

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present

Mr. Justice Md. Iqbal Kabir
And
Mrs. Justice Jesmin Ara Begum

First Miscellaneous Appeal No.287 of 2024
With
Civil Rule No. 650 (FM) of 2024

IN THE MATTER OF:

Mrs. Mohsina Rahman

... Defendant No.1-Appellant

Versus

A.K.M Zakaria Hossain Chowdhury

... Plaintiff-Respondent

Mr. K.S. Salahuddin Ahmed, Advocate

... For the Defendant No.1-Appellant

Mr. A.K. Rashedul Huq, Advocate with

Ms. Nasrin Akhter Sheela, Advocate

... For the Plaintiff-Respondent

Judgment on: 15.12.2025

Jesmin Ara Begum, J:

Since the facts and law involved in this First Miscellaneous Appeal as well as in this Rule are intertwined they are being heard together and are disposed of by this judgment.

At the instance of the defendant-appellant this first miscellaneous appeal is directed against the order dated 11.08.2024 passed by the learned

Joint District Judge, 1st Court, Dhaka in Title Suit No.18 of 2018 allowing the application for temporary injunction dated 31.01.2018 under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure.

Facts in a nutshell, for disposal of this First Miscellaneous Appeal and Rule are that the respondent-opposite party No.1 as plaintiff instituted the Title Suit No.18 of 2018 before the Court of 1st Joint District Judge, Dhaka impleading the appellant-applicant and others as defendants praying for a declaration that the deed of cancellation for revocation of the power of attorney is illegal and for a decree of cancellation of the deed of cancellation and also for a decree of permanent injunction restraining the defendant No.1 from revoking the disputed power of attorney and taking steps regarding the suit property on the contention that the defendant No.1 is the mother-in-law of the plaintiff. To realize some commercial benefits the plaintiff gifted the suit property to his wife, Mrs. Sabrina Chowdhury by way of heba dated 27.12.2000, his wife then gifted the suit property to her mother, the defendant No.1, by a heba dated

18.03.2001. The plaintiff also completed mutation of the property in the name of the defendant No.1, both the heba transfers first to Mrs. Sabrina Chowdhury and then to the defendant No.1, were all part of a scheme to realize commercial benefits for the plaintiff and it was never the plaintiffs intention to transfer the title and ownership of the property permanently. To construct a multi-storied building on the property a joint venture agreement for property development dated 27.06.2005 was executed between defendant No.1 and Advance Development Technologies Limited (ADTL), an irrevocable power of attorney dated 30.06.2005 was executed in favour of ADTL by the defendant No.1. ADTL then mortgaged the suit property to National Bank and City Bank for financing the construction. Although the defendant No.1 signed the joint venture agreement, in reality it was the plaintiff who had the real ownership and control over the property. The plaintiff married Mrs. Sabrina Chowdhury, the daughter of defendant No.1 for 26 years and in the wake of recent matrimonial discord between them, the plaintiff made a request to the defendant No.1 to transfer the property in his name, as the property was mortgaged to the Banks by ADTL,

outright transfer of the property to the plaintiff was become impossible at that moment. Therefore, the plaintiff and the defendant No.1 entered into a scheme to enable the plaintiff to retain the ownership of the property by executing a power of attorney deed No.4286 dated 09.10.2016, an undertaking and a heba deed, subsequently defendant No.1 revoked the said power of attorney by a deed of revocation being No.7938 dated 14.11.2017. Then the plaintiff A.K.M. Zakaria filed the instant Title Suit. After instituting the suit plaintiff filed the instant petition for temporary injunction on 31.01.2018.

