

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 75 of 2025
with
(Civil Rule No. 511 (FM) of 2024)**

In the matter of:

Jahanara Begum and others

... Plaintiffs-Appellants

-Versus-

Md. Ashikur Rahman and others

... Defendants-Respondents

Mr. Abul Monsur Azad with

Ms. Jobaida Gulshan Ara, Advocates

... For the appellants-petitioners

Mr. Md. Habibur Rahman, Advocate with

Mr. Md. Atikur Rahman, Advocate with

Mr. Mridul Dutta, Advocates

... For the respondents-opposite party nos. 1-2

Heard on 16.03.2025

Judgment on 17.03.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

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

At the instance of the plaintiffs in Title Suit No. 192 of 2023, this appeal is directed against the order no. 12 dated 29.05.2024 passed by the learned Joint District Judge, 4th Court, Dhaka in the above-mentioned suit rejecting an application filed by the plaintiffs under Order 40, Rule 1 of the Code of Civil Procedure for appointment of receiver.

The salient facts leading to preferring this appeal are:

The appellants as plaintiffs filed a suit for partition in the suit land seeking following reliefs:

(ক) নালিশী সম্পত্তিতে মোঃ হাবিবুর রহমানের ওয়ারিশ হিসাবে ১নং

বাদী $\frac{১}{৮}$ বা $\frac{৯}{৭২}$ অংশ, ২-৬নং বাদীগণ প্রত্যেকে $\frac{৯}{৭২}$, ১ ও ২নং বিবাদী

প্রত্যেকে $\frac{১৪}{৭২}$ অংশ হিসাবে প্রাপ্ত হবেন মর্মে বিবাদীদ্বয়ের বিরুদ্ধে বাদীগণ

ও বিবাদীদ্বয়ের মধ্যে এক বন্টনের প্রাথমিক ডিক্রী দিতে;

(খ) প্রাথমিক ডিক্রীর মর্ম মতে বিবাদীদ্বয় ভাগ বন্টন করিয়া না দিলে

এডভোকেট কমিশনার নিয়োগক্রমে সরেজমিনে বাদীগণ ও বিবাদীদ্বয়ের

প্রাপ্য অংশ দখল বুঝাইয়া দিয়া পৃথক পৃথক ছাহাম প্রদানের এক চূড়ান্ত

ডিক্রী দিতে;

(গ) মোকদ্দমার যাবতীয় খরচ বিবাদীদ্বয়ের বিরুদ্ধে ডিক্রী দিতে;

(ঘ) আইনতঃ ও ন্যায়তঃ বাদীগণ আর যে সকল প্রতিকার সমূহ পাইতে

হকদার তৎমর্মে ডিক্রী দিতে হুজুরের মর্জি হয়।

In the suit, the defendants entered appearance by filing a written statement denying the case of the plaintiff. Subsequently, on 05.03.2024 the plaintiff filed an application under Order 40, Rule 1 of the Code of

Civil Procedure for appointment of a receiver regarding the suit properties.

It is stated in the application that the scheduled properties described in the plaint originally belonged to one, Md. Habibur Rahman, who died leaving behind one wife, five daughters and two sons. After his demise, the plaintiff no.1 got $\frac{1}{8}$ th share and those of the plaintiffs no. 2-6 as $\frac{7}{72}$ th share while defendant nos. 1-2 as $\frac{14}{72}$ th share who are now possessing such properties. But the documents pertaining to ownership of the scheduled properties are lying with the defendants and as the plaintiff asked for a photocopy of the same, the defendants have refused to provide the documents. Rather, they are enjoying the rent out of the building/market located in the suit land as described in schedule 'Ka' and 'Kha' to the plaint that comes to Taka 6,50,000/-. After that, when the plaintiff no. 1 requested the defendants to distribute proportionate income coming out of the scheduled properties to maintain her family as she lost her husband and has no other means to make ends meet, and when the plaintiff nos. 2-6 also made same demands yet the defendants did not pay any heed to the request, hence the plaintiffs filed the suit. After filing the suit, they also filed an application for appointment of a receiver.

On 03.03.2016 the defendants filed a written objection against the said application denying all the material averments so made in the application and prayed for rejecting the same.

The learned Joint District Judge, 4th Court, Dhaka after hearing the parties ultimately rejected the application vide impugned order dated 29.05.2024.

Being aggrieved by and dissatisfied with the said order passed by the learned Joint District Judge, the plaintiffs as appellants preferred this appeal. After preferring the appeal, the appellants as applicants also filed an application for stay of the impugned order dated 29.05.2024 and this Court vide order dated 15.10.2024 issued rule which gave rise to Civil Rule No. 511(FM) of 2024.

