

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 2496 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Zakir Hossen and others

... Defendant-Petitioners

Versus

Md. Shakhawat Hossen (Shamim) and others

... Plaintiff-Opposite parties

Mr. Md. Ashrafuzzaman, Advocate

... For the petitioners

Mr. Shakil Ahmed, Advocate

... For the Opposite Party Nos.1-8

Judgment on: 10.09.2026

Md. Riaz Uddin Khan, J:

At the instance of the defendants Rule was issued calling upon the plaintiff-opposite party Nos.1-8 to show cause as to why the impugned judgment and order dated 21.04.2025 passed by the Additional District Judge, 2nd Court, Narsingdi in Miscellaneous Appeal No.06 of 2024 dismissing the appeal and thereby affirming the order dated 18.03.2024 passed by the Assistant Judge, Belabo, Narsingdi in Civil Suit No. 04 of 2024 allowing the application for temporary injunction under Order-XXXIX, Rule-1 and 2 along with Section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule this Court directed the parties to maintain status-quo in respect of possession and position of the suit land for a period of 06(six) months which has expired long before.

The opposite party-plaintiffs filed an application for vacating the order of stay and this Court by order dated 22.02.2026 after hearing both the parties kept the application with the record to be considered at the time of hearing of the Rule.

Succinct facts for disposal of this Rule are the opposite party Nos.1-8 as plaintiffs filed the Civil Suit No. 04 of 2024 for declaration of Title contending inter alia that one Abdul Gahor alias Abdul Gafur and Abdur Rahman were owners of the land appertaining at C.S khatian No.54, Dag No.390 of Belabo Mouza under Narshgindi district measuring 28 decimals and in total 276 decimals of land in others plots; Abdur Rahman died leaving behind his brother Abdul Gahor alias Abdul Gafur who became owner of the entire land. Abdul Gahor alias Abdul Gafur died leaving behind his son Abdul Awal, daughter Ayesha Akhter and wife Tomija Khatun; they became owner of in total 327 decimals of land including those 276 decimals and accordingly S.A Khatian No.35 was recorded in their names including the disputed land. Thereafter, R.S Khatian No.85, R.S Dag No. 687 was rightly recorded in their names. Then Tomija Khatun died leaving behind son Abdul Awal and daughter Ayesha Akhter. Abdul Awal made an amicable settlement with his sister Ayesha Akhter and got 25 decimals suit land from R.S Dag no.687. Thereafter, Abdul Awal gifted 2.125 decimals by a deed of gift to a Mosque on 07.03.1996 and on 11.04.2023 he

sold 16.40 decimals from rest 22.875 decimals to the plaintiffs and accordingly the plaintiffs mutated their names. They also established Madrasah on 4.875 decimals of suit land and recently when they took some development work of the Madrasah building the defendants threatened them to dispossess from the disputed land hence the suit.

The plaintiffs then filed an application under Order 39 Rule 1 & 2 along with section 151 of the Code of Civil Procedure for temporary injunction stating inter alia that the Defendants may enter into the suit property and change the nature and character of it and may try to erect new house over the suit land.

The defendants filed written objection stating inter alia that Abdul Gahor alias Abdul Gafur and Abdur Rahman were owner of the land suit land appertaining at C.S khatian No. 54, Plot No. 390 measuring 25 decimals of land. R.S Khatian No. 85 was wrongly prepared. Abdul Awal had no right to sell 16.40 decimals to the plaintiffs as he was owner of 10.375 decimals after earlier transfer. The suit land is ejmali property; the defendants become owners of disputed land by way of inheritance and had been possessing the same by erecting House, Mosque over there in some portion, planting trees in some portion and by cultivating the rest of the land and digging pond over there; Recently the plaintiffs blocked a pathway of 100 years at the southern end of the suit land and on shalish they agreed to reopen the pathway but did not do so. Earlier the Plaintiffs had initiated Civil Suit No.93 of 2023 and made a prayer for temporary injunction which was allowed ex parte even before serving any notice upon

the defendants. Then the defendants made an application to vacate the order of temporary injunction and accordingly it was vacated by order dated 30.11.2023; and then the plaintiffs on 03.01.24 withdrew the suit. Now they again filed this suit and this application for temporary injunction but they do not have any exclusive right, title and possession over the disputed land which is liable to be dismissed.

After hearing both the parties the trial court was pleased to allow the application for temporary injunction by order dated 18.03.2024 against which the defendants preferred Miscellaneous Appeal No.06 of 2024 before the learned District Judge, Narshingdi which was ultimately heard by the learned Additional District Judge, 2nd Court who by her impugned Judgment and Order dated 21.04.2025 was pleased to dismiss the appeal affirming the order passed by trial court.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 21.04.2025 passed by the court of appeal below the defendant-petitioners instituted this Civil Revision before this Court and obtained the Rule and interim order as stated at the very outset.