The defendant-appellant contested the application by filing a written objection contending, inter-alia, that the injunction application is not maintainable in law, that the plaintiff gifted the suit property to his wife who then gifted it to her mother the defendant No.1, both the said transfers were made after taking required permission from RAJUK and the suit property has been mutated in the name of the defendant No.1 who is in possession of it. Subsequently, defendant No.1 has entered into an agreement with a builder company named ADTL and

executed irrevocable power of attorney in favour of ADTL to develop the suit property, subsequently when dispute arise between defendant No.1 and ADTL, ADTL initiated Arbitration proceeding and Arbitral Tribunal passed an award on the basis of agreed settlement agreement where the power of attorney given to ADTL was declared still in force. When there was serious marital dispute between plaintiff and his wife Mrs. Sabrina Chowdhury, plaintiff by putting illegal mental pressure upon the defendant No.1 forced her to sign illegal power of attorney in favour of plaintiff and also obtained some other documents by misleading the defendant No.1 without informing her about the contents of the same where she put her signature in good faith to save the marital relationship between the plaintiff and her daughter and since the power of attorney given in favour of ADTL was declared as effective by Arbitral Tribunal is one of the reason for cancelling the power of attorney of the plaintiff. The power of attorney which was executed in favour of the plaintiff is an illegal one as no permission from RAJUK has been obtained for executing the same. There is no prima facie case for granting temporary

injunction. Under such circumstances the defendant-appellant opposes the petition for temporary injunction.

After hearing the learned Advocates of both the sides the learned Joint District Judge allowed the petition for temporary injunction by his impugned order dated 11.08.2024.

Being aggrieved by and highly dissatisfied with the impugned order of temporary injunction the defendant No.1-appellant-applicant filed this instant FMA and obtained the Rule.

Mr. K.S. Salah Uddin Ahmed, the learned Counsel appearing for the defendant-appellant-applicant submits that two other injunction applications of the plaintiff-respondent in the instant suit on the same facts have already been rejected earlier but without considering the judgment and decisions of the Hon'ble Appellate Division and High Court Division, as were delivered in the earlier injunction matter, the learned trial Court passed the impugned order of temporary injunction by which he has not only disregarded the order of the higher Court but also committed serious error of law.

He also submits that by passing the impugned order the learned trial Court has restrained the defendant No.1 from taking any step regarding the suit property which is absolutely illegal in view of the judgment and order passed by the Hon'ble High Court Division in FMA No.10 of 2020 and Civil Rule No.557(FM) of 2019 where the rule has been discharged with findings that plaintiff-respondent cannot represent the principal i.e. the defendant-appellant in any litigation. However, the learned counsel submitted that by the judgment given in FMA No.10 of 2020 it has been established that the defendant-appellant will deal the disputed property, as such the finding of the trial Court that the defendant No.1 cannot take any other measure regarding the suit property is ex-facie illegal and tantamounts to disobeying the order of the higher Court.

The learned Advocate for the appellant takes us to the decision of Hon'ble Appellate Division reported in 66 DLR(AD)193 to show that benami transaction is illegal and he claimed in this respect that by passing the impugned order the learned Joint District Judge, 1st Court, Dhaka disobeying the reported decision of our Apex Court accepted the

plaintiff-opposite parties claim that he is the real owner of the suit property and the defendant No.1 is his benamdar.

Per Contra, Mr. A.K. Rashedul Huq, the learned Advocate appearing on behalf of the plaintiff-respondent-opposite party No.1 takes us to his counter affidavit and bundle of documents annexed thereto and submits that plaintiff-respondent-opposite party is the owner of the suit property and he has control over it and both the heba transfers, first to Mrs. Sabrina Chowdhury and then to the appellant were all part of a scheme to realize commercial benefits for the respondent No.1 and it was never the respondent's intention to transfer the title and ownership permanently which is evident from the power of attorney itself and from the undertaking dated 09.10.2016 executed by the defendant No.1-appellant in favour of the plaintiff.

Mr. A.K. Rashedul Huq, the learned Advocate for the plaintiff-respondent-opposite party also submits that the collective reading of power of attorney, undertaking and heba deed executed by the defendant-appellant in favour of the plaintiff-respondent-opposite party shows that the plaintiff-

respondent is the real owner of the property despite the fact that the defendant NO.1-appellant was shown as the owner on paper.

The learned Advocate for the plaintiff-respondent-opposite party lastly submits that the defendant-appellant though sent revocation notice to the plaintiff-respondent, but without taking any step to resolve the dispute by mediation under section 13 of the Power of Attorney Act, 2012 the defendant No.1-appellant illegally cancelled the Power of Attorney deed of the plaintiff-respondent.

We have considered the submissions advanced by the learned Advocates of both the parties and also gone through the documents submitted, affidavit, counter affidavit and the decisions referred to.

