

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Jesmin Ara Begum

First Miscellaneous Appeal No. 431 of 2025
with
Civil Rule No. 334 (FM) of 2025

IN THE MATTER OF:

Haris Mahmud and another
....Appellants (in F.M.A. No. 431 of 2025)
Versus
Dr. A.S.M Badruddoza
....Respondent (in F.M.A. No. 431 of 2025)

Mr. Fida M Kamal, Senior Advocate with
Mr. A.S.M. Shahriar Kabir, Advocate
....For the Appellants (in F.M.A. No. 431 of 2025)

Mr. Md. Asaduzzaman, Senior Advocate with
Mr. Taposh Kumar Dutta, Advocate
....For the Respondent (in F.M.A. No. 431 of 2025)

Haris Mahmud and another
....Petitioners (in Civil Rule No. 334 (FM) of 2025)
Versus
Dr. A.S.M. Badruddoza
....Opposite Party (in Civil Rule No. 334 (FM) of 2025)

Mr. Fida M Kamal, Senior Advocate with
Mr. A.S.M. Shahriar Kabir, Advocate
....For the Petitioners (in Civil Rule No. 334 (FM) of 2025)

Mr. Md. Asaduzzaman, Senior Advocate with
Mr. Taposh Kumar Dutta, Advocate
....For the Opposite Party (in Civil Rule No. 334 (FM) of 2025)

Judgment on 11.11.2025.

Md. Iqbal Kabir, J:

The first miscellaneous appeal has been directed against the Judgment and Order dated 30.06.2025 passed by the learned Joint District Judge, 1st

Court, Dhaka in Eviction Suit No. 551 of 2024, allowing the application for temporary injunction filed under Order XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 by the plaintiff-respondent.

The relevant facts for the disposal of the appeal in brief are that the opposite parties as plaintiffs filed an Eviction Suit before the Joint District Judge, 1st Court, Dhaka, being Title Suit No. 551 of 2024 alleging that the petitioner is a tenant and forcefully occupied the possession of the commercial space of the opposite party, and further appellants failed to pay the rent according to the rental agreement.

However, during the pendency of the eviction suit, the plaintiff-respondent of the suit filed an application for an injunction to restrain the defendants-appellants from interfering with the possession of the suit property during the pendency of the suit.

It appears that the said application was contested by the appellant-petitioners who, as defendants, appeared in the suit and filed a written objection denying all material assertions made in the application, contending *inter-alia* that the plaintiff-respondent has no cause of action. According to them, there was an unregistered tenancy agreement for commencing a conventional hall business, and the terms of the tenancy agreement explicitly stated the said purpose of the rent. Following Clause 13, the appellants installed new lifts and also installed a modern kitchen, generator, and other amenities for the purpose of the community hall, but the learned Court failed to consider the said material fact. Defendants Appellants also brought notice that they also filed an application under Order VII, Rule 1, instead of disposing above noted application, Court below by its order dated 30.06.2025 allowed the application filed by the plaintiff on a plea that the appellants are tenant and thereby restrained the applicants from conducting their businesses convention hall and further restrained them from hosting as any events and using essential utilities such as electricity, gas etc. till disposal of the suit.

Being aggrieved by and dissatisfied with the said judgment and order dated 30.06.25 passed by the learned Joint District Judge, 1st Court, Dhaka, the defendants as appellants, preferred this First Miscellaneous Appeal.

Mr. A.S.M. Shahriar Kabir, learned Advocate for the appellants, submits that the Court below, without considering the legal provisions and the factual circumstances of the suit, hastily allowed the application, thereby restraining the appellants from operating their convention hall business, prohibiting them from hosting any events, and further restricting their access to essential utilities such as electricity and gas until the disposal of the suit.

He claims that the plaintiff, by suppressing material facts, instituted the suit. According to him, an unregistered tenancy agreement existed between the parties for the specific purpose of operating a convention hall, and the terms of that agreement clearly reflected such intended use. He contends that, pursuant to Clause 13 of the tenancy agreement, the appellants installed new lifts, a modern kitchen, a generator, and other amenities essential for running a community hall. However, the learned Court below failed to consider these material facts while passing the impugned order.

