

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 5121 of 2025

IN THE MATTER OF:

An application under section 115(1) of the Code of
Civil Procedure. (Against Order)

And

IN THE MATTER OF:

Hasina Akter Munni and others

---- Plaintiff-Respondent-Petitioners.

-versus-

Abdul Momin

---- Defendant-Appellant-Opposite Party.

Mr. Goutam Kumar Roy, Advocate

---- For the Petitioners.

Mr. Subrata Saha, Senior Advocate with

Mr. Manabendra Roy, Advocate

--- For the Opposite Party.

Heard on: 06.01.2026 and 13.01.2026

Date of Judgment: 18.01.2026.

S. M. Saiful Islam, J:

This Rule was issued upon an application under section
115(1) of The Code of Civil Procedure, 1908 calling upon the

defendant-opposite party to show cause as to why the impugned judgment and order dated 11.11.2025 passed by the learned Special District Judge, Noakhali in Miscellaneous Appeal No. 34 of 2024 allowing the Appeal and thereby *setting aside* the judgment and order dated 29.04.2024 passed by the learned Assistant Judge, Companyganj, Noakhali in Title Suit No. 254 of 2023 shall not be *set aside* and/or such other further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the petitioners as plaintiff instituted Title Suit No. 254 of 2023 in the Court of learned Assistant Judge, Companyganj, Noakhali impleading the opposite party as defendant praying for a decree of permanent injunction so that the defendant cannot dispossess the plaintiffs from the suit land forcibly or cannot construct building of any kind in the suit land. The case of the plaintiff-petitioners in short is that 1.78 acre of land appertaining to CS Khatian No. 156/157 of Ramdi Mouja under the Police Station Companyganj of District- Noakhali was sold in auction in a Rent Execution Case and Krishna Mohan Saha and Bipin Chandra Das purchased that land in that auction on 29.01.1935. Later on that auction purchasers sold that 1.78 acre of land by a registered kabla dated 28.04.1941 to Mijanur Rahman, Harunar Rashid and Aminur Rasul and accordingly MRR Khatian No. 139 was prepared in their names. In CS 156/157 Khatian, total land was 2.37 acre. Apart from that 1.78 acre, rest .59 acre was owned and possessed by Jouban Ali (.25 acre), Abdus Sobhan (.09 acre) and Abdur Rahman (.25 acre) and accordingly MRR 140, 141 Khatians were prepared in their names. Within that 1.78 acre of

land mentioned above, Mijanur Rahman, Harunar Rashid and Aminur Rasul got 59.33 decimal each. Mijanur Rahman sold 59 decimal land including 25 decimal from CS plot no. 763 to the father of the plaintiff Nos. 1-3 Abdus Satter by registered kabla dated 21.10.1987. Abdus Satter died leaving behind 3 daughters plaintiff Nos. 1-3. Harunar Rashid died leaving 1 wife, 1 son and 4 daughters including plaintiff No. 4. In the BS record, 9 decimal out of 25 decimal in plot No. CS 763 was recorded in the name of the predecessor of the plaintiff Nos. 1-3 Abdus Satter. Against that record the defendant has filed LST Case No. 19/2014 in the Land Survey Tribunal which is still pending. Defendant had no title and interest in the 48 decimal of land in CS Plot No. 763 appertaining to CS Khatian No. 157. Plaintiffs are docile women and the defendant threatened to forcibly construct building in the suit land on 24.11.2023. Then the plaintiffs filed the suit for permanent injunction and also filed a petition for temporary injunction under Order 39 Rule 1 read with section 151 of the Code of Civil Procedure so that the defendant cannot dispossess the plaintiffs from the suit land forcibly or cannot change the nature and character of the suit land or cannot construct the building till disposal of the suit.

Defendant-Opposite party filed a written objection against that petition for temporary injunction stating *inter alia* that his father Abdus Sobhan owned and possessed 1.97 acre of land in CS 157 Khatian. He gifted 1.33 acre of land including 29 decimal from plot No. 763 to defendant No. 1 and his brother Aminur Rasul by a registered heba deed dated 11.08.1979. In the BS record 9 decimal land from CS plot No. 763 was recorded in

name of the predecessor of plaintiff Nos. 1-3 in BS *Khatian* No. 66 and 11 decimal of land was recorded in the name of the predecessor of the plaintiff No. 4 in BS 331 *Khatian*. Against that record defendant and his brother Aminur Rasul filed LST Case No, 19 of 2015 for correction of the record and the case is now pending. Predecessors of the plaintiffs were not owner and possessor in CS plot No. 763. The defendant has got approved plan from Basurhat *Pourashava* to construct building in the suit land and has started construction long before the filing of this suit. For these reasons, the defendant prayed for rejection of the petition for temporary injunction.

Learned Assistant Judge, upon hearing of both the parties, allowed the petition for temporary injunction by the judgment and order dated 29.04.2024. Learned Trial Court held that on perusal of the suit BS *Khatian* Nos. 66 and 331, plaintiffs appear to be in possession and if the petition is not allowed and the plaintiffs are dispossessed by the defendant, the suit will be frustrated. Considering all these, learned Trial Court allowed the petition to restrain the defendant opposite party from changing the nature and character of the suit land and from selling the land or dispossessing the plaintiff from the suit land.

Against that order dated 29.04.2024, defendant opposite party filed Miscellaneous Appeal No. 34 of 2024 before the learned District Judge, Noakhali and the said Appeal was heard by the learned Special District Judge, Noakhali who upon hearing of both the parties allowed the said Appeal by the impugned Judgment and order dated 11.11.2025 reversing the judgment and order dated 29.04.2024 passed by the learned Trial

Court. In such facts and circumstances, plaintiff-petitioners filed this revisional application and obtained the Rule.

