

**District-Faridpur.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No.3700 of 2024.**

Mina Akter and others.

----- Plaintiff-Appellant-Petitioner.

-Versus-

Md. Omar Ali Khan and others.

----- Defendant No.37-Respondent-Opposite-Party No.1.

No one appears.

----- For the Plaintiff-Appellant-Petitioners.

Mr. Ashoke Kumar Bose with

Mr. Sanower Rahman, Advocates.

----- For the Defendant-Respondent-Opposite Party.

**Heard On: 07.07.2025**

**And**

**Judgment Delivered On: 15.07.2025.**

**Md. Toufiq Inam, J.**

Following an application under section 115(1) of the Code of Civil Procedure (CPC), this Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 23.04.2024 passed by the learned District Judge, Faridpur in Miscellaneous Appeal No. 07 of 2024, dismissing the appeal and thereby affirming the order dated 18.03.2024 passed by the learned Senior Assistant Judge, Sadar, Faridpur, transferred from the Court of the learned Assistant Judge (Acting), Alfadanga, Faridpur, in Title Suit No. 25 of 2022 (renumbered from Title Suit No. 08 of 2009), rejecting the petitioner's application for temporary injunction under

Order XXXIX Rules 1 and 2 of the CPC, should not be set aside, and/or why such other or further orders should not be passed as to this Court may seem fit and proper.

The petitioner, as plaintiff, instituted Title Suit No. 89 of 2009, which was subsequently renumbered as Title Suit No. 25 of 2022, in the Court of the Senior Assistant Judge, Faridpur, seeking partition of the land described in the schedule to the plaint against defendant-opposite parties Nos. 1–36. During pendency of the suit, the plaintiff-petitioner filed an application under Order XXXIX Rules 1 and 2 of the CPC, seeking temporary injunction against added defendant No. 37, a developer engaged by defendants, restraining it from constructing a multi-storied building and thereby altering the nature and character of the suit land.

Upon hearing the parties, the learned trial Court rejected the application for temporary injunction by order dated 18.03.2024. Aggrieved thereby, the plaintiff-petitioner preferred Miscellaneous Appeal No. 07 of 2024 before the learned District Judge, Faridpur, which was also dismissed by the impugned judgment and order dated 23.04.2024, affirming the order of rejection passed by the trial Court.

Being dissatisfied with the concurrent findings of the courts below, the petitioner approached this Court under its revisional jurisdiction and obtained the present Rule.

This matter has appeared in the daily cause list on multiple occasions with the names of the learned Advocates for both sides. However, despite repeated calls, the learned Advocate for the petitioner did not appear to press the Rule. In contrast, Mr. Ashoke Kumar Bose, learned Advocate for the opposite-party No. 1 (defendant No. 37), has made submissions on behalf of the opposite party. The matter has also

posted in the list for judgment with the date of delivery duly notified, yet no one on behalf of the petitioner appeared to advance arguments. Considering that the matter involves an interlocutory issue, this Court deems it appropriate to dispose of the Rule on merit.

In the revisional application, the petitioner has asserted that the appellate Court below dismissed the Miscellaneous Appeal by introducing a new or “third” case not argued or pleaded by either party, and thus acted illegally and with mala fide intent. The petitioner prayed that the defendant No. 37 be restrained by an order of injunction from proceeding with the construction work over the suit land and from altering the nature and character of the land, pending disposal of the suit.

It is further asserted that both the courts below failed to properly consider that the balance of convenience lies in favour of the plaintiffs, and that a prima facie and arguable case exists in their favour. The petitioner argued that denial of temporary injunction has caused irreparable loss and has resulted in miscarriage of justice. It is also claimed that if construction is allowed to proceed, the plaintiffs may be permanently dispossessed from the suit land.

In response, Mr. Ashoke Kumar Bose, appearing with Mr. Sanower Rahman on behalf of opposite-party No. 1 (defendant No. 37), submitted that both courts below correctly found that the plaintiffs claim 8.71 decimals of land as heirs of Begum Nurun Nahar Banu, the original owner. Since the suit is one for partition based on inheritance and title is yet to be determined, the plaintiffs cannot, at this stage, seek to restrain other co-sharers, who are also parties to the suit, from using or developing the land, unless and until their specific share and exclusive possession are established. Accordingly, both the trial Court and the appellate Court rightly refused to grant the injunction.

It is well-settled that where the appellate court affirms the findings of the trial court, the revisional court should exercise restraint and may interfere only when there is a manifest error of law or where the subordinate courts have acted in excess of jurisdiction or have caused gross failure or miscarriage of justice.

Upon hearing the learned Advocate for the opposite-party No. 1, and upon perusal of the revisional application, including the grounds stated therein and all relevant materials on record, particularly the impugned judgments and orders, this Court finds that both the trial Court and the appellate Court have passed well-reasoned orders. Since the plaintiff's title and entitlement to a specific share of the suit land is yet to be adjudicated, and given that the land is admittedly undivided and jointly owned with other co-sharers, the prayer for temporary injunction seeking to prevent construction on land not shown to be under the plaintiffs' exclusive possession is misconceived. In absence of proof of exclusive possession, no injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure can be granted.

Moreover, it is well-established that co-sharers in joint property have equal rights over every portion of the undivided land until partition is effected by metes and bounds. One co-sharer cannot seek to prevent another from exercising their possessory rights, such as construction or use, unless a clear case of exclusive possession, ouster, or irreparable harm is demonstrated. In the present case, the plaintiff has neither proved exclusive possession over the suit land nor shown that the acts of the defendant are illegal or beyond their rights as a co-sharer. The mere pendency of a partition suit, without more, is insufficient ground to restrain lawful use of jointly owned property. Courts must avoid granting injunctions that unduly restrict co-owners

in the legitimate exercise of their property rights in the absence of compelling reasons.

Accordingly, this Court finds no substance in the Rule, which stands discharged. There will be no order as to costs.

The order of status quo granted earlier by this Court is hereby recalled and vacated.

Let this order be communicated to the courts concerned at once.

**(Justice Md. Toufiq Inam)**

Sayed. B.O.