

Present:  
Mr. Justice Md. Iqbal Kabir  
And  
Mr. Justice Md. Riaz Uddin Khan

First Miscellaneous Appeal No. 124 of 2021  
With  
Civil Rule No. 747 (FM) of 2019

IN THE MATTER OF:

Md. Harunur Rashid Rana and others  
....Appellants (in F.M.A. No. 124 of  
2021)  
Versus  
Md. Abdul Jabbar Miah and others  
....Respondents (in F.M.A. No. 124 of 2021)

Mr. Moloy Kumar Roy, Advocate  
....For the Appellants (in F.M.A. No. 124 of  
2021)

No one  
....For the Respondents (in F.M.A. No. 124 of  
2021)

Md. Harunur Rashid Rana and others  
....Petitioners (in Civil Rule No. 747 (F.M) of  
2019)  
Versus  
Md. Abdul Jabbar Miah and others  
....Opposite Parties (in Civil Rule No. 747 (F.M) of  
2019)

Mr. Moloy Kumar Roy, Advocate  
....For the Petitioners (in Civil Rule No. 747  
(F.M) of 2019)

Mr. Khondker Shamsul Hoque Reza with  
Mr. Sarder Zakir Hossen, Advocates  
....For the Opposite Parties (in Civil Rule No. 747  
(F.M) of 2019)

Heard on 24.04.2025, 28.04.2025, and judgment  
on 14.05.2025.

Md. Iqbal Kabir, J:

The first miscellaneous appeal has been directed against the judgment  
and order dated 15.09.2019 passed by the learned Joint District Judge, 3<sup>rd</sup>

Court, Dhaka in Title Suit No. 197 of 2019 allowing application filed under order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure by the plaintiff-respondents.

The relevant facts for the disposal of the appeal are that respondent No. 1 as the plaintiff instituted a suit for partition against the appellant-petitioners implicating them as defendants before the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka stating inter alia that the plaintiff is the owner measuring 6.08 decimals land out of 33 decimals under Dhaka City Jarip Khatian No. 14777/1 Dag No.53476. After the death of C.S. recorded owner Nazimuddin his legal heirs Gopal and others became the owner of land thereby duly recorded in S.A. Khatian No. 907 Daag Nos. 729, 743, 745, 746, and 747, and in the R.S. Khatian the name of Tona Gazi and Others was duly recorded. After the death of Gopal his legal heirs Sipai, Nur, Suku Ali, and Zorimon Nessa became the owner of his land. Thereafter their offspring Md. Chandu Miah and others became the owners of the 33 decimals of land by way of inheritance and duly recorded their names in Dhaka City Jarip Khatian No. 14777/1 Dag No. 53476. However, at one point in time, they appointed Akond Rafique Haider as their lawful attorney to look after the scheduled land vides Power of Attorney Deed No. 7804 dated 17.07.1994. Akond Rafique Haider transferred 8.25 decimals of land in favour of the plaintiff Md. Abdul Jabbar Miah through Saf Kabla Deed No. 15023 dated 16.11.2000, the plaintiff duly mutated his name of 6.08 decimals land as per Dhaka City Jarip khatian. Thereafter Md. Abdul Jabbar Miah appointed Md. Hafizur Rahman Sardar as his lawful attorney in respect of the suit land vides Power of Attorney Deed No. 4618 dated 02.07.2019. Now, the plaintiff is in difficulties to peaceful possession and enjoyment of the suit land with the defendants and as such he has filed the instant suit for partition of his land.

However, during the pendency of the suit respondent No. 1- the plaintiff filed an application under order 39 rule 1 & 2 read with section 151 of the

Code of Civil Procedure for a temporary injunction against the defendants on 17.07.2019 before the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka in Title Suit No. 197 of 2019.

