

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Miscellaneous Appeal No.1 of 2025

Abdul Aziz

... Appellant

-Versus-

Unidev Trading (BD) Limited and others

... Respondents

Mr. Khair Ezaz Maswood, Advocate with

Mr. Md. Omar Faruk, Advocate

Mr. Md. Mahmudul Hasan, Advocate

... For the appellant.

Mr. Md. Ramzan Ali Sikder, Advocate

....For the Respondent No.1.

Heard and Judgment on 02.07.2026.

S M Kuddus Zaman, J:

This First Miscellaneous Appeal is directed against the impugned judgment and order dated 17.09.2024 passed by the learned Joint District Judge, 2nd Court, Narayanganj in Title Suit No.579 of 2022 allowing the application filed by the plaintiff under Order 39 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908.

Facts in short are that the respondent as plaintiff instituted above suit for declaration of title by adverse possession and permanent injunction for 166.52 acres land appertaining to S. A. Khatian Nos.109 and 202 corresponding to R. S. Khatian Nos.202 and 109 as fully described in the schedule to the plaint

In above suit the plaintiff submitted a petition for injunction under Order 39 Rule 1 of the Code of Civil Procedure, 1908 for an order of temporary injunction restraining the defendants from entering into above land and disturbing the peaceful possession of the plaintiff alleging that the plaintiff purchased 19.5274 acres land appertaining to S. A. Khatian Nos.207 and 208 corresponding to R. S. Khatian Nos.109 and 202 from several owners and constructed godown, factory and other structures and were possessing the same by renting to several persons for more than twelve years and above land has been rightly recorded in the name of the plaintiff. On 03.09.22 defendant Nos.17 and 28 along with 10-12 goons attempted to forcibly dispossess the plaintiff from above land.

Defendant No.28 contested above petition by filing a written objection alleging that defendant No.28 was a co-sharer of disputed S. A. Khatian Nos.207 and 208 corresponding to R. S. Khatian Nos.109 and 202 and his co-sharers transferred 270 decimal land to the plaintiff by registered kabla deed No.2996 dated 29.03.2000 and against above kabla deed above defendant as petitioner filed pre-emption Miscellaneous Case No.8 of 2001 in the 2nd Court of Joint District Judge, Narayangong which was allowed on contest on 28.05.2005. Plaintiff who was opposite party in above case preferred Miscellaneous Appeal No.53 of 2005 to the District Judge, Narayangonj which was dismissed on 05.03.2007. Above appellant preferred Civil Revision No.1637 of 2007 to the High

Court Division and the High Court Division made the Rule absolute and set aside the judgment and order of the Court of Appeal below. Defendant No.28 as appellant challenged the legality and propriety of above judgment and order of the High Court Division by preferring Civil Appeal No.192 of 2016 to the Appellate Division which was allowed on 24.0.2016. The plaintiff preferred Civil review No.214 of 2019 to the Appellate Division for review of above judgment and order which was also rejected on 21.04.2022 and the judgment and order passed by the trial Court in Pre-emption Case No.8 of 2001 was affirmed. The plaintiff cannot get an order of temporary injunction in respect of above pre-empted land of defendant No.28 which was affirmed by the Appellate Division.

The learned Joint District Judge allowed above petition for injunction by impugned judgment and order dated 17.09.2024.

Being aggrieved by and dissatisfied with the judgment and order of the trial Court defendant No.28 as appellant moved to this Court and preferred this First Miscellaneous Appeal.

Mr. Khair Ezaz Maswood, learned Advocate for the appellant submits that the respondent as plaintiff filed above suit for declaration of title by adverse possession for 166.2 decimals land appertaining to S. A. Khatian Nos.207 and 208 corresponding to R. S. Khatian Nos.109 and 202. The plaintiff purchased 270 decimal land appertaining to S. A. Khatian Nos.207 and 208 corresponding to R. S. Khatian Nos.109 and

202 from the co-sharers of the appellant by registered kabla deed No.2996 dated 29.03.2000 and the appellant preferred Pre-emption Case No.8 of 2001 against above kabla deed of the respondent which was allowed on 28.05.2005 by the Appellate Division of the Supreme Court of Bangladesh in Civil Appeal No.192 of 2016. The plaintiff has filed above suit for 166.52 acres land of S. A. Khatian No.207 and 208 and corresponding to R. S. Khatian Nos.109 and 202 incorporating the land which was pre-empted by the appellant as mentioned above. The respondent sought an order of injunction against the land of the appellant but the learned Joint District Judge failed to appreciate above facts and circumstances of the case and materials on record and most illegally passed an order of temporary injunction which is not tenable in law.

