

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4703 of 2024

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Salahuddin (Danish) and others

...Defendant-Petitioners

Versus

Rowshan Ara Begum and others

...Plaintiff-Opposite parties

Mr. Taposh Kumar Dutta, Advocate

... For the petitioners

Mr. Md. Faruque Ahammed, with

Mr. M.A. Mannan Bhuiyan and

Mr. Kawsar Ahmed, Advocates

... For the Opposite Party No. 1

Judgment on: 04.03.2026

Md. Riaz Uddin Khan, J:

At the instance of the defendants this Rule was issued asking the opposite party No.1 to show cause as to why the impugned judgment and order dated 23.05.2024 passed by the Additional District Judge, 7th Court, Dhaka in Miscellaneous Appeal No. 65 of 2024 disallowing the appeal and thereby affirming the judgment and order dated 11.02.2024 passed by the Senior Assistant Judge, 3rd Court, Dhaka allowing an application for temporary injunction under Order-XXXIX, Rule-1 & 2 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule the operation of the judgment and order dated 11.02.2024 passed by the

Senior Assistant Judge, 3rd Court, Dhaka was stayed initially for a period of 03(three) months which was extended time to time.

Facts in brief for disposal of this Rule is that the present opposite party no.1 being plaintiff filed Title Suit no. 1886 of 2008 in the court of Joint District Judge, 4th Court, Dhaka praying for the decree of partition which was transferred to the learned Senior Assistant Judge, 3rd Court, Dhaka and renumbered as Title Suit No. 266 of 2022. In the suit the plaintiff on 20.04.2008 filed an application under Order 39 Rule 1 & 2 read with section 151 of the Code of Civil Procedure for temporary injunction restraining the defendants 2-10 from demolishing the old structures and from doing any new construction over the suit property and from changing the nature and character of the suit property and from transferring the same. The Trial Court upon hearing the plaintiff issued show cause notice by order dated 24.04.2008 against which the defendants filed written objection on 03.06.2008. The plaintiff filed an application on 12.05.2008 under section 151 of the Code of Civil Procedure for an order of status-quo; upon hearing the same the Trial Court passed an order on 19.03.2013 directing the parties to maintain status-quo. The injunction application was fixed for hearing on 28.04.2014, on that date the plaintiff being absent the temporary injunction application was rejected.

The plaintiff again on 23.07.2014 filed another application under Order 39 Rule 1 & 2 along with section 151 of the Code of Civil Procedure against the defendant nos. 2-10, 11(Ka)- 11(Cha), 12 and 13 for temporary injunction restraining them from transferring the suit property and from doing any new construction over there. The learned Trial Court upon hearing the plaintiff passed an order on 24.07.2014 as follows *"Seen, Heard the Ld Counsels and perused the record. It appears from the record*

that this Court issued an order of status-quo earlier on 19.3.13 and the same is hereby from date will be hearing in the injunction order.” Thereafter the learned Court on 11.08.2014 made the interim status-quo order absolute.

That the temporary injunction application was ultimately fixed on 05.01.2024 for hearing. The Trial Court ultimately upon hearing the parties passed the impugned order dated 11.02.2024 allowing the temporary injunction application in the modified form directing both the parties to maintain status-quo in the suit property.

Being aggrieved by the aforesaid order dated 11.02.2024 the defendants filed Miscellaneous Appeal No. 65 of 2024 before the Court of learned District Judge, Dhaka along with an application for stay of the impugned order. The learned District Judge upon preliminary hearing admitted the appeal and stayed the impugned order of the Trial Court vide order dated 27.03.2024. The miscellaneous appeal was subsequently transferred to the learned Additional District Judge, 7th Court, Dhaka for disposal who upon hearing the parties was pleased to pass the impugned judgment and order dated 23.05.2024 dismissing the appeal on contest and thereby affirming the judgment and order passed by the trial court.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 23.05.2024 passed by the Additional District Judge the defendant petitioners filed the instant civil revision and obtained the rule and order of status-quo as stated at the very outset.

Mr. Taposh Kumar Dutta, learned advocate appearing for the defendant petitioners submits that the plaintiff filed the suit for partition for number of twelve schedules from which the property of number of five schedules were included into the 'Ka' list of vested property gazette; in the context, as per law the suit has become abated in respect of those properties and accordingly schedule of the

plaint was amended but the schedule of the application for temporary injunction was not amended. According to the provision of Arpita Sampatti Protyarpon Ain, 2001 (as amended in 2011) no court of civil jurisdiction can pass any order in respect of any property enlisted in the 'Ka' list of a gazette and any such order and judgment is a nullity according to section 13 of that law. Both the learned Courts below failing to consider this legal embargo passed the impugned judgments and orders committing error of law resulting in an error in decision occasioning failure of justice.

