

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 3774 of 2013**

**IN THE MATTER OF :**

An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:

Md. Ishaque Ali being dead his legal heirs Md. Mainul Haque and others

...Plaintiff-Petitioners

Versus

The Additional Deputy Commissioner and others

...Defendant-Opposite parties

None

.... For the parties

**Judgment on: 10.09.2026**

**Md. Riaz Uddin Khan, J:**

At the instance of the plaintiff Rule was issued calling upon the defendant-opposite parties to show cause as to why the Judgment and Order dated 14.08.2013 passed by the Additional District Judge, Chapainawabgonj in Misc. Appeal No. 07 of 2010 rejecting the prayer for injunction and thereby affirming the judgment and order dated 18.02.2010 passed by the Court of Assistant Judge, Shibgonj, Chapainawabgonj in Other Class Suit No. 38 of 2010 vacating the order of temporary injunction passed earlier should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule the parties were directed to maintain status-quo in respect of the

suit land for a temporary period which was expired. Thereafter on 28.04.2014 the petitioner filed an application for injunction which was rejected. Subsequently by order dated 15.05.2014 the prayer for extension of status-quo was also rejected by a single bench of this Court. However, on 10.12.2015 new lawyers appeared with no objection certificate from the filing lawyer and filed an application for injunction and a single bench of this Court by order dated 10.12.2015 allowed that application for injunction restraining the defendants from lease out the property till disposal of the Rule.

This Civil Revision has been sent from the section of this Court at the direction of the Hon'ble Chief Justice and is appearing in the list of this Court for several dates. No one appears to press or oppose this Rule though it is appearing in the list for several dates. Since it is a civil revision, I have taken up this matter, perused the revision petition along with the annexures and I have decided to dispose of the case on merit.

Facts for disposal of this Rule are that the present petitioner as plaintiff filed Other Class Suit No. 38 of 2010 for permanent injunction against the opposite parties before the Assistant Judge, Shibgonj, Chapainawabgonj. The plaintiff's case is that the suit land originally belonged to Pulin Chandra Das and others according to C.S record. On 09.02.1944 they sold 1.4 acres and .63 acres of land to the plaintiff from C.S Plot Nos. 49 and 50 respectively and the plaintiff peacefully began to enjoy the possession over the suit land but during S.A operation it was recorded wrongly

in the names of Pulin Chandra Das and others instead of plaintiff. The plaintiff filed Misc. Case No. 59 of 1962 against such wrong entry of S.A khatian which was allowed but unfortunately at the time of R.S record though plaintiff's name was recorded initially in the draft but when it was finally published it was recorded in the names of Narayan Das and others showing their address at India and recorded as the vested and non-resident property. Against that the plaintiff filed Other Class Suit No. 31 of 1977 before the court of Sadar Munsif, Rajshahi for declaration of his title and ultimately got decree. Thereafter, on the strength of that decree the plaintiff mutated his name and possesses the suit land. The plaintiff's further case is that at one stage some local miscreants showing the plaintiff as petitioner filed Misc. Case No. 42/XIII/05-06 for cancelling mutation and Assistant Commissioner (Land), Shibgonj cancelled the mutation of the plaintiff. Thereafter, when the son of the plaintiff went to local Tahsildar office he came to know that the suit land has been leased out by the defendants to the 3<sup>rd</sup> party and on receiving such news the plaintiff filed the instant suit.

The plaintiff filed an application for temporary injunction under Order-XXXIX, Rule- 1 and 2 of the Code of Civil Procedure. The trial court issued show cause notice and also passed an interim order.

The defendant Government filed written objection against the application for temporary injunction and also filed an application under Order XXXIX, Rule 4 of the Code of Civil Procedure Their case, inter alia are that Pulin Chandra and others were

C.S recorded tenants in the suit land. In S.A khatian the plot No.50 was recorded in the names of Dharma Narayan Das and Shailen Chandra Das and plot No. 49 was recorded in the names of Amzad Hossain, Sonaruddin, Dharma Narayan Das and Shailen Chandra Das. Dharma Narayan Das and Shailen Chandra Das went to India for good at the time of the Indo-Pak war in 1965 and as per the law their portion was vested to the Government and was accordingly recorded in the R.S khatian showing the property as vested and non-resident property. The defendant has been leasing out the property year to year basis. The plaintiff created some forged documents, claiming decree got the suit land mutated but eventually on finding the truth his mutation was cancelled. The plaintiff's claim of title through registered deed dated 09.02.1944 is false, forged and fabricated. Since the plaintiff has no right title and interest in the suit land he cannot get the temporary injunction.

The trial court though initially issued interim injunction but on hearing of both the parties vacated the temporary injunction by order dated 18.02.2010. Against that order the plaintiff filed Misc. Appeal No. 07 of 2010 before the learned District Judge, Chapainawabgonj which was ultimately heard by the Additional District Judge, Chapainawabgonj who after hearing both the parties by his impugned judgment and order dated 14.08.2013 was pleased to allow the appeal in part sending it on remand to the trial court to decide whether the suit itself was maintainable as per the present existing law relating to vested and nonresident property.