On the other hand Mr. Md. Ramzan Ali Sikder, learned Advocate for the respondent No.1 submits that the appellant filed Pre-emption Case No.8 of 2001 in the 2nd Court of the Joint District Judge, Narayanganj and obtained a judgment and order on 28.05.2005 but the land of above Pre-emption Case was disputed and several other persons have lawful claim over above land and they have initiated separate legal proceeding in the Civil Court and the High Court Division. The land of Pre-emption Case No.8 of 2001 and those of Title Suit No.579 of 2022 are quite distinguishable and not identical. The respondent was not as party to Pre-emption Case No.8 of 2001 nor he

was a respondent in Civil Appeal No.192 of 2016 before the Appellant Division. The latest record of right stands in the name of the respondent and he is also paying rent to the Government regularly. On consideration of facts and circumstances of the case and materials on record the learned Joint District Judge rightly passed an order of temporary injunction which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above respondent as plaintiff instituted above suit for declaration of title by adverse possession and permanent injunction against the appellant for 166.52 decimals land appertaining to S. A. Khatian Nos.207 and 208 corresponding to R. S. Khatian Nos.109 and 202. In spite of claiming of title by adverse possession the plaintiff has stated in the plaint that he purchased some land from several persons by registered kabla deeds by deeds of bainapatra from other persons went into possession in some disputed land. There is no mention as to when above lawful possession by purchase or bainapatra became adverse against the true owners.

The defendant has admitted that the plaintiff purchased 270 decimals land of S. A. Khatian Nos.207 and 208 corresponding to R. S. Khatian Nos. 109 and 202 from his co-owners by registered kabla deed No.2996 dated 29.03.2000. It has been claimed that against above kabla deed dated 29.03.2000 defendant No.18 as petitioner preferred Pre-

emption Case No.8 of 2001 to the 2nd Court of Joint District Judge, Narayangonj which was allowed on 28.05.2005 and above judgment and order of the trial Court was ultimately affirmed by the Appellate Division of the Supreme Court of Bangladesh in Civil Appeal No.192 of 2016 on 12.03.2019. It has been further claimed that above disputed land also comprises above pre-empted land of defendant No.28 which was affirmed by the Appellate Division.

The plaintiff did not claim in the petition for injunction that he did not purchase 270 decimal land from the disputed Khatians or he was not a party to Pre-emption Case No.8 of 2001 filed by respondent No.28 as petition against above kabla deed. It was not claimed by the respondent that he did not prefer Miscellaneous Appeal No.53 of 2005 to the District Judge, Narayangonj challenging the judgment and order of above Pre-emption Case nor he preferred Civil Revision No.1637 of 2007 to the High Court Division or he was not a respondent of Civil Appeal No.192 of 2016 of the Appellate Division.

The claim of the learned Advocate for the respondent No.1 that the respondent was not a party to above pre-emption case or above Miscellaneous Appeal Civil Revision or Civil Appeal to the Appellate Division is out of pleadings and a completely a new case which this Court in its revisional jurisdiction cannot entertain or determine. The learned Advocate for respondent No.1 further submits that the land of Pre-emption Case No.8 of 2001 and disputed land is quite

distinguishable. But there is no such claim in the plaint or petition for injunction. It is not disputed that the land of above pre-emption case and the disputed land of this injunction petition belong to S. A. Khatian No.207 and 208 and R. S. Khatian No.109 and 202.

The claim of the respondent that the land of pre-emption case is disputed and other persons have lawful claim as to title and possession of above land is also not tenable in law at the instance of the respondent. No claimant of above land is before us and we are merely hearing a Miscellaneous Appeal against an order of temporary injunction. The respondent purchased 270 decimal land by registered kabla deed dated 29.03.2000 from S. A. Khatian No.207 and 208 corresponding to R. S. Khatian No.109 and 202 and defendant No.28 as petitioner filed Pre-emption Case No.8 of 2001 which was allowed and above judgment and order was ultimately affirmed by the Appellate Division of the Supreme Court of Bangladesh in Civil Appeal No.192 of 2016. The plaintiff had no locus standi to claim title in the land covered by above judgment and of the Appellate Division passed in Civil Appeal No.192 of 2016 and seek a declaration of title by adverse possession for above land.

The learned Joint District Judge committed serious illegality by passing the impugned order of temporary injunction in respect of the land which was acquired by defendant No.28 by pre-empting the kabla

deed of the plaintiff and which was affirmed by the Appellate Division of Supreme Court of Bangladesh.

In above view of the facts and circumstances of the case and materials on record we find substance in this First Miscellaneous Appeal which deserves to be allowed.

In the result, the First Miscellaneous Appeal is allowed.

The impugned judgment and order dated 17.09.2024 passed by the learned Joint District Judge, 2nd Court, Narayangonj in Title Suit No.579 of 2022 is set aside and the petition for injunction filed by the respondent under Order 39 Rule 1 of the Code of Civil Procedure, 1908 is rejected.

The learned Joint District Judge is directed to dispose of above suit expeditiously in accordance with law within a period of twelve months from the date of receipt of this order.

However, there will be no order as to cost.

Tamanna Rahman Khalidi, J:

I agree.