

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4232 OF 2024

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Shahnaz Begum and others

... Petitioners

-Versus-

Saidur Rahman and others

... Opposite parties

None appears

.... For the petitioners.

Mr. Ahmed Nowshed Jamil with

Mr. Ashim Kumar Mallik, Advocates

.... For the opposite party No.1.

Judgment on 21.11.2024.

This Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and order dated 14.08.2024 passed by the Additional District Judge, 8th Court, Dhaka in Miscellaneous Appeal No.110 of 2024 reversing the order dated 31.03.2024 passed by the learned passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No.206 of 2016 should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title and partition. In above suit on 07.02.2014 the plaintiff filed a petition under Order 39 Rule 1 and 2 and Section 151 of

the Code of Civil Procedure for an order of ad-interim and temporary injunction against the defendant restraining him from changing the nature, feature and character of the disputed property. The learned Joint District Judge on hearing the learned Advocate for the petitioner directed for issuance of notice upon the defendants.

On receipt of above notice defendant No.1 entered appearance and the learned Joint District Judge took up above injunction petition for hearing on 31.03.2024. After hearing the learned Advocate for respective parties and on consideration of materials on record the learned Joint District Judge passed an ad-interim order directing both the parties to maintain status-quo with regard to the the nature, feature and character of above land.

Being aggrieved by above judgment and order of the learned Joint District Judge defendant No.12 preferred Miscellaneous Appeal No.110 2024 to the learned District Judge, Dhaka which was heard by the learned Additional District Judge, 8th Court, Dhaka who allowed above appeal, set aside the impugned judgment and order of the trial Court and directed the learned Joint District Judge to dispose up the petition for injunction on merit in accordance with law.

Being aggrieved by and dissatisfied with the above judgment and order of the learned Judge of the Court of Appeal below above respondent No.12 as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner when the Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

Mr. Ahmed Nowshed Jamil, learned Advocate for opposite party No.1 submits that on receipt of the notice of the petition under Order 39 Rule 1 and 2 of the Code of Civil Procedure defendant No.12 entered appearance and participated in the hearing of above petition on merit. As such the learned Joint District Judge should have passed an order on above petition for injunction on merit. But the learned Joint District Judge most illegally passed an ad-interim order of status-quo till hearing of above petition on merit which is illegal and not tenable in law. The learned Judge of Court of appeal below on correct appreciation of materials on record rightly allowed the appeal and set aside the flawed judgment and order of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party No.1 and carefully examined all materials on record.

It turns out from record that in this suit for declaration of title and partition the plaintiff submitted a petition on 07.02.2024 under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure for an order of ad-interim and temporary injunction. The learned Joint District Judge instead of passing an ad-interim order directed for issuance of notice upon the defendants and defendant No.12 on receipt of above notice

entered appearance and participated in the hearing of above petition for injunction on merit.

The learned Joint District Judge had legal jurisdiction to pass an order of ad-interim injunction on the first day of hearing of above petition for injunction but as mentioned above instead of passing an ad-interim order of injunction the learned Joint District Judge directed for issuance of notice upon the defendant. As such the learned Joint District had no jurisdiction to pass the impugned order of ad-interim injunction on above petition under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure. But the learned Joint District Judge could pass a judgment and order on the merit of above petition for injunction.

On correction appreciation of above materials on record the learned Judge of the Court of Appeal below has rightly allowed the appeal and set aside above flawed judgment and order of the trial Court and directed the learned Joint District Judge to pass an appropriate judgment on above petition for injunction after hearing both the parties a fresh which calls for no interference.

In above view of the materials on record I am unable to find any infirmity or illegality in the impugned judgment and order of the learned Judge of the Court of Appeal below and this revisional application under Section 151(1) of the Court of Civil Procedure is devoid of any substance and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

The order of status-quo granted at the time of issuance of the Rule is vacated.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER