

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.2795 OF 2024**

In the matter of:

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

And

Mohammed Faridul Hoque and another

... Petitioners

-Versus-

Mohammed Yakub Ali Sheikh and others

... Opposite parties

Mr. Saiful Quader Chowdhury, Advocate

... For the petitioners.

Mr. Helal Uddin Mollah, Advocate

....For the opposite party Nos.1-3.

**Heard and Judgment on 23.07.2025.**

This Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and order dated 25.04.2024 passed by the learned Joint District Judge, Munshigonj in Miscellaneous Appeal No.27 of 2023 allowing the appeal and reversing the judgment and order dated 02.04.2023 passed by the learned Senior Assistant Judge, Louhojong, Munshigonj in Civil Suit No.194 of 2022 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted above suit for declaration of title for 39 decimal land and for further

declaration that R. S. Khatian No.9 prepared for above land was erroneous and not binding upon the plaintiffs.

In above suit plaintiffs filed a petition under Order 39 Rule 1 of the Code of Civil Procedure for an order of ad-interim and temporary injunction on 21.03.2023. The learned Senior Assistant Judge on hearing the learned Advocate for the petitioner and considering materials on record issued show cause notice on defendant Nos.1-3 and 37 who did not turn up. The plaintiff filed a petition under Section 151 of the Code of Civil Procedure for an order of ad-interim injunction against above defendants and the learned Senior Assistant Judge passed an order of ad-interim injunction against defendant Nos.1-3.

Above plaintiff again submitted a petition under Section 151 of the Code of Civil Procedure on 27.04.2023 for passing an order of ad-interim injunction against defendant No.37 and the learned Assistant Judge allowed above petition and passed an ad-interim order of status-quo against defendant No.37.

Challenging the legality and propriety of above orders dated 02.04.2023 and 27.04.2023 above defendants as appellants preferred Miscellaneous Appeal No.27 of 2023 to the District Judge, Munshigonj who allowed above appeal, set aside the judgment and order of the trial Court and directed the learned Senior Assistant to dispose of above petitions for injunction on merit in accordance with law.

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge above respondents as petitioners

moved to this Court with Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Saiful Quader Chowdhury, learned Advocate for the petitioners submits that the petitioner as plaintiff filed above suit and filed a petition under Order 39 Rule 1 of the Code of Civil Procedure for an order of ad-interim and temporary injunction against defendant Nos.1-3 and 37 but the learned Senior Assistant Judge issued show cause notice upon above defendants. The defendants did not turn up and on an application filed by the plaintiff under Section 151 of the Code of Civil Procedure the learned Senior Assistant Judge passed an ad-interim order of status-quo so that the defendants cannot transfer above land till disposal of the injunction petition. The learned Judge erroneously omitted to pass an order against defendant No.37. As such the plaintiffs filed another petition under Section 151 of the Code of Civil Procedure for an order of ad-interim injunction against defendant No.37 and the learned Senior Assistant Judge rightly passed an order of ad-interim injunction against defendant No.37 on 27.04.2023. But the learned District Judge utterly failed to appreciate above facts and circumstances of the case and materials on record and most illegally allowed above Miscellaneous Appeal and set aside above lawful judgment and order of the trial Court and set aside the order of ad-interim injunction which is not tenable in law.

On the other hand Mr. Helal Uddin Mollah, learned Advocate for the opposite party Nos.1-3 submits that on 02.12.2024 this Court while

extending the order of status-quo directed the petitioners to make the Rule ready for hearing within 6(six) months or in default the Rule shall be stand discharged. The petitioners could not make above Rule ready for hearing within 6(six) months from 02.12.2024. As such the instant Rule has already been discharged. The learned Advocate further submits that on consideration of facts and circumstances of the case and materials on record the learned District Judge has rightly allowed Miscellaneous Appeal and set aside the ad-interim order of status-quo passed by the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the petitioner as plaintiff instituted above suit for declaration of title and other remedies and in above suit the plaintiffs filed a petition on 21.03.2023 under Order 39 Rule 1 of the Code of Civil Procedure for an order of ad-interim and temporary injunction against defendant Nos.1-3 and 37 and the learned Senior Assistant Judge on consideration of submissions of the learned Advocate of the plaintiffs and materials on record directed for issuance of notice upon above defendants who did not turn up. It is also admitted that the plaintiffs filed a petition under Section 151 of the Code of Civil Procedure for passing an order of ad-interim injunction against above defendants and the learned Senior Assistant Judge passed an ad-interim order of status-quo against defendant No.1-3 on 02.04.2023 and the plaintiffs filed another petition under Section 151

of the Code of Civil Procedure for an order of ad-interim injunction against defendant No.37 and the learned Senior Assistant Judge passed an order of ad-interim injunction against defendant No.37 on 27.04.2023.

If a Court after hearing the concerned Advocate on an application under Order 39 and Rule 1 of the Code of Civil Procedure issues show cause notice without passing an order of ad-interim injunction it is to be presumed that the Court has refused to pass an ad-interim order of injunction and above Court shall have no legal authority to pass an order of ad-interim injunction later on in above interlocutory proceeding.

After issuance of show cause notice upon the defendants the learned Senior Assistant Judge had two options before him. The learned Judge could after hearing the learned Advocates for both sides dispose of above petition on contest in accordance with law or if the defendants fail to turn up despite service of notice the learned Judge could dispose of above petition for injunction ex-parte in accordance with law.

When a petition under Order 39 Rule 1 of the Code of Civil Procedure was pending for hearing the plaintiff had no right to file a petition under Section 151 of the Code of Civil Procedure in above interlocutory proceedings.

In above view of the materials on record I hold that both orders of ad-interim injunction passed by the learned Senior Assistant Judge on

02.04.2023 and 27.04.2023 were unlawful, without jurisdiction and not tenable in law.

The learned District Judge committed an error in directing the trial Court to dispose of above two petitions of the plaintiffs under Section 151 of the Code of Civil Procedure instead of directing to disposing of the petition for injunction in accordance with law.

In above view of the materials on record I hold that the ends of justice will be meet if the impugned judgment and order passed by the learned District judge is upheld with above modification.

The impugned judgment and order dated 25.04.2024 passed by the learned Joint District Judge, Munshigonj in Miscellaneous Appeal No.27 of 2023 is upheld with modification that the learned Senior Assistant Judge shall dispose of the petition for injunction filed by the plaintiffs under Order 39 Rule 1 of the Code of Civil Procedure on 21.03.2023 on merit in accordance with law expeditiously.

The Rule is accordingly disposed of.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN  
BENCH OFFICER