The said application was contested by the appellants-petitioners who as defendants appeared in the suit and filed a written objection on 27.08.2019 denying all material assertion made in the injunction application contending inter alia that the plaintiffs have no cause of action and the suit is barred in present form and manner, according to him Nazim Uddin was the recorded owner in C.S. Khatian No. 463. However, after a long history, Billah Hossain and Azhar Uddin appointed Md. Nurul Hoque and others to overlook and sell their property vide Power of Attorney Deed No. 1502 dated 05.03.2018. Appellant-petitioner described the jeanology of the land, and stated that the appellants-petitioners are owners of 9.90 decimals land vide Saf Kabla Deed No. 1738 dated 12.03.2014 and 4.05 decimals land vide Saf Kabla Deed No. 6635 dated 25.08.2014 and have been appointed as attorney in respect of 1.65 decimals land vide Power of Attorney Deed No. 1502 dated 05.03.2018. the appellants-petitioner obtained approved plan as well as NOC for use of land from RAJUK vide its Memo No. 25. 39. 0000. 098. 33. 259. 17. 980 dated 29.08.2017. According to him, the plaintiff has no title and interest over the suit land and as such instant injunction application is liable to be rejected.

The learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka considering the facts, circumstance, and materials evidence on record allowed the application filed under order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure in Title Suit No. 197 of 2019 by the plaintiff-respondents.

Being aggrieved by and dissatisfied with the judgment and order dated 15-09-2019 the appellant preferred the instant appeal.

Mr. Moloy Kumar Roy, learned Advocate for appellants submits that the Court below without considering the provisions of law and relevant facts of the suit hastily allowed the application for a temporary injunction in modified form

vide its order No. 6 dated 15.09.2019 under order 39 rule 1 & 2 read with section 151 of the C PC filed by the plaintiff restraining the defendants-petitioners by an order of status quo and as such the impugned order is illegal and required to be set aside for ends of justice.

He submits the land of the plaintiff-respondent No. 1 is not identified, through demarcation and not in possession and as such impugned order of status quo passed by the learned trial Court restraining the appellants-petitioner to carry on construction works in their land which is duly approved by the RAJUK is abuse of the process of the Court and therefore the impugned order is liable to be stayed for ends of justice. He submits Trial Court ought to reject the application for temporary injunction as the record of rights has been published in the name of the predecessor of the defendants-appellants and they are paying rent and holding tax of the suit land and, doing construct upon demarcation of their land. However, with a wrong finding the court allowed the application for temporary injunction and committed error of law as well as facts therefore the impugned judgment and order are liable to be set aside for the ends of justice.

He submits that the appellants-petitioners undertake to proceed with the construction of a building at their own risk, responsibility, and liability and shall remain liable to comply with any order or direction of this Court, if any.

He submits that the learned trial Court ought to reject the application of the plaintiff-respondent No. 1 on the ground that he will not be affected by the construction of a building by the appellants-petitioners in their land and as such order of status quo is misconceived and thus committed an error of law resulting an error in decision occasioning failure of justice and as such the impugned judgment and order is liable to be set aside.

Mr. Khondker Shamsul Hoque Reza with Mr. Sarder Zakir Hossen, the learned Advocates appearing for the respondents, on the other hand, support

the impugned judgment and order, according to them alleged order is just, correct, and proper and there is no reason to interfere.

Having heard the learned Advocates for both sides and having gone through the materials on record along with the impugned order. The only question that calls for consideration in this First Miscellaneous Appeal is whether the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka in Title Suit No. 197 of 2019 allowed the application filed under order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure is justified and proper.

Upon hearing and perusal of the record, it appears that the property of the plaintiff-respondent No. 1 is not identified by demarcation and is not in the possession of the respondents. On the other hand, it appears that the record of rights has been published in the name of the predecessor of the defendants-appellants and they are paying rent and holding tax on the suit land which proof of possession of the defendants-appellants over the suit land. The land in question has been demarcated through a boundary wall and, developing work is going on by way of construction of a multi-storied building. They started construction work on the land upon obtaining permission from the concerned authority.

It is transpire that the record of rights has been published in the name of the predecessor of the defendants-appellants and they are paying rent, land has been demarcated by a boundary wall and construction works are going on. Knowing well, instead of that in a sleep shoot manner without applying judicial mind with the wrong finding court bellow allowed the application for temporary injunction and committed an error of law as well as facts.

Therefore, we find merits in the appeal and accordingly, the appeal is allowed.

The connected Rule No. 747 (FM) of 2019 is hereby made absolute. The order dated 15.09.2019 passed by the learned Joint District Judge, 3<sup>rd</sup>

Court, Dhaka in Title Suit No. 197 of 2019 is thus, set aside.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

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

No order as to costs.

Md. Riaz Uddin Khan, J:  
I agree.