

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)  
First Miscellaneous Appeal No. 193 of 2024  
with  
(Civil Rule No. 119 (FM) of 2024)  
In the matter of:**

Samsun Nahar

--- Plaintiff -Appellant.

-Versus-

Serajul Islam and others

--- Defendants-Respondents.

Mr. Feroz Alam, Advocate

...For the Appellant

Mr. Md. Asaduzzaman, Senior Advocate with

Mr. Abul Kalam Azad, Advocate

...For the Respondents

**Judgment on 30.06.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J**

Since the point of law and facts so figured in the appeal and the rule are intertwined, those have heard together and are being disposed of by this common judgment.

At the instance of the plaintiff in Title Suit No. 386 of 2023, this appeal is directed against the order no. 7 dated 05.02.2024 passed by the learned Joint District Judge, 4<sup>th</sup> Court, Dhaka in the aforesaid suit, rejecting the application for temporary injunction under Order 39, Rule 1 and 2 of the Code of Civil Procedure.

The present appellant, as plaintiff, filed the above-mentioned suit seeking partition of the suit land. The case of the plaintiff in short, is that 80 decimals of land described in schedule 'Ka' appertaining to C.S and S.A *Khatian* No. 618, R.S. *Khatian* No. 988, City Survey *Khatian* No. 2973, C.S. and S.A plot no. 563, 574 and 569 corresponding to R.S plot no. 45, 46 and City plot no. 8749, 8701 originally belonged to Gopal Chandra Mondal, Tukani Prashad and Subal Chandra Mondal, all sons of Indra Mohan Mondal. One Sheikh Atahar Ali subsequently purchased 53.50 acres of land under S.A. *Khatian* No. 63 and got his name mutated on 04.09.1984 and established a re-rolling mill over the said land.

Land measuring 30 decimals under 'Kha schedule' appertaining to S.A. *Khatian* No. 457, R.S. *Khatian* No. 383, C.S and S.A plot no. 836, R.S plot no. 864 was acquired by one Most. Ayesha Khatun by way of *heba* deed no. 1503 dated 29.03.1977. Subsequently, Ayesha Khatun transferred the said land to the father of the plaintiff, named Sheikh Atahar Ali by deed no. 27831 dated 20.11.1981.

Furthermore, 8 decimals of land appertaining to S.A. *Khatian* No. 184, R.S *Khatian* No. 561 corresponding to C.S. and S.A plot no. 836, R.S. plot no. 846 originally owned by one Rahela Khatun. She sold the said land to the father of the plaintiff on 22.09.1982. Additionally, the father of the plaintiff purchased 60 decimals of land under S.A. *Khatian* No. 260, R.S *Khatian* No. 446, C.S and S.A. plot no. 729, R.S. plot no. 816 from Sheikh Abdur Rauf and others by way of deed no. 62 dated 19.01.1989. The father of the plaintiff also acquired 85 decimals of land appertaining to R.S. plot no. 841 and 842 from one Abdul Sobhan by

virtue of deed nos. 1488 and 1489 both dated 28.03.1977. Moreover, he also purchased 96 decimals of land under S.A. *Khatian* No. 644, R.S *Khatian* No. 33 appertaining to C.S. and S.A. plot no. 775, R.S. plot no. 812 by means of deed nos. 2000 and 2001 both dated 31.03.1964 and deed no. 1955 dated 07.07.1966. The grandfather of the plaintiff, namely Hazi Anwar Ali had purchased 2.12 decimals of land of S.A. *Khatian* No. 598, R.S *Khatian* No. 31 appertaining to C.S and S.A. plot no. 436, R.S plot no. 512 and .62 decimals of land of R.S. plot no. 585; 19 decimals of land of S.A. *Khatian* No. 450, R.S *Khatian* No. 32 appertaining to C.S and S.A plot no. 786, R.S plot no. 824; 10.66 decimals of land of R.S. plot no. 857; 1 decimal of land of S.A. *Khatian* No. 621, R.S. *Khatian* No. 403, C.S and S.A plot no. 408, R.S plot no. 596 and 0.67 decimals of land of R.S plot no. 597 by way of deed nos. 1898 and 1899 both dated 10.02.1958. Said Hazi Anwar Ali was also the owner of 2 decimals of land under S.A. *Khatian* No. 211, R.S. *Khatian* No. 36, C.S. and S.A plot no. 409, R.S plot no. 594; 3 decimals of land of R.S plot no. 595; 1.34 decimals of land of R.S plot no. 848 and 854 and 14 decimals of land of S.A. *Khatian* No. 630, R.S. *Khatian* No. 568, C.S. and S.A. plot no. 807, R.S. plot no. 848. Upon the demise of Hazi Anwar Ali, the father of the plaintiff, Sheikh Atahar Ali succeeded to the said properties as his lawful heir.

Land measuring an area of 8.66 decimals of land described in schedule 'Ga' to the plaint appertaining to R.S. *Khatian* No. 59, C.S. plot no. 153, R.S. plot no. 286 originally belonged to the grandfather of the plaintiff, Hazi Anwar Ali. After the demise of Hazi Anwar Ali, the

father of the plaintiff Sheikh Atahar Ali became the owner of the aforesaid land.