It is admitted by both the parties that the plaintiff-respondent A.K.M. Zakaria Hossain Chowdhury inherited the suit property from his father and became owner and possessor of it. It is also admitted that this plaintiff-respondent gifted the suit property to his wife Mrs. Sabrina Chowdhury by way of heba and it is also admitted by both the parties that Mrs. Sabrina Chowdhury then gifted the suit property to her mother the defendant-appellant Mrs. Mohsina

Rahman. It is further admitted by both the parties that both the heba transfers were made with the prior permission from RAJUK and the suit property has been mutated in the name of the defendant-appellant. Admittedly defendant-appellant Mrs. Mohsina Rahman has entered into a joint venture agreement with a builder company namely ADTL and defendant-appellant executed an irrevocable power of attorney in favour of ADTL for construction of a multistoried building in the suit property.

The plaintiff-respondent is claiming by submitting the counter affidavit that both the heba transfers first to Mrs. Sabrina Chowdhury and then to the appellant, were all part of a scheme to realize commercial benefits for the plaintiff-respondent No.1 and it was never the plaintiff-respondent's intention to transfer the title and ownership of the property permanently. More specifically plaintiff-respondent's claim is that although the defendant-appellant signed the joint venture agreement with ADTL, but in reality, it is the plaintiff-respondent who has the real ownership and control over the property. This type of claim is totally illegal claim because after transferring the suit property to his wife by way of

heba on 27.12.2000 the plaintiff-respondent can never claim himself as the real owner of the property. All kind of benami transactions of immovable property have been made prohibited in our country by section 5 of the Land Reforms Ordinance, 1984. In the case of SN Kabir Vs. Fatema Begum and others, reported in 66DLR(AD)193, it has been held in paragraph 28 that, "Because of Benami transactions, multifarious litigations crop up across the country. Moreover, the persons having the possession of black money take advantage of benami transactions by purchasing property in the names of their nearest relatives and such transactions increase corruption in the society. So, the legislative authority had the intention to say good-bye to benami transactions once and for all."

On the basis of the above mentioned reported decision and as per the provisions of Land Reforms Ordinance, 1984, benami transactions being illegal, the plaintiff-respondent on transferring the property to his wife by way of gift is not entitled to claim himself as the real owner of the property. Though the plaintiff-respondent claimed that both the heba transfers were all part of a scheme to realize

commercial benefits for the plaintiff and though he claimed that it was never his intention to transfer title and ownership permanently by heba, but such type of claim of the plaintiff is not tenable in the eye of law.

Admittedly, joint venture agreement with developer company, ADTL was executed with defendant No.1-appellant on 27.06.2005 and also irrevocable power of attorney on 30.06.2005 for construction of multistoried building in the suit property and at one stage when dispute arose between ADTL and defendant No.1-appellant, the dispute gave rise to arbitration which was ended by way of an award dated 05.12.2011 on the basis of an agreed settlement agreement holding the power of attorney given to ADTL as legal, but the learned trial Court did not consider the arbitral award while passing the impugned order.

On perusal of the record, it appears that after instituting the original Suit NO.18 of 2018 plaintiff filed an application for temporary injunction on 31.01.2018, where the learned trial Court passed an order of status-quo upon both the parties, against which order the defendant-appellant did not take any step to the higher Court.

The plaintiff again filed another application for temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure on 29.07.2018 and filed another application for temporary injunction under section 151 of the Code of Civil Procedure which was rejected by the learned trial Court on 29.11.2018, against which the plaintiff-respondent filed the Civil Revision No.4110 of 2018 where the Hon'ble High Court Division passed order of injunction restraining defendant-instant appellant from enforcing and giving effect to the deed of cancellation revoking the power of attorney and also restraining defendant No.1 from interfering with the functioning of the plaintiff as her attorney, then the defendant No.1-instant appellant filed CPLA No.607 of 2019 before the Hon'ble Appellate Division, where Hon'ble Appellate Division directed the trial Court to dispose of the application for temporary injunction filed on 29.07.2018 within 01(one) month, also directed the parties to maintain status-quo regarding the subject matter of the suit till disposal of the main application for temporary injunction and also set-aside the order of the High Court Division dated 13.12.2018, then the learned trial Court after

