

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Misc Appeal No. 11 of 2021

Md. Abdus Sattar Mojumder and others

..... appellants

-Versus-

Nazma Begum and others

..... respondents

with

Civil Rule No. 241(FM) of 2020

Md. Abdus Sattar Mojumder and others

..... petitioners

-Versus-

Nazma Begum and others

..... opposite parties

and

Civil Revision No. 4612 of 2022

Nazma Begum and others

..... petitioners

-Versus-

Raquiba Banu

..... opposite party

Mr. Md. Ali Imam Khaled Rahim with

Mr. S.M. Selim, Advocates

..... for the appellants

(appellants in the FMA and petitioners and C. Rule)

Mr. Hazi Saifuddin Ahmed Chowdhury with

Ms. Badrun Nahar, Advocates

..... for the respondents

(respondents in FMA, Op in C. Rule and petitioners in C R)

Judgment on 27.05.2025

Bhishmadev Chakrabortty, J:

Since the appeal and revision have arisen out of the same title suit and the Rule has arisen out of the first miscellaneous appeal, the parties in all are almost same and common question of fact and law are involved; these have been heard together and are being disposed of by this judgment.

The appeal is directed against the judgment and order of the Joint District Judge, Court 3, Dhaka passed on 29.01.2020 in Title Suit 532 of 2018 rejecting the application under Order 39 Rule 4 read with section 151 of the Code of Civil Procedure (the Code) for reviewing the judgment and order of the same Court passed on 03.09.2018 in the same suit allowing the application under Order 39 Rules 1 and 2 read with section 151 of the Code directing both the parties to maintain *status quo* in respect of the suit property. In the appeal the appellants filed an application for staying the order of *status quo* passed by the Court below upon which the civil Rule was issued the appellants were permitted to make construction work over the land of schedules-Ka, Ka1 and Ka 2 property at their own risk and peril with direction to the parties to maintain *status quo* in respect of transfer and possession of the suit property. At the instance of the plaintiffs the Rule was issued in Civil Revision No. 4612 of 2022 calling upon the opposite party to show cause as to why the judgment and order of the same Joint District Judge passed on 10.04.2022 in the same suit allowing the application of defendant 6 permitting her to develop the suit land should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

Facts relevant for disposal of the Appeal and as well as the Rules, in brief, are that the respondents in the appeal as plaintiffs instituted the aforesaid title suit in the Court of Joint District Judge, Court 3, Dhaka praying for declaration of title in the suit land with

further prayer of recovery of khas possession in respect of schedules Ka, Ka 1 and Ka 2 to the plaint along with others prayers. The defendants have been contesting the suit by filing written statement. During pending of the suit the plaintiffs filed an application under Order 39 Rules 1 and 2 of the Code praying for temporary injunction restraining the defendants from selling, transferring and changing the nature and character of the suit land described in schedules 'Ka', 'Ka 1' and 'Ka 2' to the plaint and also for injunction restraining the defendants from entering into land described in schedule-'Kha' to the plaint. Defendant 2 contested the said application by filing written objection. However the Joint District Judge after hearing both the parties by the judgment and order passed on 03.09.2018 allowed the application in a modified form directing the parties to maintain *status quo* in respect of selling out, transfer and possession of the parties in the property till disposal of the suit. Thereafter defendants 1 and 2 filed an application under Order 39 Rule 4 read with section 151 of the Code in the same Court praying for recall and cancel the order of *status quo* passed earlier on the reason of doing development work in the suit premises. However, the Joint District Judge by order dated 29.01.2020 rejected the said application challenging which the appellants preferred this appeal. The appeal was admitted on 16.08.2020, thereafter, on an application for stay of the judgment and order of *status quo* passed by the Court on 03.09.2018 this Division issued Rule on 16.08.2020 and passed *interim* order on 15.09.2020 permitting the appellants to proceed

with the construction work in schedules Ka, Ka 1 and Ka 2 at their own risk and peril without disturbing the plaintiffs in any manner. This Division further directed the parties to maintain *status quo* in respect of transfer, possession as well as sale of the suit property till disposal of the Rule. After passing the aforesaid order by this division, defendant 6 filed an application to the trial Court praying for an order permitting her to repair/develop the suit property situated in the schedule to the application in the light of the order passed by this Division. The Joint District Judge allowed the said application on 10.04.2022 permitting her to do so in the land of schedules-‘Ka’, ‘Ka 1’ and ‘Ka 2’ to the plaintiff. Against the aforesaid order the plaintiffs approached this Court with an application under section 115(1) of the Code and the Rule was issued.

Mr. Ali Imam Khaled Rahim, learned Advocate for the appellants in the appeal and petitioners to the Civil Rule taking us through the materials on record submits that admittedly the appellants are in possession of land in schedules-Ka, Ka 1 and Ka 2 to the plaintiff. The joint District Judge passed order directing the parties to maintain *status quo* in respect of sale, transfer as well as possession of the parties in the suit land. Such kind of order makes a serious complication in the enjoyment and use of the suit land by the defendants who are in possession of Ka, Ka 1 and Ka 2 schedules. Although they filed application under Order 39 Rule 4 of the Code for recalling the order of *status quo* but actually in the application they sought permission of the

Court for doing development work in the suit land. The application could have been filed there with such prayer. The appellants are in possession in the suit land and the *interim* order passed by this Court permitting them to make construction work therein with further order directing the parties to maintain *status quo* in respect of sale, transfer and possession of the parties in the property is a perfect and innocent order which may not be interfered with by this Court in appeal. This Court did not interfere with the order of *status quo* passed by the Joint District Judge but permitted the defendants to make construction work over the suit land where they are in possession. The above order has been passed five years ago but the respondents did not take any step in this Court or in the appellate division to vacate the said order. Mr. Rahim, therefore, prays for disposing the appeal as well as the Rule with direction to the trial Court to dispose of the suit expeditiously maintaining the interim order passed by this Division in the Rule.

