

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 5222 of 2024

Sahab Uddin

..... Petitioner

-Versus-

Most. Saleha Mahbuba Chowdhurani

..... Opposite-Party

Mr. Md. Abdul Karim, Advocate

... For the Petitioner

Mrs. Nusrat Jahan, Advocate

... For the Opposite Party

Judgment on 12.03.2025

In this revision Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 30.01.2024 passed by the learned Additional District Judge, 6th Court, Chattogram in Miscellaneous Appeal No. 219 of 2023 disallowing the appeal and thereby affirming the order No. 24 dated 13.04.2023 passed by the learned Senior Assistant Judge, Sitakunda Court, Sadar, Chattogram in Other Suit No. 1270 of 2021 allowing the application for temporary injunction and also directing the defendant to vacate the suit land should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. Opposite party Most. Saleha Mahbuba Chowdhurani filed Other Suit No. 1270 of 2021 in the Court of learned Senior Assistant Judge, Sitakunda Court, Sadar, Chattogram, against the present petitioner as defendant for a decree of permanent injunction in respect of schedule-1(ka) land under R.S. Khatian No. 60, Plot No. 7037 corresponding to B.S. Khatian No. 1904, Mutation Khatian No. 4117, Plot No. 9699 measuring 24 sataks of land giving definite boundary. On the very day of filing suit the plaintiff filed an application under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure praying for temporary injunction against the defendant in the following terms:

“অতএব প্রার্থনা হজুর আদালত কৃপাবিতরণে উপরোক্ত কারণে ন্যায় বিচারের স্বার্থে অত্র মামলা নিষ্পত্তি না হওয়া পর্যন্ত বিবাদী কর্তৃক জোর পূর্বক ও বেআইনীভাবে ১(ক) তফসিলোক্ত সম্পত্তিতে প্রবেশ না করার জন্য, বাদী ও তৎ বর্গাদারকে ১(ক) তফসিলোক্ত সম্পত্তি হইতে বেদখল না করার জন্য, বাদীর শান্তিপূর্ণ ভোগ দখল ও চাষাবাদে বিঘ্ন সৃষ্টি না করার জন্য বিবাদীকে অস্থায়ী নিষেধাজ্ঞার আদেশ দ্বারা বারণ করার আদেশ হয়;

এবং

ইতিমধ্যে মামলার গুরুত্ব ও জরুরীত্ব সদয় বিবেচনাক্রমে বিবাদীকে কারণ দর্শানোর নির্দেশসহ উপরোক্ত প্রার্থনা মতে অন্তর্বর্তীকালীন নিষেধাজ্ঞার আদেশ দ্বারা বারণ করার আদেশ হয়।”

The trial court after hearing application for injunction issued notice to show cause to the defendant, subsequently, the plaintiff filed an application on 28.11.2022 for putting up the record and prayed for passing

an ad-interim order of injunction restraining the defendant from dispossessing the plaintiff, cutting trees, making any construction and from disturbing the plaintiff in anyway till disposal of main application for injunction. The trial court after hearing issued notice to show cause for 15 days to the defendant as to why an order of temporary injunction shall not be granted as prayed for, in the meantime, passed an order directing both the parties to maintain status quo in the like form. The order was duly communicated and served upon the defendant. After passing an order of status quo, the plaintiff filed an application praying for appointing an Advocate Commissioner for inspection of the suit property on the points given in the application. The trial court appointed an Advocate Commissioner named Dilder Ahmed Bhuiyan who after receiving writ, served notice upon the defendant on 04.10.2022 fixing on 08.10.2022 for holding local inspection. Accordingly, on the date fixed learned Advocate Commissioner went to the spot and after holding inspection furnished report in the court stating the present nature, feature and character of the property.

The defendant appeared in suit and filed written objection on 01.12.2022 against the application for temporary injunction denying claim

of the plaintiff. The plaintiff by filing an application on 28.03.2023 claimed that the defendant during substance of order of status quo entered into the suit land and started construction violating the order of injunction. Consequently, prayed for an order against the defendant to maintain status quo ante by removing the structure from the suit land. The defendant filed written objection against the application for mandatory injunction on 13.04.2023 denying the allegations brought by the plaintiff. The trial court took the matter of temporary injunction and mandatory injunction for hearing and after hearing the parties by its judgment and order dated 13.04.2023 allowed application for temporary injunction and restrained the defendant by an order from dispossessing the plaintiff from the suit land, from changing the nature and character of the suit land, by erecting any structure, from cutting down the trees and from interfering with the peaceful possession of the plaintiff till disposal of the suit and directed the defendant to vacate the possession of the suit land in favour of the plaintiff by removing the structures thereon within 21 (twenty one) days from date, failing which the plaintiff will get the possession thereof by demolishing the structures standing thereon through the court.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the defendants preferred Miscellaneous Appeal No. 219 of 2023 before the District Judge, Chattogram. Eventually, the appeal was transferred to the court of learned Additional District Judge, 6th Court, Chattogram for hearing and disposal who after hearing by the impugned judgment and order dated 30.01.2024 dismissed the appeal maintaining order of the trial court. At this juncture, the defendant-appellant-petitioner moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay and status quo.

