

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and
Mr. Justice Md. Bashir Ullah**

First Miscellaneous Appeal No. 170 of 2024

In the matter of:

Md. Alamgir Khan

--- Defendant-Appellant.

-Versus-

Mosammat Mohtarema Khanom and others

--- Plaintiffs-Respondents.

Mr. Abdus Salam Mamun, Advocate

---For the Appellant.

Mr. A.S.M. Sayem Bhuiyan, with

Mr. Md. Istiak Ahmed and

Mr. Abubakar Siddik, Advocates

---For the respondent nos. 1-4.

Heard on 12.01.2025

Judgment on: 15.01.2025

Md. Bashir Ullah, J

At the instance of the defendant no. 1 in Other Class Suit No. 153 of 2022, this appeal is directed against the judgment and order dated 21.04.2024 passed by the learned Joint District Judge, Second Court, Chattogram allowing the application for appointing a receiver under Order 40, Rule 1 of the Code of Civil Procedure.

The salient facts leading to preferring this appeal are:

The respondent nos. 1-4 as plaintiffs filed Other Class Suit No. 153 of 2022 in the Second Court of the learned Joint District Judge,

Chattogram impleading the appellant as defendant No. 1 seeking the following reliefs:

(ক) নালিশী নিম্ন ১-৪ নং তপসীলের আন্দর ১(ক) নং হইতে ৪(ক) নং তপসীলের ভূমি সরসে নিরসে বিভাগ ক্রমে বাদীগণের অনুকূলে একত্রে বা পৃথক সাহাম প্রদানে বিভাগের প্রাথমিক ডিক্রি হয়।

(খ) প্রাথমিক ডিক্রির মর্ম অনুযায়ী ১-২ নং বিবাদীগণ আপেষে নালিশী ভূমি বিভাগ করিয়া না দিলে বিজ্ঞ আদালত উপলক্ষ্যে এডভোকেট কমিশনার নিয়োগক্রমে নালিশী সম্পত্তি বিভাগ করিয়া বাদীগণের প্রাপ্য সাহাম পৃথকভাবে প্রদান পূর্বক বিভাগের চূড়ান্ত ডিক্রি হয়।

(গ) মোকদ্দমার খরচ প্রতিদ্বন্দীতাকারী বিবাদীগণের বিরুদ্ধে ও বাদীগণের অনুকূলে ডিক্রি হয়।

(ঘ) আইন ও ইক্যুইটি মতে বাদীগণ আর যা যা প্রতিকার প্রাপক সাব্যস্ত হয় তৎসমুদয় বাদীগণের অনুকূলে প্রদানের ডিক্রি হয়।

It is stated in the plaint *inter alia* that the schedule-1 and 2 properties were purchased by one, Md. Abdul Gafur Khan, the predecessor of both the plaintiffs and defendant nos. 1 and 2 and in both the schedules he constructed dwelling houses. The schedule-3 property was purchased by Md. Abdul Gafur Khan in the name of the defendant-appellant on 26.02.1989 by registered deed No. 916 in *benami* and schedule-4 properties was purchased by Abdul Gafur Khan in his own name by three registered *Kabla* Nos. 9273, 9305 and 5283 on 03.06.1985 and 08.10.1988 respectively. Md. Abdul Gafur Khan died on 10.07.2021 leaving behind four sons and one daughter and plaintiff no.1 is his second wife and his first wife died earlier and defendant no.1 is the son of his earlier wife. The properties mentioned in the schedules have

not been partitioned by metes and bounds and therefore the plaintiffs prayed for partition of land of schedule 1-4 by a preliminary decree and demarcating it by a final decree.

On 03.07.2022, defendant No. 1 filed an application under Order 40 Rule 1 read with Section 151 of the Code of Civil Procedure for the appointment of a receiver in respect of schedule 1 and 2 properties stating *inter alia* that in schedule-1 property, there is one four-storey residential building consisting 10 flats wherefrom the monthly rental income generates Tk. 60,300/- and in schedule-2 properties there are five flats and two tin shed dwelling houses from which rented income generates 42,900/ which in total is Tk. 1,03,200 (One lac three thousand and two hundred) but the plaintiffs are depriving him from his share of rental income though the properties mentioned in those two schedules are his paternal property and he is entitled to 14 out of 72 shares and as such a receiver is required to be appointed to collect rent from the schedule 1 and 2 properties so that others cannot misappropriate it.

