

Present:

Mr. Justice Sheikh Abdul Awal
and

Mr. Justice Md. Mansur Alam

In the Matter of:

First Miscellaneous Appeal No. 21 of 2012

Anish Uddin.

.....plaintiff-appellants.

-Versus-

Kashem and another

.....Defendant-respondents.

Mr. Nikhil Kumar Saha.

..... For the appellant.

Mr. T.M. Shakil Hasan, Advocate

..... For the respondents.

Heard on 03.03.2025 and

Judgment on 04.03.2025

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the order No. 51 dated 24.07.2011 passed by the learned Joint Judge, 4th Court, Dhaka Rajshahi in Title Suit No. 151 of 2006 rejecting the application for temporary injunction.

The brief fact relevant for disposal of this appeal is that the appellant as plaintiff filed Title Suit No. 151 of 2006 in the Court of the learned Joint District Judge, 4th Court, Dhaka impleading the defendant Year Hossain and others praying for partition of the suit land as described in the schedule of the plaint. After institution of the suit, the plaintiff-appellant filed an application under Order XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction restraining the defendant No.2 from constructing

building or semi paka ইমারত on the suit property during pendency of the suit.

The learned Joint District Judge, 4th Court, Dhaka after hearing the application by order dated 14.07.2011 rejected the application for temporary injunction on the finding that the plaintiff's possession in the suit land is not specified, the parties are possessing in the suit land in ejmali and thus, the plaintiff is not entitled to get an order of injunction on an unspecified land.

Being aggrieved by the aforesaid impugned order passed by the learned Joint District Judge, 4th Court, Dhaka the plaintiff-appellant filed this First Miscellaneous Appeal before this Court.

During pendency of the appeal, the plaintiff-appellant filed an application for injunction and this Court by order dated 25.10.2011 issued Rule and passed an ad-interim order of injunction restraining the opposite parties from dispossessing the appellant from the suit property for a period of 6 months.

In this backdrop, the defendant entered appearance in the Rule and filed an application for vacating the order of injunction against opposite party No.2 (defendant No. 25) and a division bench of this Court after hearing the said application by order dated 27.05.2012 vacated the ad-interim injunction and also ordered that ad-interim order shall continue only in respect of opposite party No.1 (defendant No.102), who was a party to the temporary injunction petition.

On a query from the Court, Mr. T.M. Shakil Hasan, the learned Advocate for the respondent No.2, however, submits that he has no knowledge as to the position of the suit pending in the Court below.

Mr. Nikhl Kumar Saha, the learned Advocate for the appellant submits that the opposite party No.1 (defendant No.102) has possessed the suit land in ejmali and unless an ad-interim order of

injunction is passed, the plaintiff will evict the defendant No.102 from the suit land.

Considering all these aspects of the case as revealed from the materials on record particularly in a case of this nature, we are of the view that ends of justice will sufficiently be met if the order of this Court as to injunction with regard to opposite party No.1 (defendant No. 102) is continued till disposal of the suit.

In the result, the appeal is allowed in-part without any order as to cost. The order of this Court dated 27.05.2012 so far as it relates to injunction in respect of opposite party No.1 (defendant No. 102) is allowed to continue till disposal of the suit. Since the appeal is allowed in part, the connected Rule being Civil Rule No. 892 (FM) of 2011 is also absolute in-part.

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

Md. Mansur Alam, J:

I agree.