hearing the main application for temporary injunction dated 29.07.2018 rejected it on 17.04.2019, against which the plaintiff preferred F.M.A. NO.10 of 2020 before the Hon'ble High Court Division and obtained ad-interim order dated 15.07.2019 passed in Civil Rule NO.551(FM) of 2019 which had been challenged in Civil Petition for Leave to Appeal No.3834 of 2019 by the defendant NO.1, where Hon'ble Appellate Division directed the Rule be heard and disposed of by the Division Bench of the High Court Division presided over by Mr. Justice Md. Ruhul Quddus and the ad-interim order passed by the High Court Division was stayed till disposal of the Rule. Thereafter, the Division Bench of High Court Division heard the Rule and F.M.A NO.10 of 2020 and passed judgment on 23.09.2021 by disposing the Appeal with direction to the trial Court to dispose of the suit within 06(six) months and also with direction to the parties to maintain status-quo in respect of leasing out or making any encumbrances thereon within the said period. It was also observed by the said Division Bench of the Hon'ble High Court Division in the above order dated 23.09.2021 that, "On the same principle, we do not think that before final disposal of the

suit, the petitioner can represent the principal in any litigation on her behalf.”

Against the said judgment dated 23.09.2021 though defendant No.1-appellant filed CPLA NO.1997 of 2022 before the Hon’ble Appellate Division, but the plaintiff has not filed any appeal.

So, it is clear that on the same facts the temporary injunction application of the plaintiff dated 29.07.2018 has been rejected upto the Appellate Division in Civil Petition for Leave to Appeal No.607 of 2019 and another injunction petition was rejected in the judgment dated 23.09.2021 by the Hon’ble High Court Division.

But, without considering the prior findings and orders of the higher Courts regarding the injunction matter, the learned Joint District Judge allowed the application for temporary injunction by his impugned order dated 11.08.2024 which is an error of law.

Though the parties have other litigations between them but where in the instant Title Suit No.18 of 2018 two other separate injunction matters were rejected upto the higher Court, as such without considering the higher Courts order on prior

injunction matters the trial Court committed serious illegality in allowing the injunction petition by the impugned order.

Though it is evident from the record that the subsequent power of attorney deed No.4286 dated 09.10.2016 was executed by the defendant No.1-appellant to the plaintiff respondent without taking prior permission from RAJUK, but whether the suit deed of revocation No.7938 dated 14.11.2017 executed by the defendant-appellant is valid deed or not and whether the power of attorney was revoked legally or not are all mixed question of laws and facts which need to be determined by the learned trial Court after examining all oral and documentary evidences adduced by the parties during trial.

At this stage of the suit, where plaintiff-respondent's injunction matter was earlier rejected by Hon'ble Appellate Division in Civil Petition for Leave to Appeal No.607 of 2019 and where the plaintiff-respondent has not filed any appeal against the order dated 23.09.2021 passed by Hon'ble High Court Division in F.M.A. No.10 of 2020 by disposing the Appeal with direction to maintain status-quo and to dispose of the original Title Suit within 06(six)

months and where the defendant NO.1-appellant did not take any step against the 1st order of status-quo passed by the trial Court in the application for temporary injunction submitted on 31.01.2018; justice would be done if the appeal is allowed by setting aside the impugned order with modification to maintain status-quo in respect of transferring the suit property by way of sell, also with a direction to dispose of the suit expeditiously.

Resultantly, the First Miscellaneous Appeal No.287 of 2024 is allowed with modification.

The impugned order dated 11.08.2024 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit NO.18 of 2018 is hereby set-aside and accordingly, the Rule in connection with First Miscellaneous Appeal No.287 of 2024 is made absolute with modification without any order as to cost.

Both the plaintiff-respondent and defendant No.1-appellant are hereby directed to maintain status-quo in respect of transferring the suit property by way of sell. The trial Court is directed to dispose of the suit expeditiously with utmost care.

Communicate this judgment and order to the
concerned Court below at once.

Md. Iqbal Kabir, J:

I agree.

Md. Anamul Hoque Parvej
Bench Officer