Mr. Abul Monsur Azad, the learned Advocate appearing for the plaintiffs-appellants contends that the *Wasiyat Nama* on which the defendants based their title is fabricated and forged. Where, a Muslim cannot execute a *Wasiyat Nama* over $\frac{1}{3}$ rd share of his entire property and thus the alleged *Wasiyat Nama* is an illegal document and void *ab initio* for which, the plaintiffs have also compelled to file a separate Title Suit before the learned Joint District Judge, 4th Court, Dhaka which is now pending but the trial Court without considering such vital aspects, rejected the application for appointment of receiver.

He further contends that the plaintiff no.1 is a very old lady and sick and she has to incur more than taka one lakh per month as of treatment costs even though she is being deprived of getting her proportionate monthly rent from 'Ka' and 'Kha' scheduled properties which the defendants have been misappropriating and therefore, a receiver should be appointed immediately.

However, in support of his contention, the learned Advocate for the appellants relied upon the decisions passed in the cases of *Nurul Hossain Vs. Hasan Banu*, reported in 35 DLR (1983) and *Mohammad Moslem Khan and others Vs. Mohammad Mohsin Khan and others*, reported in 7BLT (AD)(1999) 101.

With those submissions, the learned counsel finally prays for allowing the appeal and making the Rule absolute.

Per contra, Mr. Habibur Rahman along with Mr. Md. Atikur Rahman, learned Advocates appearing on behalf of the respondent nos. 1-2 contends that, one Habibur Rahman executed *Wasiyat Nama* in favour of his heirs, that is, the plaintiffs and defendants (Annexure-‘X-2’) where plaintiff-appellant no.1 stands as attesting witness and according to that *Wasiyat Nama*, the defendants will get ‘Ka’ schedule properties, plaintiff no.1 will get 50% share and the defendants will get rest 50% share in ‘Kha’ schedule properties where five daughters of Habibur Rahman that is, plaintiff nos. 2-6, will get ‘Ga’ schedule properties and plaintiff no. 1 will get ‘Gha’ schedule properties. It has further been stated that, the plaintiffs have no *prima facie* case and considering this aspect, the trial Court has rightly rejected the application for appointment of a receiver.

He further contends that it is well-settled proposition that the court will not appoint a receiver in a partition suit where the property consists of immovable property and without any allegation of mismanagement, damage, apprehension of alienation and wasting of the property.

However, in support of his contention, the learned Advocate for the respondents relied upon the decisions passed in the case of *Faiz Ahmed Chowdhury and another Vs. Baktear Ahmed Chowdhury and others*, reported in 36 DLR(AD)(1984)97 and *Kamiruddin and others Vs. Mokshed Ali Biswas* reported in 1MLR(AD)(1996)43. With those submissions, the learned counsel prays for dismissing the appeal and discharging the Rule.

We have considered the submissions so advanced by the learned counsels for the contending parties at length, perused the memorandum of appeal, application for stay, application for appointment of receiver, counter-affidavit filed by the respondents-opposite party nos.1-2, impugned order and other materials on record.

During the hearing, it was informed by the learned counsel for the appellants that the plaintiffs-appellants meantime filed Title Suit challenging the legality of *Wasiyat Nama* which is pending, so we refrain from passing any opinion regarding the *Wasiyat Nama* at this stage.

The learned Counsel for the appellants draws our attention that the 'Kha' scheduled property was rented to the British Embassy but due to litigation, they have not been paying the rent regularly and the embassy is not interested to stay in the property as tenant. If that is the case, then it is our considered view that both parties to the suit are being prejudiced. In such a situation, the interest of parties to the suit will be protected, if a receiver is appointed for a limited period only for collecting rent from schedule 'Kha' property and to supervise the vehicle

described in schedule 'Umo' only for their better management and preservation. Other properties will be dealt with in its present state till disposal of the suit. But we think it would be appropriate if the suit is disposed of within a short span of time. So it is required to direct the trial Court to dispose of the suit at the shortest possible time to settle the issues once for all.

Given the above observation, the appeal is disposed of, however without any order as to cost.

The order dated 29.05.2024 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No. 192 of 2023, is thus set aside.

The learned Joint District Judge, 4th Court, Dhaka is directed to take necessary steps to appoint a receiver for 'Kha' (ঋ) scheduled properties in accordance with law. The receiver will collect the rent in respect of 'Kha' (ঋ) scheduled property and deposit the same to the trial Court who will keep the same in a designated account of the court to be disbursed among the plaintiffs and defendants based on the final disposal of the suit. The trial Court is at liberty to fix the remuneration of the receiver on his own accord and pass the amount from the rent to be collected from the 'Kha' (ঋ) scheduled property.

However, the learned Joint District Judge, Fourth Court, Dhaka is directed to dispose of Title Suit No. 192 of 2023 as expeditiously as possible, preferably within a period of 06 (six) months from the date of receipt of the copy of this judgment.

Since the appeal is disposed of, the connected rule being Civil Rule No. 511 (FM) of 2024 is hereby discharged.

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

Md. Mozibur Rahman Miah, J.

I agree.

Md. Sabuj Akan/
Assistant Bench Officer