

Present
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice A.K.M. Zahirul Huq

First Miscellaneous Appeal No. 41 of 2026
With
Civil Rule No. 532 (FM) of 2025

Bangladesh Industrial Finance Company Limited
(BIFC)
.... Appellant

Ibadur Rahman Chowdhury and others
.... Respondents

Mr. Mohammad Arshadur Rouf, Senior Advocate with
Mrs. Syeda Nasrin, Advocate
.... For the Appellant

Mr. Raghob Rauf Chowdhury, Senior Advocate with
Mr. Sharif Ahmad, Advocate
.... For the Respondent Nos. 1-4

Judgment on 09.03.2026.

Md. Iqbal Kabir, J:

Since the facts and law involved in this First Miscellaneous Appeal, as well as in this Rule and application for mandatory injunction/ status-quo are intertwined, they are being heard together and disposed of by this judgment.

This First Miscellaneous appeal is directed at the instance of the plaintiff-appellants against the judgment and order dated 07.10.2025, passed by the learned Joint District Judge, 5th Court, Dhaka, in Title Suit No. 74 of 2024, rejecting the application filed under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure 1908.

It is pertinent to note that the Title Suit, being No. 74 of 2024 for declaration of title, was being filed by the plaintiff appellants, thereby seeking the following relief:

(ক) তপসিল-১ বর্ণিত যুগ্ম জেলা জজ, ১ম আদালত, ঢাকার দেওয়ানী মোকদ্দমা নং-১১৪৫/২০১৭ এ বিগত ১৯/০৬/২০১৯ ইং তারিখে ১-৪ নং বিবাদীগণের নামে সোলেমুলে প্রাপ্ত রায় ও ডিক্রি তফস্বকী, যোগাযোগী এবং বাদীর উপর অকার্যকর মর্মে ঘোষণা প্রদান;

(খ) তপসিল-২ বর্ণিত নালিশী সম্পত্তিতে বাদীর অনুকূলে এবং ১-৪ নং বিবাদীগণের প্রতিকূলে ১ ষোল আনা স্বত্ব ঘোষণার এক ডিক্রি দিতে;

(গ) বিবাদী পক্ষের নামে ১৮৯/১৬ নং নামজারী ও জমাভাগ মোকদ্দমামূলে ১৫.১৫ শতাংশ সম্পত্তির নামজারী বাতিলপূর্বক বাদীর নামে নামজারী সম্পাদনের নিমিত্তে ৫নং বিবাদীকে আদেশ প্রদানপূর্বক এক ঘোষণার ডিক্রি দিতে;

(ঘ) সম্যক আদালত ব্যয় বাদীর অনুকূলে ও ১-৪ নং বিবাদীপক্ষের বিরুদ্ধে প্রদান করিতে;

(ঙ) অথবা আদালতের ন্যায় বিচারে বাদী অন্য যেভাবে যে যে বৈধ প্রতিকার পাইতে হকদার তাহা ডিক্রী দিতে আজ্ঞা হয়।

The Plaintiff asserted ownership based on the registered sale deed of 2005 and claimed to be in peaceful possession, alleging that the defendants are attempting to forcibly dispossess them.

However, the defendants contended that they obtained ownership and title through a Sale Deed executed by the Court in Execution Case No. 22/2004, arising out of a decree in Original Suit No. 254/1983 (Suit for Specific Performance of Contract). They claim their possession of the Schedule Property was delivered to them on 14.08.2025 through the due process of law in the aforementioned Execution Case.

The plaintiff appellants file an application for an ad-interim injunction under section 151 of the Code of Civil Procedure. Having considered the submission made by the parties, the Court below vide its order No. 3 dated 08-09-2025 passed an order of status-quo in respect of the suit property until final hearing and disposed of the application for temporary injunction.