Defendant no. 2 also filed an application for appointing a receiver under Order 40 Rule 1 in respect of schedule nos. 1 to 4 to the plaint on 01.08.2022. On the other hand, the plaintiffs filed written objection on 01.08.2022 and 22.01.2023 against the application for appointment of receiver but ultimately the plaintiffs did not press the written objections and in that regard they filed application on 27.11.2023.

The defendant no.1-appellant also filed an application on 03.07.2022 under Order 6 Rule 16 read with Section 151 of the Code of Civil Procedure praying for striking out schedules 3, 3ka and 4, 4(ka)

from the plaint stating that land described in schedules 3 and 3(ka) was acquired by him by registered purchase deed No. 916 dated 26.02.1989 and he also acquired scheduled-4 and 4(ka) properties by way of registered *Hebanama* Deed No. 15386 dated 03.02.2019. Defendant no. 2 filed an application on 01.08.2022 praying for the appointment of a receiver for schedule nos. 1-4 properties on the ground stated therein.

Upon hearing the parties, the learned Joint District Judge, Second Court, Chattogram allowed the application for appointing receiver under Order 40, Rule 1 of the Code of Civil Procedure on contest on 21.04.2024 in respect of schedule nos. 1-4.

Being aggrieved by and dissatisfied with the judgment and order dated 21.04.2024 passed by the Joint District Judge, Second Court, Chattogram the defendant no.1 as appellant then preferred the instant appeal. The appellant also filed an application for staying the operation of the order dated 21.04.2024 passed by learned Joint District Judge, Second Court, Chattogram in Other Class Suit No. 153 of 2022 appointing receiver so far as it relates to schedule nos. 3 and 4 lands to the plaint. Upon hearing, this Court stayed the operation of the order dated 21.04.2024 for a period of 06(six) months on 10.06.2024 which was lastly extended on 01.12.2024 for a further period of 01(one) year.

Feeling aggrieved by the order of stay dated 10.06.2024 passed by this Court, the respondents preferred Civil Petition for Leave to Appeal No. 2668 of 2024 before the Honourable Appellate Division of the Supreme Court of Bangladesh. Upon hearing, the Honourable Judge-in-Chamber passed the following order:

“It is desirable that the competent Bench of the High Court Division shall dispose of the Rule expeditiously preferably within a period of 01(one) month from the date of receipt of this order.”

Mr. Abdus Salam Mamun, learned senior counsel on behalf of the appellant submits that the impugned order is erroneous and cannot be sustained in law.

He further contends that defendant no.1-appellant purchased schedule-3 land in his name and the same has been mutated in his name. The appellant also acquired schedule 4 land by a registered *hebanama* given by his father after the death of his mother and he is in exclusive possession in the land covered by *heba* since registration. He has been paying holding tax, land development tax and gas bill and hence, the appointment of receiver in respect of schedule 3 and 4 properties is not sustainable in law and the Court below passed the same without applying its judicial mind and as such, it is liable to be modified. Learned counsel finally prays for allowing the appeal by modifying the impugned order striking out the schedules 3 and 4 properties.

Per contra, Mr. A.S.M. Sayem Bhuiyan, learned Advocate appearing on behalf of the plaintiff-respondent nos. 1-4 contends that defendant no. 2 submitted application for appointment of a receiver in respect of schedule nos. 1, 2, 3 and 4 land to the plaintiff and defendant no. 1 applied for appointment of receiver for schedule nos. 1 and 2 land to the plaintiff. The defendant no. 1 did not raise any objection against the application filed by the defendant no. 2 even the defendant no. 1 has not

filed any written statement in the suit till today. So, the learned Joint District Judge, Second Court, Chattogram rightly passed the order dated 21.04.2024 appointing receiver. He further submits that the plaintiffs challenged the purchase deed no. 916 and *hebanama* deed no. 15386 so, there is no illegality or infirmity in the impugned order. Hence, he prays for dismissing the appeal.

We have heard the learned Advocates for the contending parties and perused the memorandum of appeal, the supplementary affidavit, the impugned judgment and order passed by the trial Court and other materials on record.

