

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

and

Mr. Justice Mohi Uddin Shamim

First Miscellaneous Appeal No. 214 of 2012

with

Civil Rule No. 45 (FM) of 2012

In the matter of:

Md. Asadul Haque and others

... Appellants-defendants-petitioners

-Versus-

Md. Anisuzzaman and others

... Respondents-plaintiffs-opposite parties

Md. Khurshid Alam Khan

... For the appellants-defendants-petitioners

Mr. Kamruzzaman Bhuiyan, Advocate

... For the respondents-plaintiffs-opposite parties
No.1-3 and 5

Heard on 9th & 16th January, 2025

and

Judgment on 27th January, 2025

Mohi Uddin Shamim, J.

Since the questions of law and fact involved in the First Miscellaneous Appeal No. 214 of 2012 and the Civil Rule No. 45 (FM) of 2012 are intertwined, those matters have been taken together, heard together and disposed of by this common judgment.

At the instance of the defendant-petitioners, this appeal is directed against the Order No. 126 dated 21.11.2011, passed by the learned Joint District Judge, 2nd Court, Satkhira, in Civil Suit No. 13 of 2005, allowing an application for the appointment of a Receiver for the scheduled land mentioned in the plaint and the Market stands thereupon, under Order XL, Rule 1, read with Section 151 of the Code of Civil Procedure.

Upon an application for stay, this Court, vide order dated 16.01.2012, issued a Rule and stayed operation of the impugned order dated 21.11.2011 for a period of eight (8) weeks from the date, and the Rule has been registered as Civil Rule No. 45 (FM) of 2012. Subsequently, the order of stay was extended from time to time and, lastly, it was extended on 03.03.2015 until disposal of the Rule.

Facts necessary for disposal of this appeal as well as the Rule, in short, are that the respondents as plaintiffs, on 20.06.2004 filed Civil Suit No. 12 of 2004 in the Court of learned Joint District Judge, 1st Court, Satkhira for partition. Subsequently, the suit was transferred to the Court of the Joint District Judge, 2nd Court, Satkhira for hearing and was renumbered as Civil Suit No. 13 of 2005. It is stated that the suit land measuring .12 acre, under “Kha” Tafshil, situated in Polashpole mouza in S. A. Khatian No. 2140, belonged to one Abdur Rouf. Thereafter, Abdur Rouf died, leaving behind four sons and one daughter, who are the plaintiffs in this case. The plaintiffs

applied to the Satkhira Pourashava for partition with the co-sharers, but the defendants did not agree; as such, the plaintiffs filed the aforementioned case for partition.

The present appellant No. 1 as defendant No. 18, filed a written statement stating, inter alia, that he acquired the disputed .12 acre of land from his predecessor through boinanama. Thereafter, appellant No. 1 as plaintiff filed Civil Suit No. 60 of 2004 (Sadar), dated 27.05.2004 for specific performance of contract, which is pending before the said Court.

During the trial of the Partition Suit, the plaintiff-respondent filed an application under Order XL, Rule 1, read with Section 151 of the Code of Civil Procedure for appointment of a Receiver for the Market, which had been erected by the appellants on the suit land. After hearing the said application, the learned Joint District Judge, 2nd Court, Satkhira passed an order appointing a Receiver for the said Market on 21.11.2011.

Being aggrieved by and dissatisfied with the impugned order dated 21.11.2011, the defendants as appellants preferred this appeal before this Court. The appeal was admitted and is now ready for hearing. The appellants by filing an application prayed for a stay of the operation of the impugned order; whereupon a Rule was issued and a stay was granted. Both the appeal and the connected Rule have been taken up for disposal.

No one appears on behalf of the appellant-defendants to press the appeal and the connected Rule.

On the contrary, Mr. Kamruzzaman Bhuiyan, the learned Advocate appearing for the defendant-respondent Nos. 1–3 and 5, vehemently opposes the appeal and the connected Rule. He also submits that the appointment of a Receiver is a discretionary power of the Court, and if the Court is satisfied that a Receiver should be appointed, it may pass an order appointing a Receiver. He further submits that since it was presumed that unless a Receiver is appointed the law and order situation would deteriorate, and as such, the trial Court committed no illegality in appointing the Receiver by the impugned order. He has also argued that the order appointing a Receiver was correctly issued within the ambit of the law by the Court below under Order XL, Rule 1, read with Section 151 of the Code of Civil Procedure. He finally prays for dismissal of the appeal.

We have heard and considered the submissions as advanced by the learned Advocate for the respondents-opposite parties Nos. 1–3 and 5 at length, perused the Memo of Appeal, the written objections filed by both parties in the suit, and all other connected materials available on record.