Thereafter, the application under Order XXXIX Rule 1 and 2 read with section 151, for a temporary injunction filed by the plaintiff-appellant-petitioner was heard, against which defendant respondent opposite party Nos. 1-4 filed a written objection. Upon hearing the parties, the Court vide its order dated 07.10.2025 rejected the application for temporary injunction.

Being aggrieved by and dissatisfied with the said judgment and order passed by the learned Joint District Judge, 5th Court, Dhaka, the plaintiff-appellant-petitioner preferred this First Miscellaneous Appeal.

Upon hearing the appellant, this Court, by its order dated 26.10.2025, issued Rule and passed an interim order of injunction. Against which defendant, the respondent opposite parties travel to the Apex Court. The Judge-in-Chamber, by its order dated 20.11.2025, modified the interim order passed by this Court; thereby, the parties are directed to maintain the status-quo in respect of possession of the suit property till disposal of the Rule.

However, this matter has been sent to this Court for disposal within a specified period. But it takes time to make it ready, as the respondents were reluctant.

Mr. Mohammad Arshadur Rouf, learned Senior Advocate, submits that the plaintiff–appellant is the lawful owner of the scheduled property and has peaceful, continuous possession thereof for a long period to the knowledge of all concerned. The defendant-respondents, having no lawful right, title, interest, or possession over the property, in collusion with each other, are making unlawful attempts to dispossess the plaintiff by threats and intimidation.

He claims that the defendant-respondent does not possess any valid deed or lawful document in support of his alleged claim. Any document relied upon by the defendants has been created through fraud and forgery and therefore does not confer any lawful right or interest upon them.

He submits that the plaintiff–appellant has been regularly paying the Land Development Tax, WASA bills, DPDC bills, and other charges relating to the property. However, the Court below failed to consider that there exists a real and imminent apprehension of unlawful dispossession by the defendant respondents, and to some extent violates the Court order.

However, by filing an application for mandatory injunction /status-quo entry and brought notice to this Court that appellant’s apprehension came into the light. According to him, the respondent-opposite parties started working, thereby, deliberately undertaking to alter the nature and character of the suit property during the subsistence of the status-quo order. He claims that the conduct and posture of the respondents demonstrated a brazen disregard for lawful authority as they behaved with confidence, without any obstruction, and complete impunity. He claims that respondents were acting under perceived protection, since no effective intervention from law enforcement agencies was forthcoming despite repeated communications made by the petitioner.

He submits that the documents relied upon by the defendant respondents, including the sale, the Record of Rights, mutation papers, rent receipts, and the report of the Advocate Commissioner regarding delivery of possession, are

misconceived, collusive, and do not legally establish the defendants' ownership or possession. Hence, the impugned judgment and order passed by the learned Court below rejecting the prayer for temporary injunction are illegal, erroneous, and liable to be set aside.

Mr. Raghiv Rauf Chowdhury, learned Senior Advocate for the respondent Nos. 1-4, submits that they obtained possession through the execution of a Court decree, their possession holds a legal sanction and is not prima facie illegal or wrongful.

He has claimed that the statements made in paragraph No. 3 of the supplementary affidavit dated 22.06.2026 are not true; rather, those are misleading. The respondents categorically denied the allegations made by the plaintiff-appellant. According to him, no permanent construction has been made on the suit land to date. After obtaining possession of the land through the Court, the respondents erected only a temporary wall to separate the portion of land delivered to them. Such a construction was made long before the order of status quo was passed by the Court.

It has been claimed that when a small portion of the said temporary wall became damaged, the respondents merely repaired the damaged portion. No new wall has been constructed, nor has the demarcated boundary been altered in any manner. The boundary of the land had already been determined and settled by the Advocate Commissioner along with the Bailiff/Execution Officer of the Court on 14.08.2025, which is evident from the order dated 26.08.2025 passed by the learned Joint District Judge, 3rd Court, Dhaka in Title Execution Case No. 22 of 2004.