The learned advocate then submits that the suit being one for simple partition all the defendants and plaintiffs stand on same footing and status; in the context the defendants who are the admitted co-sharers cannot be restrained by an order of injunction from demolishing the old building and from doing new construction and thereby developing the suit land situated at Shankhari Bazar, in the heart of Dhaka city. Both the Courts below failing to appreciate this factual and legal aspect passed the impugned judgment and orders.

The learned advocate next submits that admittedly the suit property is in a dilapidated condition situated at the Shankhari Bazar under Dhaka City Corporation which is a thickly populated area and if any earthquake of dangerous grade happens most of the building will be collapsed and may cause huge loss of life and property and both the learned Courts below failing to consider this factual position of the property passed the impugned judgment and orders.

Mr. Dutta further submits that it is settled that as the partition suit yields a long pending proceedings, the defendants of such suit should not be restrained to develop the suit property situated in urban area; it is also settled that due to scarcity of land in urban area the

defendants in a partition suit should not be restrained by an order of injunction from developing the property stating the cause that if the defendants are allowed to do an development work that will not decrease the value of the suit property and in that case there is no chance for the plaintiff to be deprived as he, if be allotted any saham, will get a more valuable property.

The learned advocate also submits that the trial court allowed the temporary injunction application in a modified form directing both the parties to maintain status-quo in the suit property but the court did not specify the terms of status-quo which is vague and obscure and not maintainable in the eye of law and the appellate court below should have set aside the said order.

Mr. Dutta finally submits that without considering the peculiar facts and circumstances of the present case both the courts below passed the order of status-quo without considering that the suit land is situated in the heart of Dhaka old city and the structures are in a dilapidated condition which requires innovation and or reconstruction and the defendants cannot be restrained for an indefinite period. In support of his submissions the learned advocate cited series of decisions passed by our superior courts: the case of Nasir Uddin (Md) vs. Abul Kalam, former Chief Engineer of Chittagong Development Authority and others reported in 8 BLC(AD)156 and the case of Abul Kalam Engineer and another vs. M. Nasir Uddin in 54 DLR 515, the case of Fahim Al Haque (Minor) and another vs. Mohammad Abdul Aziz and others in 43 DLR 226, the case of Mofazzal Hossain (Md) and another vs. Mainuddin being dead his legal heirs Samsi Begum and others in 3 BLC (AD)78 and in the case of Fazlu Hoque Patwary (Md) and others vs. Md. Rezaul Hoque Patwary and others reported in 59 DLR 115.

On the other hand, Mr. Md. Faruque Ahammed with Mr. M.A. Mannan Bhuiyan and Mr. Kawsar Ahmed, the learned

advocate appearing for the opposite party submits that since it is a suit for partition and the defendants are enjoying the share much more of their legal entitlement and now trying to make construction and/or to sell the property as such the trial court considering all aspect of the case passed the impugned order which has been affirmed by the appellate court and this Court sitting in revision should not interfere with the said judgment and orders.

Mr. Ahammed next submits that the parties may be directed to maintain status-quo in respect of the possession of the suit land and the trial court may be directed to dispose of the suit within a time fixed by this Court. The learned advocate further submits that the decisions cited by the learned advocate for the petitioners are not applicable in the present case as those facts in the cited decisions are distinguishable from the facts of the present case.

I have heard the arguments advanced at the bar, perused the application, supplementary affidavit along with the annexures. The contesting opposite party did not file any counter affidavit.

It appears from record that on an application under Order-XXXIX, Rule-1 & 2 read with section 151 of the Code of Civil Procedure initially an order of status-quo was passed but ultimately rejected for non appearance of the plaintiff petitioner and thereafter again an application under Order-XXXIX, Rule-1 & 2 read with section 151 was filed for temporary injunction which was pending for long time and ultimately disposed of on 11.02.2024 directing the parties to maintain status-quo till disposal of the suit and the trial court expected that the trial could be concluded soon. On appeal the appellate court cited a decision reported in 3 SCC 161 wherein Indian Supreme Court observed that:- *the court shall grant the relief only when it is satisfied that the applicant will suffer irreparable*

Loss or injury if the other party is not restrained as prayed for. The Court should always be willing to extend its hands to protect a citizen who is being wronged or is being deprived of any property without due course of law. The appellate court held that considering the prima facie case the trial court passed the order of status-quo till conclusion of the trial which is proper and finally dismissed that appeal.