The issue involved in this appeal is for determination as to whether the impugned order appointing a Receiver is lawful or not.

Order XL, Rule 1, read with Section 151 of the Code of Civil Procedure deals with the appointment of a Receiver in respect of disputed property and provides that the Court may appoint a Receiver when it appears to be just and convenient. It is a settled principle of law that a Receiver should not be appointed to suppress a bona fide possessor of the property in controversy, unless there is some substantial ground for interference. The power conferred by the Code of Civil Procedure to appoint a Receiver is not to be exercised as a matter of course, and the mere fact that appointing one can do no harm is not a sufficient reason for allowing an application for the appointment of a Receiver. The words “just and convenient” in Order XL, Rule 1 of the Code of Civil Procedure mean that the Court should appoint a Receiver for the protection of the property or the prevention of injury in accordance with legal principles, and not merely because the Court deems it convenient to do so. The law confers no arbitrary or unregulated discretion on the Court. Where the object of the plaintiff is to assert a right to property of which the defendant is in possession, the case necessarily involves further questions. The Court by taking possession at the instance of the plaintiff, may be doing wrong to the defendant, in some cases causing an irreparable wrong.

These principles have been summarized by the Appellate Division of the Supreme Court of Bangladesh in *Kamiruddin and others v. Md. Mukshed Ali*

Biswas and others, reported in 48 DLR (AD) 14, wherein it was observed as follows:

“Under the provision of Order XL Rule 1 of the Code of Civil Procedure, the Court may appoint a receiver of any property when it appears to be just and convenient. The Court may find it just and convenient when it is necessary for the protection of the property or the prevention of any injury to the property, but not simply when it thinks so. It is, no doubt, a discretionary power of the Court as to when a receiver may be appointed in respect of any property, but the discretion must be exercised judiciously according to judicial principles and not capriciously. The applicant for the appointment of a receiver must show a prima facie case and a good chance of success, and no order for the appointment of a receiver should be passed to deprive a de facto possessor of the property. Sub-rule (2) of Rule 1 of Order XL of the Code of Civil Procedure does not authorize the Court to remove from the possession of property any person to whom any property to the suit has not a present right so to remove.”

Appointment of Receiver is called for when a co-sharer is put to such hardships that without court’s intervention remedy is not available. In this regard, we have perused a reported case, of *Nurul Hossain vs. Hasan Bannu*, reported in 35 DLR 28, which reads as follows:

“..... Allegations of mismanagement, element of danger or apprehension of alienation and wasting of the property are important factors to be weighed by the Court but the apprehension must be well founded and

must be such that without protection of the court the property in question will be wasted or dissipated.

..... In the instant case, receiver was prayed for not only on the ground of wastage of damage but also on the ground that the plaintiffs who were female co-sharers had been kept out of enjoyment of the property and the defendants were appropriating all the rents of the tenanted premises from the tenants. Order 40 confers very wide powers on the Court to appoint a receiver and where it appears to the Court "to be just and convenient" the Court may appoint a receiver. It has been held in Ramji Ram and others vs Saligram reported in 14 GWN 248 that where In a suit for partition of joint-family property it was proved that a co-owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession by the co-owner with the result that all supplies were cut off from his branch of the family, and although no case of waste might have been established against the co-owner in possession the case was eminently a proper one for the appointment of receiver.

The appointment of receiver is a discretionary matter. So long it is found that discretion has been properly, exercised by the Court below and has not been exercised in an improper, arbitrary or whimsical manner an order of appointment of receiver made by a Subordinate Court does not call for an interference by this Court."

The facts and circumstances of the reported case in 35 DLR 28 and those of the present case are similar, and as such we subscribe to the same view in the present case.

Very remarkably, evidently, and admittedly, defendant No. 1 claimed 9 decimals of land out of 22 decimals by way of a disputed 'boinanama', but he is forcefully possessing and enjoying the whole 22 decimals of land by constructing a market over the total property, i.e. on 22 decimals.

Under the foregoing facts and circumstances, we are of the considered view that the appointment of a Receiver by the learned Joint District Judge, 2nd Court, Satkhira, in his impugned order dated 21.11.2011 has been correctly given, and no illegality was committed in appointing a Receiver. Therefore, we find no substance in the appeal and accordingly dismiss the appeal.

In the result, the appeal is **dismissed** and the connected Rule, being Civil Rule No. 45 (FM) of 2012, stands **discharged** without any order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Let a copy of this judgment be communicated to the respondents as well as the lower Court concerned forthwith.

Kazi Md. Ejarul Haque Akondo, J.

I agree.