

District-Naogaon.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 8209 of 1991.

Sajjad Ali Mondol being dead his legal heirs Md.
Kayes Uddin and others.

..... Plaintiff- Respondent- Petitioners.

-Versus-

Md. Moshaque @ Mosaraf and others.

..... Defendant-Appellant-Opposite Parties.

Mr. Md. Golam Azom, Advocate

..... For the Plaintiff- Respondent- Petitioners.

None appears.

..... For the Defendant-Appellant -Opposite Parties.

Heard On: 30.06.2025; 07.07.2025

And

Judgment Delivered On: 04.08.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 16.06.1984 passed by the learned Subordinate Judge, Naogaon in Misc. Appeal No. 48 of 1982, reversing the judgment and order dated 23.07.1981 passed by the learned Munsif, Naogaon in Other Class Suit No. 1076 of 1981 allowing an application under Order XXXIX Rule 1 of the Code of Civil Procedure, should not be set aside, or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

The petitioner, as plaintiff, instituted Other Class Suit No. 1076 of 1981 in the Court of Munsif, Naogaon against the defendant-opposite parties seeking a decree of permanent injunction in respect of the land described in the schedule to the plaint.

The plaintiff's case, in short, is that the suit land appertaining to C.S. Khatian No. 19 of Mouza Kaikuri, P.S. Sapahar, originally belonged to one Chura Kisco. Upon his death, leaving his only daughter, Kali Kisco, she, along with others, exchanged the land with the plaintiffs by executing several deeds of power of attorney on 18.05.1957 in favour of the plaintiffs/petitioners and the predecessors-in-interest of defendants Nos. 10–15, in respect of the suit land and other lands. On the basis of an amicable partition, the suit lands fell to the share of plaintiffs Nos. 1–3, and the R.S. Khatians were prepared in their names. They claim to have been in possession of the suit land, paying rents to the Government, and assert that defendants have no right, title, or possession therein. The plaintiffs alleged that defendants Nos. 1–9, being of dangerous character, threatened them with dispossession on 14.07.1981 and attempted to forcibly dispossess them and cut away crops from the suit land. Hence, the suit for permanent injunction.

During the pendency of the suit, the plaintiffs filed an application under Order XXXIX Rule 1 CPC seeking a temporary injunction restraining defendants Nos. 1–9 from entering the suit land,

dispossessing the plaintiffs therefrom, and cutting away crops until disposal of the suit. The defendants appeared and filed a written objection, contending inter alia that the suit land originally belonged to Chura Kisco from whom one Sakina Khatun purchased it. Upon her death, leaving her only son Ali Azam, he sold the land to Saliman Ali, Shahida Begum, and Darajuddin. Thereafter, portions of the land were sold to defendants Nos. 1–8 and others, who claimed to be in possession of their respective shares.

The plaintiffs filed in court their exchange deeds, rent receipts, and other documents in support of their case, but the defendants failed to produce any document to substantiate their claim that Sakina Khatun had purchased the suit land from the original owner.

Upon consideration of the materials on record, the learned Munsif, by order No. 2 dated 23.07.1981, granted an ad-interim injunction in favour of the plaintiffs. After hearing both parties and examining their respective documents, the trial court found a prima facie case of title and possession in favour of the plaintiffs and made the ad-interim injunction absolute until disposal of the suit.

The defendants preferred Miscellaneous Appeal No. 48 of 1982 before the learned Subordinate Judge, Naogaon, challenging the interim order dated 23.07.1981. By judgment and order dated

16.06.1984, the appellate court allowed the appeal and set aside the injunction granted by the trial court.

Aggrieved, the plaintiff-petitioner moved this Court in revision and obtained the present Rule.

Mr. Md. Golam Azam, learned Advocate for the petitioner, submits that the trial court, having found prima facie title and possession in favour of the plaintiff, rightly passed the temporary injunction. The said order having been made absolute upon contest, the defendants erred in law in preferring an appeal against the initial interim order rather than the order making it absolute. The appellate court, by reversing the trial court's decision without properly considering the evidence, committed an error of law resulting in failure of justice.

None appears on behalf of the opposite parties to oppose the Rule.

Since this is an old matter, taken up pursuant to an administrative order of the Hon'ble Chief Justice, this Court proceeds to dispose of the matter.

It appears from the record that the trial court, upon prima facie satisfaction, passed the injunction order on 23.07.1981, which was later made absolute on 10.03.1982 after contest. The defendants, instead of challenging the latter order, filed appeal against the earlier

interim order. The appellate court, without due consideration of the plaintiffs' possession and other material facts, allowed the appeal and set aside the injunction.

In view of the fact that this is an old matter and there is no clear record as to whether the original suit for permanent injunction has since been disposed of, and the learned Advocate for the petitioner could not confirm its present status, this Court is of the view that the ends of justice will best be served by restoring the trial court's order and directing expeditious disposal of the suit.

In the result, the Rule is made absolute without any order as to costs.

The judgment and order of the appellate court are set aside, and the order of the trial court granting temporary injunction is restored. The trial court concerned is directed to dispose of the suit within six (6) months from receipt of this order, if not already disposed of.

Communicate this order at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.