Mr. Md. Abdul Karim, learned Advocate appearing for the petitioner submits that the property in question is ejmali property of the petitioner and his sister Shamsun Nahar who got the same by way of inheritance. Since the property has not been legally partitioned by metes and bound no injunction is maintainable against a co-sharer of the property.

He submits that the plaintiff in suit is a stranger to the property who purchased a portion of land from his sister Shamsun Nahar and got no possession at all. The petitioner has been possessing the suit property, as

such, there is no question of dispossession of the plaintiff and the trees standing on the suit property are all belonging to the defendant, as such, there was no question of violation of order of injunction and construction of any building violating the order of the court.

He submits that plaintiff's vendor Shamsun Nahar inherited only 8 decimal of land out of 24 decimals. Both the courts below while allowing application for injunction both temporary and mandatory failed to appreciate that the structure whatever standing on the suit property are in the share of the petitioner measuring 16 sataks. It is also argued that for maintaining a suit for injunction the plaintiff is to prove that she has a prima facie case entitling her to get an order of injunction, but in the instant suit, the plaintiff could not prove her prima facie case as well as possession in the suit property, as such, the impugned judgment and order passed by both the courts below are liable to be set aside.

Mrs. Nusrat Jahan, learned Advocate appearing for the opposite party submits that maintainability of a suit is matter of adjudication by evidence. She submits that it is fact that the plaintiff filed the instant suit for a decree of permanent injunction and filed an application praying for temporary injunction against the defendant. The trial court after hearing

issued notice to show cause for 15 (fifteen) days to the defendant and considering urgency of the matter passed an order of status quo directing both the parties in respect of possession and position, nature and character of the suit property. The defendant appeared in suit, filed written objection against the application for temporary injunction, in the meantime, the plaintiff got the property inspected through court by an Advocate Commissioner who furnished a report finding that the suit property measuring 24 sataks lying vacant having some trees at a portion of the land, there was no structure at all. After filing written objection the defendant by entering into the suit land started pucca construction and raised 16 pillars and cast the roof. Thereafter, the plaintiff in suit, because of such act of the defendant has become compelled to file an application on 02.01.2023 praying for passing an order against the defendant to maintain status quo ante and filed an application for further inspection of the suit property. The trial court appointed one Mr. Monir Ahmed (Mamun) as Advocate Commissioner for holding local inspection who after giving notice to both the parties on 20.02.2023, went to the spot on 25.02.2023 at 10 o'clock and after holding inspection he filed report in the court on 14.03.2023, finding that the defendant started construction on the

west part of suit land and raised 16 pucca pillars and cast the roof and also found some construction materials lying here and there position of which have been shown in the attached sketch map.

She submits that the trial court heard the matter at length and considering all the facts and circumstances and report of both the Advocate Commissioners by its judgment and order dated 13.04.2023 allowed both the applications for temporary injunction and also application for directing the defendant to maintain status quo ante. On appeal the appellate court concurred with the findings and observations of the trial court and consequently dismissed the appeal affirming the order of the trial court.

She submits that both the courts below while allowing both the applications rightly observed that the defendant after passing order of status quo ought to have respected the order of the court and maintain status quo till disposal of the application for injunction or till disposal of the suit as this is a suit for simple injunction, but he did not obey the order of the court. As such, the courts below committed no illegality and error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, application for temporary injunction and mandatory injunction, written objections to both the applications, local inspection reports annexed to the counter affidavit and order of status quo passed on 28.11.2022.

This is a suit for simple injunction against the sole defendant. The plaintiff claimed that she purchased the suit plot in its entirety measuring 24 sataks from sister of the defendant named Shamsun Nahar by a registered deed No. 1360 dated 15.04.2001. On the same day Shamsun Nahar also executed and registered another deed of Khati Niskritinama No. 1361 in favour of the plaintiff declaring that in the event of any shortfall in the title of the seller, the plaintiff will get the property from other plots of land owned by Shamsun Nahar. After purchase she got possession of the suit property and has been possessing the same by cultivating and planting various trees by engaging workers. When the defendants threatened the plaintiff with dispossession and construction of house thereon, the plaintiff filed the instant suit for injunction. The plaintiff also filed an application for temporary injunction on the very day

of filing of the suit which was pending for hearing. On 28.11.2022 the plaintiff filed an application for putting up the file and prayed for an ad-interim injunction till disposal of application under Order 39 Rules 1 and 2 read with Section 151 of the Code.