Being aggrieved by and dissatisfied with the said judgment and order dated 14.08.2013 the plaintiff filed the instant Civil Revision before this Court and obtained the rule and interim order as stated at the very outset.

The plaintiff-petitioner in the civil revision petition has taken as many as 10 grounds assailing the judgments and orders passed by the courts below, sum and substance of those are that the trial court as well as the lower appellate court failed to consider the facts and circumstances of the case and did not apply their judicial mind rather being misconceived and misconstrued the facts and law of the case rejected the application for temporary injunction mainly on the basis of misleading submission of the opposite parties to the effect that the suit property was vested one and the petitioner creating forged documents claimed himself owner of that property. The courts below should have considered that there are houses and trees on the suit land which was evident by the Advocate Commissioner's report which indicate that the petitioner is in possession. Both the courts below overlooked the deed dated 09.02.1944, the petitioner's mutation and rent receipts and possession of long 69 years. The balance of convenience and inconvenience is in favour of the petitioner. In support of the above contention the petitioner cited two decisions reported in 33 DLR (AD) 298 and 26 DLR 10.

After going through the revision application along with the annexures I have also carefully examined the order passed by the trial court as well as the judgment and order passed by the court of appeal below.

It appears from the judgment of the trial court that the basis of the plaintiff's title of the suit land was a deed of 1944 but it was an unregistered deed and the trial court cast doubt upon the genuineness of that deed. However, another basis of the plaintiff is the decree he got in Title Suit No. 31 of 1977. The trial court called for the suit register of that suit and found that there was no similarity between the suit register and the certified copy of the said decree. So the trial court also cast doubt regarding the judgment and decree obtained as by the plaintiff. On the basis of these findings the trial court rejected the application for temporary injunction. It further appears from the court of appeal below that the Appellate Court also concurrently found that there is no similarity between the certified copies of judgment and decree of the Title Suit No. 31 of 1977 and its suit register. However, the Appellate Court raised a question whether the suit itself filed by the plaintiff is maintainable as per existing law relating to vested property and refusing the temporary injunction sent the case on remand to the trial court to decide on the point whether the suit has already been abated as the relevant law.

The petitioner's basis of title is an unregistered document of 1944 and on that basis the petitioner claimed that he mutated his land by amending the S.A khatian but he could not produce any such amended S.A. khatian or mutation khatian before the court. The petitioner filed certified copy of Title Suit No. 31 of 1977 which both the court on perusal found it a seriously doubtful one and prima facie disbelieved

the genuineness as it has no similarities with the suit register. The Appellate court also rightly raise a question whether after coming into operation of the “অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১” the suit is at all maintainable in its present form.

Section 7 of “অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১” reads as under:

৭। (১) এই আইন প্রবর্তনের পর কোন ব্যক্তি কোন সম্পত্তি প্রত্যর্পণযোগ্য সম্পত্তির তালিকায় অন্তর্ভুক্তযোগ্য নহে মর্মে বা উক্ত তালিকায় অন্তর্ভুক্ত কোন সম্পত্তি প্রত্যর্পণযোগ্য সম্পত্তি নহে মর্মে কোন আদালতে মামলা দায়ের করিতে বা এইরূপ সম্পত্তি অবমুক্তির জন্য তত্ত্বাবধায়কের নিকট কোন দাবী উত্থাপন করিতে বা উহার ব্যাপারে নাম জারীর জন্য কোন রাজস্ব কর্মকর্তার নিকট কোন আবেদন করিতে পারিবেন না।

(২) এইরূপ মামলা দায়ের বা দাবী উত্থাপন বা আবেদন করা হইলে আদালত বা ক্ষেত্রমত তত্ত্বাবধায়ক উক্ত দাবী বা রাজস্ব কর্মকর্তা উক্ত আবেদন সরাসরি নাকচ করিবেন।

From plain reading of the above provision of law it appears that as per subsection (1) no suit or application is maintainable relating to listed as returnable vested property and as per subsection (2) if any such suit, claim or application is filed in that case it will be rejected in limine.

This law came into force 11<sup>th</sup> April, 2001 when it was published in the official gazette and the present suit was filed in the year 2010.