He submits that the transaction was made based on registered deeds. Under Clause 3 of the alleged registered *Bainanama*, the plaintiff–opposite party was obligated to execute and register the sale deed for the scheduled property within 12 (twelve) months, or upon obtaining the necessary permission from RAJUK. Furthermore, Clause 2 of the said deed stipulates that the appellants shall remain in possession of the property until execution of the registered sale deed. However, to date, the plaintiff–opposite party has neither terminated the said registered deed nor taken any steps to cancel or invalidate it.

In reply to the above contention, Mr. Md. Asaduzzaman, learned Senior Advocate for the respondent, contended that allowing the appellants to retain possession solely based on the *Binanama* deeds would undermine the statutory requirement of executing and registering a sale deed and encourage possession without ownership. Therefore, Section 53A of the Transfer of

Property Act, as amended, has no application to the present case. According to him, permitting indefinite possession would be contrary to public policy, statutory provisions, and the principles governing the lawful transfer of property; hence, the Appellant's contention in this regard is devoid of merit.

By way of submission, it has been brought to our notice that the appellants failed to pay rent and have remained defaulters for the past 04 years. Non-deposit of the balance sale consideration and due to lapse of time, agreements for sale have become unenforceable. Hence, the appellants are unlawful occupiers of the suit land. In law, no such occupier is entitled to enjoy utilities or facilities belonging to the lawful owner. Their continued possession is therefore unauthorized and not protected by any law.

It has been submitted that in 2004, the Legislature amended provisions relating to contracts for the sale of immovable property. The intention of the Legislature can be inferred if the relevant provisions are read in their entirety. Specifically, the amendment of Section 53A omitted certain words, namely: "notwithstanding that the contract, though required to be registered, has not been registered, *or* reflecting intent to limit the enforceability of unregistered contracts. According to him, mere execution of an unregistered contract, without registration and without payment of the balance consideration, does not confer any enforceable rights.

He submitted that Section 54A of the Transfer of Property Act, 1882, read with Section 21A of the Specific Relief Act, 1877, clearly prevents any contract for the sale of immovable property from remaining enforceable indefinitely. According to him, the purchaser must pay the outstanding consideration within the stipulated time; failure to do so renders the contract void by law. The Contract Act, 1872, confirms that a contract loses its enforceability and becomes void. As a result, the defendant-appellants cannot claim any right over the suit property based on a contract that has become unenforceable and void.

Moreover, Clause 10 of the Binanama deeds expressly provides that, in the event the sale deed is not executed, the purchaser's remedy is confined to

recovery of the advance money with 6% interest, and not to retain possession of the property indefinitely. Thus, the agreements themselves clearly envisage the consequence of non-completion of the sale, and nowhere confer any right upon the purchaser to continue possession of the suit premises beyond the stipulated tenure. The purchaser, therefore, cannot lawfully claim any right to remain in possession of the suit land for an unlimited period.

Accordingly, the agreements contemplate the consequence of non-completion of the sale and do not authorize the purchaser to remain in possession of the suit premises indefinitely. The purchaser, therefore, cannot in law claim any right to retain possession of the suit land for an unlimited period.

It is respectfully submitted that even if the Defendants-Appellants are considered tenants, they cannot seek relief from the Court, having defaulted for four years in paying rent and utilities. They have therefore become unlawful occupiers. He argued it is well-settled that no relief is available to an illegal occupier. The injunction granted by the Trial Court is just, correct, proper, and in accordance with law. Accordingly, the appeal deserves to be dismissed, and the Rule be discharged.

In the above context, it has been replied that a party cannot approbate and reprobate on the same footing. According to him, plaintiff-respondent accepted the money, handed over the possession, and the appellants invested several crores to renovate the scheduled property without any objections (Gulam Mostofa and others, 2011) BLD (AD) 31). Further, it claims the relationship between landlord and tenant was extinguished after signing the registered sale deed. Therefore, the opposite party is not entitled to get any relief (16 BLD (AD) 1996).

It transpires to us that the appellants, being the plaintiff, filed a suit for specific performance of a contract; subsequently, that suit was withdrawn as it was not in form. Thereafter, appellants filed a Title Suit relying upon the judgment reported in 25 BLT (AD) 194. Though the Trial Court rejected the said suit, against which an appeal is pending, wherein our Apex Court directed

the parties to maintain the status quo. Further, relying upon a decision reported in ILR 5 Cal 336 (1879) and 10 BLR 380, it has been claimed that the unregistered tenancy agreement was revoked after signing the registered Bainanama. It has been stated that part payment has been accepted by the plaintiff in order to sell the scheduled property; therefore, the claim sale has concluded. According to him, the appellants are not tenants, and it can be said based on a principle annunciated in the above-cited decision.

