

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4790 OF 2024

In the matter of:

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

And

Hazi Bascha Mia

... Petitioner

-Versus-

Nurul Alam and others

... Opposite parties

None appears

... For the petitioner.

Mr. Md. Saifur Rahman, Advocate with

Mr. Ahmad Musanna Chowdhury,

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

Heard 13.08.2025 and Judgment on 26.08.2025.

This Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned judgment and order dated 16.07.2024 passed by the learned District Judge, Cox's Bazar in Misc. Appeal No.39 of 2024 dismissing the appeal and thereby affirmed the order dated 09.06.2024 passed by the learned Joint District Judge, 2nd Court, Cox's Bazar in Other Class Suit No.13 of 2024 rejecting the prayer for temporary injunction filed by the plaintiff-appellant-petitioner under Order 39 Rule 1 and 2 of the Code of Civil Procedure

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 pre-emption (Hoq Sofa) under the Mohammadan Law against three registered kabla deeds No.2449, 2451 and 2452 dated 29.11.2023 transferring total 0.1116 acres land. In above suit plaintiff submitted a petition under Order 39 Rule 1 of the Code of Civil Procedure for an order of temporary injunction against the defendants so that they cannot disturb peaceful possession of the plaintiff in above land or transfer above land to any other person. Defendant No.1 contested above petition for injunction by filing written objection alleging that above land is being possessed by the defendant and the plaintiff does not have any right, title, interest and possession in above land.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Joint District Judge rejected above petition.

Being aggrieved by above judgment and order of the trial Court above plaintiff as appellant preferred Miscellaneous Appeal No.39 of 2024 to the learned District Judge, Cox's Bazar who dismissed above appeal and affirmed the judgment and order of the trial Court.

Being aggrieved by above judgment and order of the Court of Appeal below above appellant as petitioner moved to this Court with

this Civil Revisional Application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although this matter appeared in the list for hearing on several dates.

Mr. Md. Saifur Rahman, learned Advocate for the opposite party No.1 submits that on consideration of facts and circumstances of the case and materials on record the learned Judges of both the Courts below concurrently held that the plaintiff does not have any prima facie title or possession in above disputed land and accordingly, the trial Court rejected above petition for injunction and the learned Judge of the Court of Appeal below dismissed above Miscellaneous Appeal and affirmed the judgment and order of the trial Court which calls for no interference.

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

As mentioned above petitioner as plaintiff instituted above suit for pre-emption or Hoq Sofa under the Mohammadan Law against three registered kabla deed Nos.2449, 2451 and 2452 dated 29.11.2003. The plaintiff of a suit for pre-emption under the Mohammadan Law by filing the suit admits the legality and validity of the impugned registered kabla deed by which the disputed land has been transferred. The plaintiff merely wants to pre-empt above land which

was sold by above impugned kabla deed. As such, the plaintiff admits lawful title and possession of the defendant in the disputed land on the basis of purchase by disputed kabla deed against which the plaintiff filed the suit for pre-emption.

As such, in a case for pre-emption the petitioner has no legal right to submit and maintain a petition under Order 39 Rule 1 of the Code of Civil Procedure for temporary injunction for restraining the defendant from entering into the possession of above land or disturbing the peaceful possession of the defendant in above land. The plaintiff shall get possession in above land only after getting a decree in the pre-emption case by execution of above decree through Court.

In above view of the facts and circumstances of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned District Judge nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is hereby discharged.

However, there will be no order as to costs.