It is at this juncture that this Court, based on the submissions made by the parties, passed an order thereby directing the Police Commissioner, DMP, to conduct an inquiry and submit a report before the Court. In compliance with the said direction, the Police Commissioner submitted an inquiry report dated 26.02.2026. The content of the report is reproduced herein below:

“উপর্যুক্ত বিষয় ও সূত্রোক্ত স্মারকের আলোকে আপনার সদয় অবগতির জন্য জানানো যাচ্ছে যে, সূত্রোক্ত স্মারক থানায় গৃহীত হওয়ার পর পল্টন মডেল থানায় কর্মরত মোঃ মনিরুজ্জামান সেখ, ইন্সপেক্টর (তদন্ত), বিপি ৭৮০৬১১৭৬১৭, পল্টন মডেল থানা, ডিএমপি, ঢাকা হাওলা মতে প্রাপ্ত হইয়া

সঙ্গীয় ফোর্সসহ গত ২৫/০২/২০২৬ খ্রিঃ তারিখ সরজমিনে উপস্থিত হইয়া গোপনে ও প্রকাশ্যে তদন্ত করেন এবং স্থানীয় লোকজনদের জিজ্ঞাসাবাদ করেন। তদন্তকালে ও জিজ্ঞাসাবাদে জানা যায়, ঢাকা জেলার সাবেক রমনা হালে মতিঝিল মৌজার সিটি জরিপ দাগ নং-৮০৪ এর ১৫.১৫ শতাংশ জমি গত ১৪/০৮/২০২৫ খ্রিঃ তারিখ ডিক্রী জারি মামলা মূলে বিজ্ঞ আদালতের প্রতিনিধি এবং পুলিশসহ জমির খরিদ সূত্রে মালিক কহিনুর জাহান চৌধুরী, এবাদুর রহমান চৌধুরী, ফারিয়া রহমান চৌধুরী ও সাদিয়া রহমান চৌধুরীগণের পক্ষে নিযুক্ত আম মোক্তার মোঃ কামরুল ইসলামকে জমির সীমানা নির্ধারণ করে লোহা-ইট-সিমেন্ট দ্বারা তৈরী খুঁটি স্থাপন করে দখল বুঝিয়ে দেন। ঐ সময় ইটের বাউন্ডারী ওয়াল নির্মাণের প্রস্তুতকালে কোর্টের প্রতিনিধি কার্যক্রম বন্ধ ঘোষণা করে উভয় পক্ষকে শান্তিপূর্ণভাবে নিজ নিজ অবস্থানে থাকার পরামর্শ দিয়ে পুলিশ সদস্যদের বিদায় দেন এবং তারা নিজেরাও চলে যান। পরবর্তীতে বিভিন্ন তারিখ ও সময়ে উক্ত প্রতিবাদী পক্ষ (কহিনুর জাহান চৌধুরী, এবাদুর রহমান চৌধুরী, ফারিয়া রহমান চৌধুরী ও সাদিয়া রহমান চৌধুরীগণের পক্ষে নিযুক্ত আম মোক্তার মোঃ কামরুল ইসলাম) উল্লেখিত জমির উত্তর ও পশ্চিম পার্শ্বে ইটের বাউন্ডারী ওয়াল করে সীমানা প্রাচীর নির্মাণ করেন। উত্তর পার্শ্বের সীমানায় ইটের বাউন্ডারী ওয়াল নির্মাণের ফলে বিরোধী জমিতে থাকা পূর্বের নির্মিত পাশাপাশি দুইটি গ্যারেজ ঘর (ইটের ওয়াল ও টিনের ছাপড়া ঘর) এর একটি প্রতিবাদী পক্ষের সীমানার ভিতরে পরে যায়। ঘরটি বর্তমানে আছে এবং সে ঘরে বিদ্যুৎ সংযোগ এবং ঘরের পাশে পানির মটর দেখা যায় এবং সে মটরের লাইন থেকে ইটের বাউন্ডারী ওয়ালের উপর দিয়ে প্লাস্টিকের পাইপ দিয়ে আবেদনকারী পক্ষের সীমানায় পানি নিতে দেখা যায়। উত্তর পার্শ্বের সীমানা বাউন্ডারী ওয়ালের কিছু অংশের সাথে একচালা টিনের ছাপড়া ঘর এবং জমির পূর্ব পার্শ্বের পুরাতন গেইটের উপরে কাঁটা তারের বেড়া দেখতে পাওয়া যায়। উল্লেখ্য যে, তফসীল সম্পত্তিতে পুলিশ বিভাগের কোন স্বত্ব/স্বার্থ নিহীত নেই। উক্ত জমিতে আইন-শৃঙ্খলা পরিস্থিতি স্বাভাবিক রয়েছে।