At the time of issuance of the Rule on 03.12.2025, parties were directed to maintain *status quo* regarding the possession of the suit land for 6 (six) months from date. Against that order defendant-opposite party preferred Civil Petition For Leave To Appeal No. 4862 of 2025 to the Hon'ble Appellate Division. Hon'ble Appellate Division disposed of the petition with no order and with a direction to dispose of the Rule expeditiously preferably within 8 (eight) weeks from the date of receipt of the order.

Learned Advocate Mr. Goutam Kumar Roy appearing on behalf of the plaintiff-petitioners, submits that the Court of Appeal committed an error of law in allowing Appeal without adverting to the reasons assigned by the learned Trial Court as required by Order 41 Rule 31 of the Code of Civil Procedure and the same has resulted in error in the impugned decision occasioning failure of justice. BS record of the suit land is in the name of the predecessors of the plaintiffs which shows the possession of the plaintiff-petitioners over the suit land. If, the petition for temporary injunction is not granted and the plaintiffs are dispossessed by the defendant, the purpose of the suit will be frustrated. According to the local inspection report, plaintiffs have dwelling huts in the suit land and the defendant is trying to construct building in some portion of the suit land. The learned Appellate Court below erred in law in directing the plaintiffs not to obstruct the construction work of the defendant in the suit land without considering that the defendant did not seek such relief

and thereby the same has resulted in error in the impugned decision occasioning failure of justice. For these reasons, learned Advocate for the plaintiff-petitioners prays for making the Rule absolute.

On the other hand, learned Senior Advocate Mr. Subrata Saha along with learned Advocate Mr. Manobendra Roy appearing on behalf of the defendant-opposite party submits that learned Appellate Court below has rightly allowed the Appeal by the impugned judgment and order. According to the local inspection report the defendant is possessing the suit land. The plaintiffs have no possession in the suit land and as they have no possession, the suit for permanent injunction is not maintainable. The defendant, after obtaining approved plan from municipality, has been constructing building in their possessed land. Learned Appellate Court below has rightly allowed the Appeal and has not committed any error of law in the impugned judgment and order and as such it has not occasioned any failure of justice. Hence he prays for discharge of the Rule.

Heard the learned Advocates for both the parties. Perused the impugned judgment and order, revisional application and annexures therewith. It is admitted by the defendant-opposite party that in the last survey, the suit land has been recorded in the name of the predecessors of the plaintiff-petitioners in BS 66 and 331 *Khatian* (BS plot Nos. 939, 940) and the defendant-opposite party has filed LST Case No. 19/2014 against the plaintiff-petitioners for correction of that record. It may be mentioned here that the record of rights is evidence possession and accordingly BS record indicate the possession of the plaintiffs in

the suit land. Though, the defendant-opposite party has filed LST case for correction of the record, that case is still pending. The defendant-opposite party admits that he is going to construct building upon the suit land. But admittedly the suit land has not been recorded in his name in the last survey and two suits are pending regarding the suit land, one of which has been filed the defendant himself (LST Case No. 19/14) and the other case is the present case (Title Suit No. 254/2023) filed by the plaintiff-petitioners. In the impugned judgment and order, learned Appellate Court below has directed the plaintiff-petitioners as, “এতদ্বারা নালিশী ভূমিতে বিবাদী আপীলকারী পক্ষের নির্মান কাজে বাধা সৃষ্টি না করার জন্য বাদী রেসপন্ডেন্ট পক্ষকে নির্দেশ প্রদান করা হইল।” Thus, it is very surprising that by such order learned Appellate Court granted injunction in favour of the defendant and against the plaintiffs, though the defendant even did not make such prayer. Plaintiff-petitioners filed the original suit for permanent injunction to restrain the defendant from forcibly dispossessing them from the suit land and from constructing any building there. If, the defendant is allowed to construct building in the suit land during the pendency of the suit, the original suit of the plaintiff shall be infructuous and the nature and character of the suit land will totally be changed. By the impugned order, learned Appellate Court has given an undue licence to the defendant to construct building in the suit land which has not been recorded in his name, upon which two suits are still pending and regarding which legal possession of the defendant is yet to be established by legal evidence. Thus, the impugned order seems to be very arbitrary, perverse and whimsical. Learned Appellate Court

while giving the impugned order only considered a local inspection report in which it is stated that the construction work is going on in the suit land. But the plaintiff-petitioners filed the suit when the defendant attempted to construct building in the suit land and if, in the meantime, the defendant start that construction, he should not be given licence to complete that construction during the pendency of the suit.

Considering the facts and circumstances, I find merit in the Rule and I am of the view that, justice would be sufficiently met if the parties be directed to maintain *status quo* regarding possession and position of the suit land till disposal of the suit.

Accordingly the Rule is made absolute without any order as to costs. The impugned judgment and order dated 11.11.2025 passed by the learned Special District Judge, Noakhali in Miscellaneous Appeal No. 34 of 2024 allowing the Appeal is hereby *set aside*. The parties are hereby directed to maintain *status quo* regarding possession and position of the suit land till disposal of the suit.

Learned Trial Court is directed to dispose of the Title Suit No. 254 of 2023 as expeditiously as possible and preferably within 6 (six) months from the date of receipt of this Judgment and Order.

Concerned section of this Court is hereby directed to communicate this Judgment and Order to the concerned Court below at once.