It appears from the record that defendant no.1-appellant filed an application under Order 40, Rule 1 for appointing a receiver for schedule 1 and 2 properties on 03.07.2022. Defendant no. 2 also filed application for appointment of receiver on 01.08.2022 for schedule 1 to 4 properties. Defendant no.1 did not file or raise any objection against the application filed by the defendant no. 2 even the defendant no. 1-appellant did not file any written statement. The trial Court has thus rightly observed that, বাদী ও ২ নং বিবাদী আর্জির ১, ২, ৩ ও ৪ নং তপশীল বর্ণিত সম্পত্তিতে রিসিভার নিয়োগের আবেদন করলেও ১নং বিবাদী আর্জির ১ ও ২ নং তপশীলের সম্পত্তিতে রিসিভার নিয়োগের প্রার্থনা করেছেন। কিন্তু আর্জির ৩ ও ৪ নং তপশীল বর্ণিত সম্পত্তিতে কেন রিসিভার চান না সে বিষয়ে ১ নং বিবাদীর দরখাস্তে সুনির্দিষ্ট কোন বক্তব্য নেই। and then perfectly appointed receiver holding that, “ এক্ষেত্রে যেহেতু বাদীগণ এবং ১ ও ২ নং বিবাদী সকলেই নালিশী সম্পত্তিতে রিসিভার নিয়োগের বিষয়ে আপত্তি করেননি সেহেতু এই মোকদ্দমার চূড়ান্ত নিষ্পত্তি না হওয়া পর্যন্ত আর্জির ১, ২, ৩ ও ৪ নং তপশীল বর্ণিত সম্পত্তিতে থাকা দালান গৃহের ভাড়া আদায়, উক্ত সম্পত্তির আয় ব্যয় এবং সম্পত্তির রক্ষণাবেক্ষণের দায়িত্ব দিয়ে একজন রিসিভার নিয়োগ করা হলে কোন

পক্ষেরই ক্ষতির সম্ভাবনা নেই। বরং রিসিভার নিয়োগ করা না হলে তপশীল বর্ণিত সম্পত্তি ও তদন্তিত দালান গৃহ যে কোন এক পক্ষের দ্বারা পরিচালনা, শাসন-সংরক্ষণ করা হলে অপরাপর পক্ষগণের আর্থিক ক্ষতিসহ অন্যান্য ক্ষতির সম্ভাবনা রয়েছে মর্মে আদালতের নিকট প্রতীয়মান হয়।”

We find that though the plaintiff earlier filed written objection against the application for appointment of receiver filed by defendant no. 1 but ultimately on 27.11.2023 they filed an application not to press that written objection and in that application they rather prayed for appointment of receiver for schedules 1-4 properties stating in paragraph no. 6:

“অত্র মামলার বর্তমান অবস্থার বিবেচনা ক্রমে সকল পক্ষগণের হয়রানি লাঘবে ন্যায়ানুগ হিস্যা প্রাপ্তিতে কিংবা বিজ্ঞ আদালতের প্রিলিমিনারি ডিক্রিক্রান্ত ১-৪ নং তফসিলের সম্পত্তি আরজিতে রিসিভার নিয়োগের আদেশ দানে বিজ্ঞ আদালতের আজ্ঞা হয়।”

The learned Senior Counsel for the appellant contended that the defendant no. 1-appellant filed an application for striking out schedules no. 3, 3(ka), 4 and 4(ka) but the trial court appointed receiver for schedule 1 to 4 properties without considering the same. But upon scrutiny, we find that the defendant no. 1-appellant filed an application under Order 6 Rule 16 of the Code of Civil Procedure for striking out schedule no.3, 3(ka), 4 and 4(ka) from the plaint, however, that application has not yet been heard by the trial court.

The trial Court considered that the appointment of receiver should be just and convenient as the trial court observed that, বাদী পক্ষের দাবী মতে আব্দুল গফুর খানের মৃত্যুর পর ১ ও ২ নং বিবদীগণ বাদীগণকে বঞ্চিত করে তাদের প্রাপ্য হক

আদায় করতে গড়িমসি করতে থাকেন। অপরদিকে, ১নং বিবাদী ও ২নং বিবাদী দাবী করেছেন যে, বাদীগণ নালিশী সম্পত্তিতে স্থিত দালানের ভাড়া হতে প্রাপ্য অংশ বিবাদীগণকে না দিয়ে আত্মসাৎ করে আসছেন।

In the above discussion it turns out that, the parties to the suit expressed their intention to appoint a receiver so that none of the parties to the suit be deprived from their rightful shares.

Given the above facts and circumstances, we do not find any illegality or impropriety in the impugned judgment and order, which calls for no interference by this Court. Overall, we do not find any merit in the appeal.

Resultantly, the appeal is dismissed, however without any order as to cost.

The judgment and order dated 21.04.2024 passed by the learned Joint District Judge, Second Court, Chattogram in Other Class Suit No. 153 of 2022 is thus sustained and affirmed.

The order of stay granted earlier by this Court stands recalled and vacated.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.