The mother of the plaintiff, Sufia Begum purchased 4 decimals of land in R.S. *Khatian* No. 38, C.S. plot no. 180, R.S. plot no. 285 and 11 decimals of land of C.S. and S.A. *Khatian* No. 271, R.S. *Khatian* No. 363, C.S and S.A. plot no. 121, R.S. plot no. 288 by deed no. 5400 dated 26.10.1966. Furthermore, the father of the plaintiff, Sheikh Atahar Ali was also the owner of 0.50 decimals of land of R.S. *Khatian* No. 55, C.S. and S.A. plot no. 291, R.S. plot no. 270; 63 decimals of land of R.S. *Khatian* No. 54, C.S. and S.A. plot no. 82, R.S plot no. 78 and 58 decimals of land of R.S. *Khatian* No. 54, C.S. and S.A. plot no. 87, R.S. plot no. 79. The grandmother of the plaintiff, named Asia Khatun was the owner of the 10.66 decimals of land described in schedule 'Gha' to the plaint appertaining to S.A. *Khatian* No. 21, R.S. *Khatian* No. 39, C.S and S.A. plot no. 370 and 371, R.S. plot no. 378 and 12 decimals of land of R.S. plot no. 345. Upon the death of Asia Khatun, the father of the plaintiff, Sheikh Atahar Ali inherited said properties as her heir. Hazi Sheikh Atahar Ali died, leaving behind the plaintiff and defendant nos. 1-7 as heirs. The plaintiff has been possessing and enjoying the suit land in *ejmali* (Joint possession).

Defendant no. 1 is the eldest son of Sheikh Atahar Ali and he has been supervising and managing the business of his father. Defendant nos. 3-7 are daughters of Sheikh Atahar Ali and are unaware of the properties and business matters of their father.

On 10.12.2022, the plaintiff requested defendant no. 1 to partition the suit land who refused to partition the same and instead stated that the plaintiff and her sisters are not entitled to any share in the suit properties. Defendant no. 1 further asserted that he built a re-rolling mill in schedule 'Ka' land to the plaintiff and his father had gifted him the properties described in schedule 'Kha', 'Ga' and 'Gha' through a *heba* deed. Defendant no. 1 also informed her that he had transferred certain properties to his brother, defendant no. 2, Md. Nazrul Islam Babul and had sold same portion of the properties to defendant nos. 20, 21 and 22. The plaintiff discovered that the defendant no. 1 had fabricated deed no. 5737 dated 05.02.2023. He also created and fabricated deed no. 2292 with the intention of depriving the plaintiff and defendant nos. 3-7 of their rightful shares. The plaintiff is entitled to  $\frac{1}{10}$ th share of the properties described in the schedules to the plaintiff as heir of Hazi Sheikh Atahar Ali. Despite repeated requests made by the plaintiff to the defendant no. 1 to partition the suit properties he refused to do so and hence, the suit.

After instituting the said suit, the plaintiff filed an application for temporary injunction under Order 39, Rule 1, read with section 151 of the Code of Civil Procedure. Defendant no. 1 has been contesting the suit as well as the application for temporary injunction by filing written objection denying all material allegations made in the application contending *inter alia* that, Alhaz Sheikh Atahar Ali gifted 50 decimals of land described in schedule 'ka' to the plaintiff to defendant no. 1 by *heba*

*bill awaz* deed no. 3019 dated 20.05.2002. Md. Ali Hossain gifted 0.13375 acres of land to defendant no. 1 by *heba bill awaz* deed no. 1284 dated 26.2.1986. Thus, defendant no. 1 acquired 78 decimals of land and mutated his name and has been paying rent to the local *tahashil* office. Furthermore, Dhaka City survey *Khatian* No. 2973 was also recorded in the name of the defendant no. 1. The father of the defendant no. 1 further gifted 4.725 acres of the land to defendant no. 1 by *heba* deed no. 5737 dated 30.12.2004 and 6.0311 acres of land to the brother of defendant no. 1, namely, Md. Nazrul Islam by *heba* deed no. 5738 dated 30.12.2004. The plaintiff and her siblings mutually divided their inherited properties through an amicable partition deed no. 2292 dated 24.03.2011 and that partition resolved their shares from the properties inherited from their late father. The plaintiff and her other siblings gifted a piece of suit land to defendant no. 1 by deed no. 6113 dated 01.08.2023. So, the plaintiff has no right, title and possession over the suit land; rather defendant nos. 1 and 2 have absolute right, title and possession over the same. There is no *prima facie* case in favour of the plaintiff and hence, the application for temporary injunction is liable to be rejected.

Upon hearing the parties, the learned Joint District Judge, 4<sup>th</sup> Court, Dhaka rejected the application for temporary injunction by order dated 05.02.2024.