The trial court heard the application and after hearing passed an order directing both the parties to maintain status quo in respect of possession and position of the suit property. Thereafter, the defendant entered into appearance and filed written objection against the application for injunction. Without awaiting for hearing of the injunction matter, during subsistence of order of status quo, the defendant entered into the suit land, started construction of pucca house thereon. Consequently, the plaintiff came with an application for an order directing defendant to restore status quo ante. After passing order of status quo the plaintiff got the suit property inspected through court by appointing an Advocate Commissioner who after holding inspection submitted report on 08.10.2022 and after filing application for an order directing defendant No. 2 to restore status quo ante, the plaintiff again got the suit property inspected through court by appointing another Advocate Commissioner who after holding inspection submitted report on 14.03.2023. The

defendant filed written objection against the application for mandatory injunction. The trial court heard both the matters for injunction and mandatory injunction and after hearing by its judgment and order dated 13.04.2023 allowed both the applications. While the trial court allowing the application for injunction and mandatory injunction observed that on 28.11.2022 the court passed an order directing both the parties to maintain status quo in respect of position and possession of the suit property. Thereafter, position of the suit property was inspected by an Advocate Commissioner who furnished report, wherein, the court found that the suit property was lying vacant without any construction, but there were some trees standing on a portion of the suit property. After filing an application for mandatory injunction the plaintiff again prayed for local inspection, accordingly, local inspection was held and the learned Advocate Commissioner furnished report on 13.04.2023 finding that on a portion of the suit plot, the defendant started construction of a building, raised 16 pillars and cast the roof and there were lying some construction materials on the suit property.

The defendant though filed written objection against the application for mandatory injunction did not utter a single word that he has not

violated the order of injunction or there is no pucca construction or 16 pillars and casting roof, but he only stated that the property is ejmali property there is no partition by metes and bound between co-sharer, as such, no suit for injunction is maintainable against him, but the question has to be decided by the court whether after passing an order of status quo, the defendant wilfully violated the same entering into the suit land, started construction on the suit property and changed the nature and character of the same. Nothing denied in his written objection regarding violation of order of injunction, entering into the suit land, cutting trees and construction of building.

In the absence of any positive case on the part of the defendant and denial of structures found by the Advocate Commissioners at the time of holding inspection, the trial court rightly found that the defendant intentionally, wilfully disregarding the order of the court made construction in the suit property. Such act and conduct of the defendant is not liable to be condoned in anyway. To maintain sympathy and supremacy of the judiciary and the order passed by the court such act and conduct of the party to the proceeding is a despicable attempt to the smooth functioning of judicial act, as such, the trial court rightly passed

an order restraining the defendant by a temporary injunction and directing him to restore status quo ante to save the parties and the judiciary from further aggravation. The appellate court on appeal rightly affirmed the judgment and order of the trial court concurring the findings of the trial court.

I have gone through the judgment and orders of both the courts below. The trial court in allowing both the applications for injunction and mandatory injunction discussed the cases of both the parties at length and rightly found that the defendant taking law in hand, most unfortunately violated the order of the court wilfully and made construction on the suit property.

This is a suit for injunction, if the defendant is allowed to continue construction of building on the suit property, the suit in its very inception will become redundant and the reliefs sought for will be infructuous unless the possession of the property is restored in its original position.

In the case of *Azizur Rahman Chowdhury (Md) vs. Tauhiduddin Chowdhury and others* reported in *16 BLC (AD) 26*, our apex court held that quoting another decision reported in *35 DLR (AD) 42*

“If a party to a suit does an act to bring about a change in the state of things existing at the date of the suit or just prior

to that date, in order to forestall a possible order of the court, the Court may, in an appropriate case, in exercise of its inherent power, require the offending party, by issuing a temporary injunction in mandatory form to restore the status quo ante. This principle is in consonance with fair administration of justice and this power of making an order of mandatory injunction on an interlocutory application may be exercised, irrespective of the merits of the main case as it is one of the main concerns of a Court of law to see that no one dares to interfere with the course of justice by presenting the Court with a fait accompli.”

Taking into consideration the above, I find no merit in the rule, as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule is discharged however, without any order as to costs.

The order of stay and status quo granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to proceed with the case and dispose of the same in accordance with law.

Communicate a copy of this judgment to the court concerned at once.