The opposite parties appeared and filed counter-affidavit and the petitioners also filed supplementary affidavit.

Mr. Md. Ashrafuzzaman, the learned advocate appearing for the petitioners submits that the predecessor of the petitioners one Ali Mohammad Hazi was owner of the land appertaining at C.S khatian No. 54, Dag No. 390 of Mouza: Belabo measuring 28 decimals of land. The C.S Khatian, S.A Khatian and R.S Khatian

were prepared in the names of their predecessors along with the predecessors of the plaintiffs and they are paying the rents to the Government. The instant Petitioners had been possessing the same peacefully for more than 100 years by erecting House over there in some portion, planting trees in some portion and by cultivating the rest of the land as their ancestral property in ejmali with the plaintiffs. It is the settled principle of law that injunction cannot be imposed upon the land possessing jointly and as such both the Judgments and Orders passed by the courts below are liable to be set aside. The learned advocate then submits that the plaintiffs blocked a pathway used for more than 100 years by the people at the southern end of the suit land which is evident from the advocate commissioner's report and as such the defendants cannot be enjoined from their ejment right and in that view the balance of convenience and inconvenience are in favor of defendant-petitioners and against the plaintiff-Opposite Parties.

The learned advocate lastly submits that the Plaintiffs had earlier initiated Civil Suit No. 93 of 2023 and made a prayer for temporary injunction which was allowed ex parte and when the defendants made application to vacate the order of that temporary injunction it was allowed on 30.11.2023 and then the plaintiffs withdrew the suit on 03.01.24 and then brought the present suit which is not maintainable at all.

On the other hand Mr. Shakil Ahmed, the learned advocate appearing for the opposite parties submits that the suit property is not the ejmali property and

the plaintiffs are in possession of the suit property by separate khatain and the advocate commissioner's report that the under construction building is not over land of the defendants. The learned advocate supporting the judgments and orders passed by the courts below submits that the courts below concurrently found that the construction is going on the plaintiffs' land and the courts below also found that there is a path way for the people in general other than the disputed path way. He submits that development works cannot be stopped on the plea of so-called ejmali property as it is found the land upon which the development works were done was in exclusive possession of the plaintiffs.

I have heard the submissions of both the parties, perused the application, supplementary affidavit, counter-affidavit, application for vacating the order of stay along with all the documents annexed with this Civil Revision. I have carefully examined the order of temporary injunction passed by the trial court as well as the judgment and order passed by the court of appeal below.

The trial court after hearing both the parties framed four issues to dispose of the application for temporary injunction. The trial court found that the suit land was ejmali during the C.S record but thereafter in the S.A and R.S record the property has been recorded separately and the plaintiffs and the defendants are enjoying their respective recorded lands. The trial court found that plaintiffs' land is recorded in S.A Khatian no.35 and R.S Khatian no.85 while the defendants land is recorded in S.A Khatan nos.46, 47 and 48 corresponding to R.S Khatian Nos.676,

469, 76, 542,823,466,218,831 and 305. Regarding the balance of connivance and inconvenience, the trial court held that since the plaintiffs invested huge amount in constructing the building and if the construction is halted then the plaintiffs will be prejudiced and on the other hand the defendants will lose nothing. The court of appeal below also concurred with the findings of the trial court and finally dismissed the appeal.

On careful consideration of both the judgments it appears that the plaintiffs are in possession of the suit land which has been prima facie proved and the balance of convenience and inconvenience is in favour of the plaintiff-opposite parties. The plaintiff-opposite parties got temporary injunction on 18.03.2024 more than 2½ years ago and that temporary injunction order was affirmed by the Appellate Court below. However, the defendants though got an order of stay by this Court on 23.06.2025 which has been expired on 22.12.2025 and at the moment there is no order of stay for more than 08 months. Since the plaintiff-opposite parties are in possession of the suit land which has been concurrently found by the courts below hence I found no reason to interfere with the concurrent findings of fact. The plaintiffs filed the suit for declaration of title of the suit land while the defendants claimed that the suit land is ejmali which is to be proved by taking evidence at the trial. It is true that it a general rule that in ejmali property a co-sharer cannot get injunction order against another co-sharer unless there is an exceptional case. Be that as it may, if after conclusion of trial if the suit

fails and the defendants can prove their title and possession over the suit land then the defendants will definitely get the same along with the constructed building and other structures thereon.

In the facts and circumstance as discussed above I find no merits in the instant Rule hence, the Rule is liable to be discharged.

In the result the Rule is **discharged**. However, without any order as to cost.

The trial court is directed to dispose of the suit as early as possible since it is a simple suit for declaration of title.

Communicate this judgment and order at once.