Being aggrieved by and dissatisfied with the impugned order dated 05.02.2024, the plaintiff, as appellant, preferred the instant First Miscellaneous Appeal before this Court. Subsequently, the appellant

filed an application for injunction. On 25.07.2024, upon hearing, this Court issued a rule and directed the respondents-opposite parties to maintain *status quo* in respect of possession and position and transfer of the properties described in schedules 'Ka', 'Kha', 'Ga' and 'Gha' to the plaintiff for a period of 03(three) months, which was lastly extended on 10.03.2025 for a further period of 06(six) months.

Mr. Feroz Alam, learned Advocate for the appellant contends that the learned Joint District Judge rejected the application for temporary injunction without properly considering the mandatory provisions governing the grant of temporary injunction.

He further contends that the trial Court failed to appreciate that there exists a *prima facie* case in favour of the plaintiff and that the balance of convenience and inconvenience also favours the plaintiff.

He next submits that Hazi Atahar Ali did not execute any *heba* deed in favour of the defendant no. 1 and 2 rather the defendant nos. 1 and 2 created and fabricated false *heba* deeds but the trial Court failed to consider the crucial aspect. With those submissions, the learned counsel finally prays for allowing the appeal and making the rule absolute.

*Per contra*, Mr. Md. Asaduzzaman, the learned Senior Advocate along with Mr. Abul Kalam Azad, the learned Advocate appearing on behalf of the respondents contends that the plaintiff has no right, title or possession over the suit land; rather the defendant nos. 1 and 2 have been enjoying the right, title and possession thereon. He further submits that after acquiring title and possession in the suit land by way of *heba*

*deeds* the defendant no.1 transferred a portions of the suit land to defendant nos. 20, 21 and 22.

He further submits that, there is no *prima facie* and arguable case in favour of the plaintiff and the balance of convenience and inconvenience is heavily against the plaintiff.

He finally submits that the Doctrine of *Lis Pendens* is very much applicable in this case and the trial Court very rightly passed the impugned judgment and order rejecting the application for temporary injunction upon due consideration of the facts and circumstances of the case. With those submissions, the learned senior counsel finally prays for dismissing the appeal and discharging the rule.

We have heard the submissions of the learned counsels for both sides, perused the Memorandum of Appeal, impugned judgment and order passed by the trial Court, application for temporary injunction, application for vacating the direction of *status quo* and other materials on record.

The plaintiff claimed that defendant no. 1 has been attempting to sell the suit property and if the defendants-respondents transfer the suit property during pendency of suit then multiplicity of proceedings shall arise and the plaintiff-appellant would suffer irreparable loss and injury in the event of any such transfer which cannot be compensated. It is also claimed that defendant no. 1 has already transferred some portion of the land to defendant nos. 20, 21 and 22. So, there is a *prima facie* and arguable case in favour of the plaintiff-appellant.



It appears from the record that the plaintiff filed the suit for partition of the suit land. Thereafter, she filed an application for temporary injunction and made out a *prima facie* case to have an order of injunction in her favour.

Although the learned senior counsel for the respondents laid emphasis that the principle of *lis pendens* would operate if the plaintiff eventually succeeds but such a position may create further hurdles for the plaintiff in recovering possession of the suit properly, which has already been transferred by defendant no. 1.

Whether the plaintiff and her siblings mutually divided their inherited properties by amicable partition deed and executed deed no. 6113 dated 01.08.2023 and whether she has any right and title in the suit land and whether she is entitled to have any *saham* in the suit land will be determined at the time of trial upon recording evidence. Justice will be best served if the order of *status quo* granted earlier by this Court be maintained till disposal of the suit.

Upon query, the learned Advocate for the respondents conceded and replied that the defendants-respondents did not move before the Appellate Division against the order of *status quo* dated 25.07.2024 passed by this Court.

Regard being had to the above facts and circumstances, we find that the impugned judgment and order dated 5.2.2024 passed by the learned Joint District Judge, 4<sup>th</sup> Court, Dhaka in Title Suit No. 386 of 2023 is not sustainable in the eye of law which is liable to be set aside.

Resultantly, the appeal is disposed of, however, without any order as to costs.

The judgment and order dated 05.02.2024 passed by the learned Joint District Judge, 4<sup>th</sup> Court, Dhaka in Title Suit No. 386 of 2023 is thus set aside.

Since the appeal is disposed of, the connected rule being Civil Rule No. 119 (FM) of 2024 is also disposed of.

The order of *status quo* granted by this Court on 25.07.2024 is to be maintained till disposal of Title Suit No. 386 of 2023 in respect of the possession and position and transfer of schedule 'Ka', 'Kha', 'Ga' and 'Gha' properties to the plaintiff.

The learned Joint District Judge, 4<sup>th</sup> Court, Dhaka is hereby directed to dispose of Title Suit No. 386 of 2023 on merit as expeditiously as possible, preferably within 06(six) months from the date of receipt of the copy of this judgment without giving any adjournment to any of the parties except in cases of extreme necessity.

Let a copy of this judgment be communicated to the Court concerned forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.