Moreover, section 13 of “অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১” deals with abatement of the suit and proceeding pending before any court relating to such returnable property which runs as under:

১৩। (১) প্রত্যর্পণযোগ্য সম্পত্তির তালিকা সরকারী গেজেটে প্রকাশের তারিখে যদি কোন আদালতে এমন দেওয়ানী মামলা অনিষ্পন্ন থাকে যাহাতে উক্ত তালিকায় অন্তর্ভুক্ত কোন সম্পত্তিতে স্বত্ব দাবী করিয়া বা উহা অর্পিত সম্পত্তি মর্মে দাবী করিয়া কোন প্রতিকার প্রার্থনা করা হইয়াছে, বা যদি তত্ত্বাবধায়কের নিকট এমন কোন কার্যধারা অনিষ্পন্ন থাকে যাহাতে উক্ত সম্পত্তিকে প্রত্যর্পণযোগ্য সম্পত্তির তালিকা হইতে অবমুক্তির আবেদন করা হইয়াছে, তাহা হইলে-

(ক) প্রত্যর্পণযোগ্য সম্পত্তির তালিকা সরকারী গেজেটে প্রকাশের তারিখে উক্ত মামলায় উক্ত সম্পত্তি যতটুকু জড়িত ততটুকু বাবদ মামলাটি আপনা আপনি abated হইয়াছে বলিয় গণ্য হইবে;

(খ) এইরূপ abatement এর জন্য সংশ্লিষ্ট আদালত কর্তৃক আনুষ্ঠানিক আদেশ প্রদানের বাধ্যবাধকতা থাকিবে না, এবং উক্ত তারিখের পর এইরূপ সম্পত্তির বিষয়ে উক্ত আদালত প্রদত্ত কোন আদেশ (আনুষ্ঠানিক abatement আদেশ ব্যতীত) এর কার্যকরতা থাকিবে না;

(গ) উক্ত তালিকা সরকারী গেজেটে প্রকাশের তারিখে তত্ত্বাবধায়ক উক্ত কার্যধারা কার্যক্রম বন্ধ করিবেন এবং উক্ত তারিখের পর এইরূপ সম্পত্তির বিষয়ে তত্ত্বাবধায়ক প্রদত্ত আদেশ (কার্যক্রম বন্ধকরণের আদেশ ব্যতীত) এর কার্যকারিতা থাকিবে না।

(২) উপ-ধারা (১) এ উল্লিখিত সম্পত্তির মালিক উহা প্রত্যর্পণের জন্য বা উক্ত সম্পত্তির ক্ষেত্রে ধারা ৬ প্রযোজ্য হইলে সংশ্লিষ্ট স্বার্থবান ব্যক্তি উহা প্রত্যর্পণযোগ্য সম্পত্তির তালিকা হইতে অবমুক্তির জন্য বা জনস্বার্থে অধিগ্রহণকৃত অর্পিত সম্পত্তির বিপরীতে প্রদেয় ক্ষতিপূরণের জন্য ট্রাইব্যুনালের নিকট, এবং কোন সম্পত্তি প্রত্যর্পণযোগ্য জনহিতকর সম্পত্তি হইলে উক্ত ধারায় উল্লিখিত ব্যক্তি জেলা প্রশাসকের নিকট, আবেদন করিতে পারিবেন।

(৩) এইরূপ আবেদন উপস্থাপন ও নিষ্পত্তির ও সংশ্লিষ্ট ডিক্রী বাস্তবায়নের ক্ষেত্রে ধারা ১০, ১১ এবং ক্ষেত্রমত ধারা ১৫ এর বিধানাবলী প্রযোজ্য হইবে।

Whether the suit itself is at all maintainable or has been abated as per above mentioned sections of law the trial court has to examined. It is well settled that when the suit itself is not maintainable the question of granting any interim relief does not at all arise. The question of maintainability of a suit goes at the root of a matter in issue to be adjudicated upon. If on a mere reading of the plaint it is found that the suit is not maintainable the Court has to decide the said point even when it is called upon to consider the question of issuing a temporary injunction [Chowmuhani College and another Vs. Md Ismail Hossain and others, 26 DLR 10]. In this 26 DLR 10 case this Court even rejected the plaint of the suit sitting in revisional jurisdiction under section 115 of the Code of Civil Procedure while considering a question of granting temporary injunction by invoking inherent

power of the Court under section 151 read with section 152 of the Code of Civil Procedure. In the present case I cannot consider or examine it as the petitioner did not annex the plaint of the suit. Moreover, neither party appeared before me so I cannot ask them to provide the plaint.

Be that as it may, since the plaintiff-petitioner has totally failed to prove his prima facie case before the trial court and the findings of the trial court was concurrently upheld by the court of appeal below and the petitioner could not raise any question before this court regarding the error of law or committing any legal mistake by the courts below I do not find any reason to interfere with the concurrent findings of the courts below. There is no merit in this Rule. Hence, I am not inclined to interfere with the impugned judgment and order passed by the courts below.

In the result, the Rule is **discharged**. However, without any order as to cost.

The interim order passed earlier by this Court stands vacated.

The trial court is directed to dispose of the suit after notifying the parties as early as possible in the light of this judgment expeditiously without unnecessary adjournments, if in the meantime the suit is not disposed of.

Communicate the judgment and order at once.