no. 2 and after coming to learn about the said transfer dated 01.12.2019, the plaintiff filed an application for amendment of the plaint for impleading the said defendant no. 2 as party which was ultimately allowed vide order dated 11.03.2020 and taking advantage of the said transfer, the defendant no. 2 thus has been trying to dispose of the suit property and even some customers came to the suit property and inspect the same on 07.08.2020 which cast a reasonable apprehension of the plaintiff that at any point of time, the defendant no. 2 could transfer the suit property to anybody else and if the defendant no. 2 becomes successful in materializing the deal, the plaintiff would be highly prejudiced which

cannot be compensated with money and there will be multiplicity of the suit among the parties. Against that very application for temporary injunction, the defendant no. 2 also filed a written objection denying all the material averments so made in the application for temporary injunction contending *inter alia* that, after getting the suit property from her husband that is, defendant no. 1, she got her name mutated in the khatian on 05.06.2017 and has been paying rent to the government regularly and inducted tenant and possessing the same by receiving rent from the tenants and finally prays for rejecting the application. The learned Judge of the trial court took up the said application for temporary injunction and vide impugned judgment and order rejected the same finding that, the plaintiff has got no *prima facie* good arguable case.

It is at that stage, the plaintiff as appellant preferred this appeal. After preferring the appeal, the plaintiff also filed an application for injunction and this court upon considering the materials on record issued rule and passed an order directing the parties to maintain status quo in respect of possession and position of the suit property initially for a period of 6(six) months and it was subsequently extended on 25.03.2024 for another 6(six) months.

Mr. Md. Shakhawat Hussain Khan, the learned counsel appearing for the appellant-petitioner upon taking us to the memorandum of appeal including the impugned judgment and order and all the documents appended therewith the application for injunction at the very outset submits that, since it has been asserted in the plaint as well as in the application for temporary injunction that before alleged transfer of the suit property to the

defendant no. 1 dated 13.12.2015, he had been possessing the same so it construe that the plaintiff has got a *prima facie* case in the suit property.

The learned counsel in his second leg of submission also contends that, since the property was subsequently transferred by the defendant no. 1 in favour of the defendant no. 2 so if the defendant no. 2 transfers the same during pendency of the suit, then it is the plaintiff who will suffer irreparable loss and injury and therefore, the balance of inconvenience clearly stands in favour of the plaintiff-appellant and for that obvious reason, an order of status quo which was passed at the time of issuance of the rule may remain in place till disposal of the suit when none of the parties to the suit will be prejudiced. On those two scores, the learned counsel finally prays for allowing the appeal as well as making the rule absolute by maintaining the order of status quo.

On the contrary, Ms. Shajeda Arif, the learned counsel appearing for the respondent-opposite-party by filing a supplementary-affidavit annexing a host of documents at the very outset submits that, all those documents clearly denote that, it is the respondent who has been enjoying title and possession over the suit property moment she got the property from her husband by way of heba deed dated 06.03.2017.

The learned counsel further contends that, after getting the property she mutated her name in the khatian and has been paying rent regularly vis-à-vis inducted a tenant by furnishing a tenancy agreement with the tenant and all those material facts clearly proves that, the plaintiff-appellant has no possession in the suit property and he is not entitled to get any order of

injunction and the appeal is liable to be dismissed so as to the rule be discharged.

We have considered the submission so advanced by the learned counsel for the appellant-petitioner and that of the respondent-opposite-party. Together, we have also gone through the documents so have been annexed with the supplementary-affidavit as well as the application for injunction so filed by the defendant-respondent and the plaintiff-appellant.

There has been no gainsaying the fact that, earlier the self-same plaintiff as appellant preferred an appeal being First Miscellaneous Appeal No. 08 of 2020 being aggrieved by and dissatisfied with the judgment and order dated 28.11.2019 through which an application for injunction initiated by the plaintiff was rejected and that very appeal was ultimately dismissed and the connected rule being Civil Rule No. 849(FM) of 2019 was also discharged holding that, the said order was challenged long after transferring the suit property by the defendant no. 1 in favour of the defendant no. 2 dated 06.03.2017 and this court also arrived at a decision that soon after getting the suit property by the defendant no. 2, she also mutated her name in the khatian. So all those aspects clearly shows that, it is not the plaintiff rather the defendant no. 2 has been in possession over the suit property.

At this, when we pose a question to the learned counsel for the respondent-opposite-party that, it is the only prayer made in the subsequent application for injunction filed by the plaintiff-appellant that, during pendency of the suit, that defendant no. 2 herein opposite-party cannot transfer the suit property to anybody else. When the learned counsel for the

opposite-party submits that, the defendant no. 2 herein opposite-party will not transfer the suit property during pendency of the suit rather the learned counsel submits that, it is apprehension of the respondent that, during pendency of the suit, the plaintiff-appellant could disturb peaceful possession of the defendant no. 2-respondent in enjoying possession over the suit property and rather the plaintiff-appellant should be restrained by an order of injunction. Basing on that submission, we find that, both the parties apprehend with regard to transfer vis-à-vis dispossession of the suit property. Record depicts that, the suit was filed challenging two deeds of heba firstly made in favour of the defendant no. 1 dated 13.12.2015 and by the defendant no. 1 in favour of the defendant no. 2 dated 06.03.2017 so until and unless, the validity of those deeds is adjudicated upon on taking evidence from the parties, the possession and position of the suit property should remain as it is so that none of the parties could take any advantage by selling the property to anybody else.

On going through the impugned judgment and order dated 27.08.2023, we find that, the learned Judge just in a single sentence rejected the application for injunction finding that, the plaintiff has got no *prima facie* arguable case but the learned Judge has not discussed the other two principles that is, balance of inconvenience as well as the point of suffering irreparable loss and injury by the parties to the dispute which is *sine quo non* in disposing of an application for temporary injunction. On going through the prayer so made in the application for injunction by the plaintiff-appellant-petitioner and the submission so advanced by the learned counsel for the appellant-petitioner, we find that, only

apprehension of the appellant-petitioner is that, he will be highly prejudiced if the suit property is transferred during pendency of the suit and he just wanted to get protection of the position of the suit property till disposal of the suit. So the said prayer appears to be very innocent since the deed dated 06.03.2017 is now under challenge. Because, if the suit property is transferred by the defendant no. 2 during pendency of the suit surely further proceeding of the suit as well as dispose of the same would become pointless. Further, since the defendant-opposite-party no. 1 asserts that, during pendency of the suit, she will not transfer the property so in view of the above submission so placed by the learned counsel for the opposite-party and that of the apprehension so expressed by the plaintiff in regard to transfer of the property we are of the view that, justice would be best served if the parties are directed to maintain status quo in respect of possession and position of the suit property till disposal of the suit.

Regard being had to the above facts and circumstances, we don't find any substance in the impugned judgment and order which clearly lacks any legal footing.

Accordingly, the appeal is disposed of with above observation.

The impugned judgment and order impugned in the appeal is hereby set aside.

Since the appeal is disposed of, the connected rule being Civil Rule No. 894 (FM) of 2023 is also disposed of.

However, the parties are hereby directed to maintain status quo in respect of possession and position in particular, transfer of the suit property till disposal of the suit.

Let a copy of this judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.