It further appears from record that the suit for partition was initially filed with number of twelve schedules but after publication of number of five schedules land in the Gazette regarding the vested property, following the provision of section 13 of the Arpita Sampatti Protyarpon Ain, 2001 number of five schedules property was excluded by amendment of the plaint and there remains number of seven schedules land. But in the application for temporary injunction all the property which was earlier scheduled in the suit was included and without any application of mind the trial court passed the order without specifying the land upon which the parties should maintain status-quo. Though this specific ground was taken by the appellants before the appellate court but without any finding in this regard the impugned judgment and order has been passed.

It is a general rule that in a suit for partition amongst the co-sharers, injunction is not the option and the court should not lightly allow any application for injunction except in a very rare case. It is now settled that in the present day scarcity of accommodation in urban areas, a co-sharer in possession should not be deprived of using the land in his possession by making construction at his own risk which is a subject matter in the suit for partition. In a partition suit the question of temporary injunction against construction was considered in the

case of Ali Ahmed Vs Rezia Begum and others reported in 1986 BLD 326 and rejecting the prayer for injunction their lordships of a Division Bench observed:

In our view, the nature and character of a suit land in urban areas may be allowed to be changed pending decision in partition suits by improvements but no change in the nature and character of the suit land which would diminish the value of the land or cause prejudice to the other co-sharers should be allowed. In the present-day scarcity of the accommodation in the urban areas a co-sharer should not be deprived of using the land in his possession by making constructions at his risk. If a co-sharer makes a construction in his possession on a land which is a subject matter in the suit for partition, he may do so at his risk and peril; if co-sharer chooses to make a construction at his own risk he should not be restrained from making constructions. If any portion of the constructed area falls in the saham of another co-sharer, the possession thereof shall be given to the allottee by demolition of the construction.

Similar view was taken by another Division Bench in the case of Fahin Al Haque & another Vs Mohammad Abdul Aziz & others, 43 DLR 226 rejecting the prayer for injunction. In the case of Mofazzal Hossain reported in 3 BLC (AD) 78 the Supreme Court, Appellate Division upheld the decision of the Supreme Court, High Court Division rejecting prayer for injunction against

construction in urban area considering the decision in Ali Ahmed case. The similar views were expressed in the case of Abul Kalam Engineer, 54 DLR 515 (supra) which was upheld by the apex Court, 8 BLC (AD) 156 (supra) and 24 BLC 41 (supra).

In the present case the possession of the defendants are not denied but it is claimed by the learned advocate for the plaintiff opposite party that the defendants are enjoying more lands of their shares. It is also cannot be denied that the suit property is situated at Shankhari Bazar, a densely populated area of Dhaka City Corporation which off course an urban area. It has also not been controverted or countered the submission of the petitioners that the suit land is situated in the heart of Dhaka old city and the structures are in a dilapidated condition which requires innovation and or re-construction. Both the courts below has failed to consider all these aspects of the case and by allowing the temporary injunction in the modified form, asking the parties to maintain status-quo in respect of all the properties of the scheduled in the application, has committed gross error of law resulting in an error in decision which occasioned gross failure of justice and liable to be interfered with by this Court.

The petitioners by filing supplementary affidavit annexed the order sheets of the trial court and it appears from the last order no.129 dated 16.11.2025 that the trial court fixed 12.03.2026 as next date for examination of PW-1, the plaintiff. The original suit was filed in the year 2008 but is still in a preliminary stage, though at the time of passing the order of status-quo on 11.02.2024 the trial court expected to conclude the trial soon but in the mean time more than two years have elapsed.

In such view of the facts and circumstances of the case and the position of law as described above I am inclined to interfere with the impugned judgment and order passed by the court of appeal below affirming the order of the trial court. The defendant-petitioners have succeeded in showing the merits of the case as such the instant Rule merits consideration by this Court.

In the result the Rule is made **absolute**. However, without any order as to cost.

The trial court is directed to conclude the trial as early as possible keeping in mind that this suit was originally filed in the year of 2008.

Communicate the judgment and order at once.