অতএব, ইহা আপনার সদয় অবগতি ও পরবর্তী কার্যক্রমের জন্য প্রেরণ করা হলো।”

Upon placing the report, the opposite party of this case submits that the report confirms that no permanent construction has been made on the suit land. It further states that after obtaining possession through the Court, the respondents erected only a temporary wall to separate their portion of the land before the order of status-quo was passed, and when a small portion of the said wall was damaged, it was merely repaired. The report further confirms that no new wall was constructed and that the demarcated boundary fixed by the Advocate Commissioner and the Bailiff/Execution Officer on 14.08.2025 has not been altered in any manner.

Contrary to that, the applicant-appellant, by showing the alleged report submitted that they continued their work, their conduct and work disregarded the order of this Court. He submits that they have some video clips and other documents as evidence which show that, in violation of the order of this Court, they erected or constructed a wall.

He submits that the balance of convenience and inconvenience clearly lies in favour of the plaintiff-appellant; thus, to uphold the dignity of the Court and law, a mandatory injunction of status-quo entry is necessary to prevent injustice.

Otherwise, such acts would disrupt the established rule of law and undermine the authority of the court's process.

We have considered the submissions so advanced by the learned counsel for the appellant and that of the respondents at length, perused the memorandum of appeal, including the impugned judgment and order, and all the documents appended in the case. This Court also considered the Civil Rule and the application filed by the parties.

On our scrutiny, it appears, and the respondents admitted that after obtaining possession through the Court, the respondents erected only a temporary wall to separate their portion of the land before the order of status-quo, and when a small portion of the said wall was damaged, it was merely repaired.

However, upon a plain reading of the report, it is not clear when the respondents erected the temporary wall to separate their portion of the land or when the damaged portion of the said wall was repaired. These matters involve disputed questions of fact which can only be ascertained through the examination of witnesses and other relevant evidence, and for the determination of such issues, the trial Court is the proper forum.

Moreover, the Title Suit is required to be disposed of in accordance with the law and may not remain pending for an indefinite period. Early disposal of the suit would minimize further complications between the parties.

In view of the above facts and circumstances, we are of the view that justice would be met if this Court disposed of this First Miscellaneous Appeal along with the Civil Rule and the connected application with certain directions.

Accordingly, the applicant-appellant is directed to file an application for status-quo or mandatory injunction, if so advised, within 15 (fifteen) days from the date of receipt of this judgment.

The learned trial Court is also directed to dispose of such application, if any, within 30 (thirty) days from the date of filing of the application. At the time of disposal of such application, the trial Court shall be at liberty to examine the Police Commissioner's report, along with other documents, the witnesses, if any,

and/or any other documents that may be produced by the parties, and shall dispose of the matter in accordance with law.

Apart from that, the trial Court is directed to dispose of the Title Suit being No. 74 of 2024 as soon as possible to avoid further delay and complication.

With the above observation and direction, the First Miscellaneous Appeal, along with the Civil Rule being No. 532 (FM) of 2025 and the connected application, is disposed of without any order as to cost.

However, parties are directed to maintain the status-quo in respect of position and possession of the suit land.

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

A.K.M. Zahirul Huq, J:
I agree.