

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5043 of 2024

In the matter of:

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

And

Azharul Islam and others
... Petitioners.

-Versus-

Mojibur Rahman and others
... Opposite parties
Mr. Garib Newaz, Advocate
... For the petitioners.

Mr. Md. Khalilur Rahman with
Mr. Md. Khalilur Rahaman, Advocates
... For the opposite party Nos.1-2.

Heard and Judgment on 18.12.2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the judgment and order dated 27.06.2024 passed by the learned Additional District and Sessions Judge, 4th Court, Kishoregonj in Miscellaneous Appeal No.27 of 2024 dismissing the Miscellaneous Appeal affirming the judgment and order dated 08.04.2024 passed by the learned Assistant Judge, Tarail, Kishoregonj in

Title Suit No.29 of 2024 rejecting the application of the plaintiffs under Order 39 Rule 1 of the Code of Civil Procedure should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Mr. Garib Newaz, learned Advocate for the petitioner submits that the disputed property has not been partitioned by meets and bounds and the suit for partition is pending for trial but opposite party is trying to construct a pucca building in the land in excess of his legitimate share in the land of the petitioner.

On the other hand Mr. Khalilur Rahman, learned Advocate for the opposite party Nos.1-2 submits that he constructed a three stored building in the land which was in his exclusive possession pursuant to an amicable partition and he is within the extent of land of his legitimate share. The learned Advocate further submits that by above construction the price of the above land has enhanced and if the opposite is obstructed to complete the remaining work of above building he would suffer seriously in terms of money and time. The learned Advocate ensures that if on conclusion of the trial any part of the land in his possession is found to be in excess of his legitimate share then he would remove his constructed building at his own expenses.

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

Admittedly the disputed property is a joint property of the petitioners and opposite parties and the suit for partition is pending for trial in the court below.

A suit for partition takes a longer time for conclusive determination and to make a preliminary decree final. During above period the co-shares should have a legitimate scope to profitably utilize the land in their exclusive possession including doing any construction work which enhances the value of the land.

The learned Advocated for the opposite party has assured that if his constructed building falls in the land of the share of any other co-sharer he would remove the same with his own expenses and without delay.

In above view of the facts and circumstances of the case and evidence and submissions of the learned Advocates for the respective parties I hold that the ends of justice will be met if both the parties are directed to maintain status-quo in respect of land in their exclusion possession with liberty to proceed with any construction work which enhances the value of the land with condition that if any part of the constructed building falls in the share of other co-sharer then the owner of the building would remove the same with his own expenses and without delay.

With above direction, the Rule is accordingly disposed of.