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 the First Miscellaneous Appeal is whether the learned Court below allowed the application for temporary injunction is justified and proper.

It is at this juncture, we have to go back to the eviction suit, wherein the opposite parties, as plaintiffs, alleged that the petitioners-appellants are tenants and forcefully occupied the possession of the commercial space of the opposite party, and further, the defendants/appellants failed to pay the rent according to the rental agreement. However, during the pendency of the suit plaintiff/respondent filed an application for an injunction to restrain the appellants from interfering with the possession of the suit property.

In the alleged suit, the appellants filed an application for rejection of the plaint, which is pending. However, the Court below, based on an application filed by the plaintiff, passed the impugned judgment and order, thereby the court below restraining the defendants/appellants from operating their convention hall business, prohibiting them from hosting any events, and further restricting their access to essential utilities such as electricity and gas until the disposal of the suit. Against which defendants as appellants brings this First Miscellaneous Appeal wherein this Court stayed the Trial Court Judgment and order against which plaintiffs/respondents travelled to our Apex Court, and after hearing the parties, the Judge in chamber vide its order dated 13.08.25 modified the order passed by this Court dated 18.08.25 thereby

directed the parties to maintain the status quo in respect of possession of the suit property till disposal of the appeal.

It is pertinent to note that the plaintiff/respondent is the owner of the suit Building. The defendants-appellants entered into the building as tenants, as some floors of the Building have been leased out by the plaintiff/respondent. Subsequently, the plaintiff executed a registered banana to sell the floors of the Building upon accepting consideration money. In such a situation, a certain interest has been created in the appellants' part in the subject matter of the suit property. The plaintiff/respondent, without bringing such material facts to the Court below, instituted the eviction suit stating that the defendants/appellants are tenants. Though the plaintiff/respondent executed bainanamas to sell the suit property, and also handed over the possession to the defendants/appellants by accepting consideration money. Now, the plaintiff/respondent asserted his ownership title over the property, and if he is not allowed to protect the property by an order of injunction, that can dispose of or cause damages to the property against his interest, and in that case, the purpose of instituting the eviction suit will be frustrated.

Indeed, the Trial Court considered that the registered bainanamas are not enforced; therefore, the trial court found that the defendants/applicants should be treated as tenants. The Court also relied upon some other vague and unspecified finding, though that can be awarded through monetary compensation. Further, knowing the contradictory claims and conflicting interests of the parties, if an order of injunction is passed without disposal of the eviction suit, the parties would be prejudiced. In this context, it can be said that the court below, without applying its judicial mind, passed the order and thereby committed an error of law, and as such, the order passed by the learned Trial Court is not tenable in the eyes of law. It is at this juncture, we are of the view that the trial Court failed to appreciate the material facts and allowed the plaintiff-respondent's application for a temporary injunction, which amounts to a gross miscarriage of justice.

In such a situation, we are of the view, justice would be best served if the appeal is disposed of with directions to dispose of the eviction suit within a limited period and also with an order of status quo so that no party can cause any change or injury to the subject matter of the suit against the interest of the another before the final decision.

Resultantly, the First Miscellaneous Appeal is disposed of without any order as to cost.

The Court below is directed to dispose of the eviction suit on merit as expeditiously as soon as possible, preferably within March 2026, without giving any adjournment to any party, whatever the ground. In the meantime, parties are directed to maintain the statusquo in respect of possession till the disposal of Eviction Suit No. 551 of 2024.

In the context stated above, we find that the impugned judgment and order dated 30.06.25 passed by the learned Joint District Judge, 1st Court, Dhaka, in Eviction Suit No. 551 of 2024 is not sustainable in the eyes of the law, which is liable to be set aside.

The judgment and order dated 30.06.25 passed by the learned Joint District Judge, 1st Court, Dhaka, in Eviction Suit No. 551 of 2024 is thus set aside.

Since the First Miscellaneous Appeal is disposed of, the connected Rule, being Civil Rule No. 334 (FM) of 2025, is also disposed of.

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

Jesmin Ara Begum, J:
I agree.