

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

First Miscellaneous Appeal No. 241 of 2009

In the Matter of:

Memorandum of appeal from the original order.

-and-

In the Matter of:

Mohammad Al Amin (Choton)

.....Plaintiff-appellant.

-Versus-

Darul Islam Housing Ltd. and others.

.....Defendant-respondents.

Mr. Md. Zakir Hossain, Advocate

..... For the appellants.

None appears.

.....For the respondents.

Heard on 21.05.2025 and

Judgment on 21.05.2025.

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal at the instance of the plaintiff-appellants is directed against the judgment and order dated 02.06.2009 passed by the learned Joint District Judge, 3rd

Court, Dhaka in Title Suit No. 6358 of 2008 rejecting the application for temporary injunction.

The short fact relevant for disposal of this appeal is that the plaintiff-appellant as pre-emptors filed Title Suit No. 6358 of 2008 against the respondent-purchaser and others in the Court of the learned Joint District Judge, 3rd Court, Dhaka for pre-emption under the Mohammedan Law for pre-empting the case land as described in the schedule of the plaint.

Thereafter, while the suit was in progress, the plaintiff-appellant filed an application under Order XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction praying the following reliefs:

অতএব বাদী প্রার্থনা করে যে, মাননীয় আদালত দয়া করিয়া অত্র মোকদ্দমা শুনানী ও নিষ্পত্তি না হওয়া পর্যন্ত ক্রেতা ১নং বিবাদী যাহাতে নালিশী এজমালী ভূমিতে অনুপ্রবেশ করিয়া নালিশী ভূমিতে কোন ধরনের মাটি কাটিতে না পারে বা নালিশী ভূমি ভরাট করিতে না পারে বা নালিশী ভূমির কোন আকৃতি ও প্রকৃতির কোন পরিবর্তন করিতে না পারে বা নালিশী ভূমিতে অন্য কোন কাজ কর্ম করিতে না পারে তৎমর্মে ক্রেতা ১নং বিবাদীকে অস্থায়ী নিষেধাজ্ঞার আদেশ দ্বারা বারিত করিতে আজ্ঞা হয়। এবং

ইত্যবস্থায় অত্র অস্থায়ী নিষেধাজ্ঞার দরখাস্ত শুনানী ও নিষ্পত্তি না হওয়া পর্যন্ত ক্রেতা ১নং বিবাদীকে উক্ত মর্মে অন্তর্বর্তীকারীন নিষেধাজ্ঞার আদেশ দ্বারা বারিত করিতে আজ্ঞা হয়।

The defendants resisted the said application by filing written objection denying all the allegations made in the injunction application stating, inter-alia, that the plaintiff filed the application for injunction on false allegations, the same is liable to be set-aside.

The learned Joint District Judge, 3rd Court, Dhaka after hearing the parties by his order dated 02.06.2009 rejected the application for temporary injunction holding that there is no prima-facie arguable case in favour of the plaintiff-pre-emptor for passing an order of ad-interim injunction.

Being aggrieved by the aforesaid impugned order passed by the learned Joint District Judge, 3rd Court, Dhaka the plaintiff-appellant filed this First Miscellaneous Appeal before this Court.

Mr. Md. Zakir Hossain, the learned Advocate appearing for the plaintiff-appellant submits that during pendency of the pre-emption suit the defendant by appointing a development company is trying to make construction over the suit land and unless an order of ad-interim injunction is passed the defendant as well as the development company will change the nature and character of the suit land and also transferred the suit land as well.

No one appears to oppose the appeal on repeated calls.

Having heard the learned advocate for appellant and having gone through the materials on record including the impugned order, the only question that calls for our consideration in this appeal is whether the trial Court committed any error of law in rejecting the application under Order XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction.

On going through the available materials on record together with the impugned order, it appears to us that the learned Joint District Judge, 3rd Court, Dhaka on due consideration of the entire evidence and materials on record arrived at a finding that the

plaintiff could not establish an arguable case for getting an order of injunction.

On a query from the Court, the learned Advocate for the appellant having failed to disclose the exact position of the suit that is, whether the suit is pending or disposed of.

Besides, in a suit of this nature, we find no prima-facie case to pass an order of injunction. The learned Judge of the trial court appears to have considered all the material aspects of the case and justly rejected the application for temporary injunction. No interference is, therefore, called for.

In the result, the appeal is dismissed without any order as to costs.

Since the appeal is dismissed, the connected Rule being Civil Rule No. 241 (FM) of 2009 is discharged.

Communicate this order at once.

Md. Mansur Alam, J:

I agree.

Present:

Mr. Justice Sheikh Abdul Awal

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Mr. Justice Md. Mansur Alam

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ইত্যবস্থায় অত্র অস্থায়ী নিষেধাজ্ঞার দরখাস্ত শুনানী ও নিষ্পত্তি না হওয়া পর্যন্ত ক্রেতা ১নং বিবাদীকে উক্ত মর্মে অন্তর্বর্তীকারীন নিষেধাজ্ঞার আদেশ দ্বারা বারিত করিতে আজ্ঞা হয়।

The defendants resisted the said application by filing written objection denying all the allegations made in the injunction application stating, inter-alia, that the plaintiff filed the application for injunction on false allegations, the same is liable to be set-aside.

The learned Joint District Judge, 3rd Court, Dhaka after hearing the parties by his order dated 02.06.2009 rejected the application for temporary injunction holding that there is no prima-facie arguable case in favour of the plaintiff-pre-emptor for passing an order of ad-interim injunction.

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Mr. Md. Zakir Hossain, the learned Advocate appearing for the plaintiff-appellant submits that during pendency of the pre-emption suit the defendant by appointing a development company is trying to make construction over the suit land and unless an order of ad-interim injunction is passed the defendant as well as the development company will change the nature and character of the suit land and also transferred the suit land as well.

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plaintiff could not establish an arguable case for getting an order of injunction.

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