

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 509 of 2006**

IN THE MATTER OF:

An application under Section 115 of the  
Code of the Civil Procedure.

And

IN THE MATTER OF:

Md. Ahsanul Islam (Ritu)

... Defendant-Respondent-Petitioner

-Versus-

Sree Gouranga Barman and others

... Plaintiffs-Appellant-Opposite parties.

None appears for either party.

**Judgment on: 21.08.2024**

Md. Bashir Ullah, J

At the instance of defendant no.1 in Other Class Suit No. 153 of 2004, this Rule was issued calling upon the opposite party no. 1 to show cause as to why the judgment and order dated 17.01.2006 passed by the District Judge, Kurigram in Miscellaneous Appeal No. 10 of 2005 allowing the Miscellaneous Appeal and reversing those of the order dated 28.02.2005 passed by the Assistant Judge, Sadar Court, Kurigram in the aforesaid suit rejecting an application under

Order 39 Rule 1 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court also directed both the parties to maintain *status quo* in respect of the possession of the suit land.

The short facts, relevant for the disposal of the instant Rule are:

The opposite party no. 1 as plaintiff filed a suit being Other Class Suit No. 153 of 2004 before the Assistant Judge, Sadar Court, Kurigaram for declaration of title. After filing the suit, the opposite party no.1 as the plaintiff-applicant filed an application on 25.11.2004 under order 39, rule 1 read with section 151 of the Code of Civil Procedure praying for temporary injunction.

It is stated in the application that, the scheduled land belonged to one, Khudiram Barman and S.A. Khatian was recorded in his name. The plaintiff is the only heir of the said Khudiram Barman as the grandson of one Hagura Barman who was the son of the brother of the grandfather of the Khudiram Barman. After completion of the funeral prayer of Khudiram Barman, the plaintiff got possession of the suit

land. The homestead of Khudiram Barman was situated in plot No.1952 which is now a *Puza Mandap*. The defendant nos. 2 to 5 executed a fabricated deed dated 26.07.2004 in favour of the defendant no.1, where defendant nos. 2 to 5 are not the heirs of Khudiram Barman. Subsequently, the defendant no. 1 threatened the plaintiff to dispossess and claimed rice/paddy which was cultivated in the suit land.

The petitioner as defendant contested the suit filing a written objection. The case of the defendant is that, the suit land belonged to one Khudiram Barman, son of Rajmohan Barman. He was single and died leaving behind two cousins namely, Bimal Chandra Roy and Hariram Roy. Hariram Roy died leaving behind three sons namely, Kishore Kumar Roy, Swapan Kuram Roy and Tapon Kumar Roy. Thus Bimal Chandra Roy, Kishore Kumar Roy, Swapan Kuram Roy and Tapon Kumar Roy became the owners of the suit land as heirs of Khudiram Barman. Defendant no.1 purchased the suit land from the above-mentioned heirs of Khudiram Barman and he has been owning and enjoying the possession of the suit land. So, the application for temporary injunction will be rejected.

Upon hearing the parties, the Senior Assistant Judge, Kurigram Sadar, Kurigram rejected the application for temporary injunction on 28.02.2005.

The plaintiff as appellant then filed Miscellaneous Appeal No. 10 of 2005 before the District Judge, Kurigram challenging the above-mentioned rejection order. However, upon hearing the parties, the learned District Judge, Kurigram allowed the appeal on 17.01.2006.

Being aggrieved by and dissatisfied with the judgment and order dated 17.01.2006 the plaintiff-appellant as petitioner filed the instant civil revision before this Court.

The instant revision has been sent to this Court by the Honourable Chief Justice for disposal, but none appeared to support or oppose the rule though the matter has been appearing in the list for several days with the names of the learned counsels.

We have perused the Civil Revision, impugned judgment and order and other materials on record.

It is admitted by both parties that, the suit land belonged to Khudiram Barman and S.A. Khatian was recorded in his name. He was single and hence he had no offspring. The plaintiff-appellant-opposite party no. 1 is claiming that he is the grandson of Hagura Barman who was

the son of the brother of the grandfather of Khudiram Barman and thus he is the only heir of Khudiram Barman. When the defendant-respondent-petitioner claimed ownership of the suit land showing a registered deed then the plaintiff-appellant-opposite party no. 1 instituted Other Class Suit No. 153 of 2004 and filed an application under Order 39, Rule 1 of the Code of Civil Procedure for temporary injunction. The Senior Assistant Judge, Kurigram Sadar Court, Kurigram rejected the application for temporary injunction holding that:

“নালিশী জমি উভয় পক্ষের স্বীকৃত মতে ক্ষুদিরাম বর্মনের অর্জিত।  
 ১ নং বিবাদী উল্লেখ করেন যে, ক্ষুদিরাম বর্মন মারা গেলে তাহার কোন আত্মীয় না থাকায় পিতামহ ভোলানাথ বর্মনের সহোদর ভ্রাতা ভুদুরামের পুত্র হাণ্ডা বর্মনের দৌহিত্র। বাদী শ্রদ্ধ ও পারলৌকিক ক্রিয়াদী সম্পন্ন করিয়া উক্ত জমি চাষাবাদে দখলভোগ করিয়াছেন।  
 ১নং বিবাদী আপত্তি দাখিল করিয়া উল্লেখ করেন যে, ক্ষুদিরামের মৃত্যুর পর তাহার পিতৃকুলের কোন ওয়ারিশ না থাকায় মাতৃকুলের মামাত ভাইরা উক্ত সম্পত্তির ওয়ারিশ এবং উক্ত ওয়ারিশদের নিকট হইতে বিবাদী উপযুক্ত পনবাহায় নালিশী ভূমি খরিদ করেন। ... কে কাহার ওয়ারিশ তাহা মূল মোকদ্দমার সাক্ষ্য প্রমানের ব্যাপার। সাক্ষ্য গ্রহণ ছাড়া সঠিক ওয়ারিশ নির্ণয় করা সমীচিন নহে মর্মে আপাততঃ দৃষ্টে প্রতীয়মান হয়। ...তাই বাদীপক্ষের প্রাইমাফেসী আর্গুয়েবল কেস বিদ্যমান আছে কিনা তাহা সাক্ষ্য প্রমান ছাড়া

সন্দেহাতীত ভাবে প্রমানিত না হওয়ায় অস্থায়ী নিষেধাজ্ঞার দরখাস্ত  
খানা না-মঞ্জুর এর সিদ্ধান্ত গ্রহণ করা হইল।”

Being aggrieved, the plaintiff preferred Miscellaneous Appeal before the District Judge, Kurigram. Learned District Judge as appellate Court allowed the appeal wherein the Court observed that:

“স্বীকৃত মতে নালিশী সম্পত্তি ক্ষুদিরাম বর্মনের ছিল। সে মারা গেলে তাহার কোন স্ত্রী বা পুত্র অথবা পিতা-মাতা, ভাই-বোন ছিল না। আরো স্বীকৃত যে, তপসীল বর্ণিত সম্পত্তিতে হিন্দু সম্প্রদায়ের মন্দির আছে। যাহাতে পূজা ও কীর্তন হইয়া থাকে। আপীলকারী/বাদী/দরখাস্তকারী নিজেকে ক্ষুদিরাম বর্মনের পিতামহ ভোলানাথ বর্মনের সহোদর ভ্রাতা ভুন্দুরাম বর্মনের পুত্র হাণ্ডা বর্মনের দৌহিত্র হিসাবে দাবী করিয়া ক্ষুদিরাম এর ওয়ারীশ হিসেবে তাহার দেহের সৎকার করতঃ ওয়ারীশ হিসেবে নালিশী সম্পত্তি প্রাপ্ত হইয়াছে বলিয়া দাবী করিয়াছে। অপরদিকে ১ নং বিবাদীর বক্তব্য যে, ১ নং বিবাদী তাহার ভ্রাতার পুত্র ২-৫ নং বিবাদীর পিতা হরিরাম রায় ক্ষুদিরাম বর্মনের মামাতো ভাই হিসাবে নালিশী সম্পত্তি প্রাপ্ত হইয়া গত ২৬/০৭/২০০৪ ইং তারিখে কবলামূলে তাহার নিকট বিক্রয় করিয়াছে।”

The record shows that, both the parties are claiming that they are owning and possessing the suit land. The plaintiff claimed that he is the only heir of the deceased Khudiram Barman. On the other hand, defendant no. 1 is

claiming that, he purchased the suit land from the original heirs of Khudiram Barman. In such a claim and counter claim it is not possible to ascertain the ownership of the suit land without evidence. It is also difficult to arrive at a decision in respect to the balance of convenience and inconvenience and that of *prima facie* case of the parties to the suit.

It also appears that, the instant rule and the order of *status quo* were issued and passed on 26.02.2006. The record also shows that, the opposite party no. 1 of this revision appeared on 20.07.2006. Meanwhile, around 18 years have passed but the opposite party did not file any counter affidavit nor challenged the said order of *status quo* in any forum which tantamounts that, he conceded such order of *status quo*. In such a position, it is our considered view that, justice will be best served if the order of *status quo* in respect of the possession of the suit land continues till disposal of the suit and the suit is disposed of expeditiously.

In the result, the Rule is disposed of.

The parties are directed to maintain *status quo* in respect of possession of the suit land till disposal of the Other Class Suit no. 153 of 2004 pending before the Assistant Judge, Sadar Court, Kurigram.

The trial Court is directed to dispose of the suit as expeditiously as possible preferably within 6(six) months, if it is not disposed of.

Let a copy of this judgment be communicated to the concerned court forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.

Md. Ariful Islam Khan  
Bench Officer