Mr. Saifuddin Ahmed Chowdhury, learned Advocate for the respondents in the appeal, opposite parties to the civil Rule and petitioner of the civil revision opposes the appeal and the civil Rule and supports the Rule issued in the revision. He submits that the order of *status quo* passed by the Joint District Judge is an innocent order by which the Court directed the parties to maintain *status quo* in respect of transfer, sale as well as possession of the parties in the suit land. The trial Court passed the aforesaid order in presence of both the parties and as such the application under Order 39 rule 4 of the Code was not

maintainable. The trial Court correctly rejected the application filed under Order 39 Rule 4 of the Code. He further submits that although here the appellants filed an application praying for stay of the order of *status quo* passed by the Court below but a bench of this Division passed order permitting the appellants to make construction work over the suit land. In the premises above, the appeal would be dismissed. In the Rule issued in the civil revision Mr. Chowdhury submits that defendant 6 filed an application before the trial Court praying for permission to repair and doing development work in the suit property in the schedule to the application. She actually included the land of this plaintiff-petitioners but the trial Court passed an order similar to this division passed in the civil Rule. Therefore, the appeal would be dismissed, the Rule issued in the civil Rule would be discharged and the rule issued in the civil revision be made absolute.

We have considered the submissions of both the sides and gone through the materials on record.

It appears that the suit has been filed for declaration of title in respect of the land described in the schedules to the plaint with prayer for recovery of possession in respect of schedules-‘Ka’, ‘Ka 1’ and ‘Ka 2’ with further prayer for injunction restraining the defendants from interfering with the possession of the plaintiff in ‘Kha’ schedule land. In the suit, the plaintiffs filed an application for temporary injunction praying for injunction restraining the defendants from changing the nature and character, transfer and sale in respect of Ka, Ka 1 and Ka 2

schedules as well as possession of the plaintiff in 'Kha' schedule land. The application for temporary injunction was contested by defendant 2 by filing written objection. However, the Joint District Judge after hearing both the parties passed order of *status quo* directing the parties from transferring, selling as well as changing the nature and character of the suit land with a further direction to maintain *status quo* in respect of possession of 'Kha' schedule property. The order of *status quo* passed by the Joint District Judge in the aforesaid manner seems a balancing and innocent order and not injurious to the parties. Since as per the plaint it is admitted fact that the defendants are in possession of schedules-Ka, Ka 1 and Ka 2 property, therefore, the defendants could have filed an application in the concerned Court for taking permission to do development work in the suit land. But they filed an application under Order 39 Rule 4 of the Code for recalling the order of *status quo* passed by the Court previously. On going through the statements and prayer of the application filed under Order 39 Rule 4 of the Code it is found that finally the defendant-applicants prayed for permission of the Court for doing development work in respective part of the suit premises. The Joint District Judge rightly rejected the application under Order 39 Rule 4 of the Code because the original application for temporary injunction was contested by defendant 2. Although the defendants filed this appeal challenging the aforesaid order passed on the application under Order 39 Rule 4 of the Code but this Court did not pass any order staying operation of the order of *status quo* passed

by the Joint District Judge. On the application of the appellants praying for stay of the operation of the order of *status quo* this Division issued Rule and subsequently on 15.09.2020 passed an order in the following manner-

“Considering the facts and circumstances, the petitioner-appellants were permitted to proceed with the construction work in schedule Ka, Ka 1 and Ka 2 of the land at their own risk and peril and without disturbing or affecting the plaintiffs in any manner. However, the parties are strictly directed to maintain status quo in respect of transfer, possession as well as sale of the suit property till disposal of the instant Rule”.

On perusal of the application for stay, it is found that the defendant-appellants stated reason therein that they are in possession of Ka, Ka 1 and Ka 2 schedules and prayed for making construction work therein and they wanted do so at their own risk and peril. It is found that the aforesaid order was passed on 15.09.2020 but plaintiff-respondents as well as the opposite parties to the civil Rule neither filed any application in this Court for vacating the order nor moved to the appellate division challenging it. The order so passed has been in force for last five years. The order of *status quo* passed by the trial Court has not been disturbed by this Division but the relief granted to the appellants permitting them to proceed with construction work in respect of schedules-Ka, Ka 1 and Ka 2 property maintaining the order of *status quo* passed by the trial Court. Therefore, we find that Justice

would be best served, if we direct the trial Court to dispose of the suit expeditiously keeping the *interim* order passed by this Court as it is. We further do not find any error in the order passed by the Joint District Judge permitting defendants 6 to develop/repair the suit property as described in schedules Ka, Ka 1 and Ka 2. Although defendant 6 filed an application to the concerned Court mentioning a different schedule but the Joint District Judge passed order in respect of schedules-Ka, Ka 1 and Ka 2 to the plaintiff which are admittedly in possession of the defendants.

Therefore, the concerned Court is directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and order. In dealing with the case the trial Court shall not allow either party any adjournment without dire necessity. However, until the suit is disposed of, the interim order passed by this Division in Civil Rule on 241(FM) of 2020 shall operate.

With the above observation and directions, the appeal as well as the Rules are disposed of.

Communicate this judgment and order to the concerned Court.

A.K.M. Zahirul Huq, J:

I agree.

Rajib