

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

In the Matter of:

First Miscellaneous Appeal No. 09 of 2014

Md. Asif Hasan and others

.....Plaintiff-appellants

-Versus-

A.S. Abdul Halim and others

...Defendant-respondents.

None appears

..... For the appellant.

None appears

..... For the respondents

Judgment on 23.04.2025

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the order dated 06.06.2013 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 09 of 2012 rejecting the application under Order 39, Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction.

No one found present to press the appeal on repeated calls since long.

In view of the fact that this petty old appeal arising out of an interlocutory order has been dragging before this Court over a period of 11 years, we are, inclined to take it up for disposal on merit as per materials on records.

On scrutiny of the record, it appears that the appellant as plaintiffs filed Title Suit No. 9 of 2012 in the Court of the learned

Joint District Judge, 1st Court, Dhaka for declaration that the power of attorney deed No. 4211 dated 25.05.2011 and deed of agreement No. 4210 dated 25.05.2011 in respect of “Ga” schedule of the plaint under “Ka” schedule land is illegal, collusive, void, inoperative and not binding upon the plaintiffs.

Thereafter, the plaintiffs 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 Nos. 1&2 from entering into the “Ga” schedule property and from changing the nature and character of the suit property.

Defendants resisted the said application by filing written objection, stating that the defendants are the real owner of the suit land as well as possessors of the suit land.

The learned Joint District Judge, 1st Court, Dhaka after hearing the parties by his order dated 06.03.2013 rejected the application for temporary injunction on the finding that both the parties got the suit properties in equal share from their father and defendant No.1 executed a deed with land developer company for constructing multi-storeyed on their property and there is no scope to dispossess the plaintiffs by the defendants from the suit land.

Being aggrieved by the aforesaid impugned order passed by the learned Joint District Judge, 1st Court, Dhaka, the pre-emptor-appellant filed this First Miscellaneous Appeal before this Court.

Since no one appears to press the appeal, we are not able to know about the exact position of the case whether the case is pending or disposed of.

However, on going through the available materials on records together with the impugned order it appears to us that the learned Joint District Judge, 1st Court, Dhaka on assigning sound reason rejected the application for temporary injunction. The reasonings given by the learned Joint District Judge appears to us to be proper and sound and we, do not find any reason to differ from it. No interference is, therefore, called for.

The “balance of convenience” is a key principle in deciding whether to grant an injunction. In this case weighing the facts, it appears that the balance of convenience and inconvenience are in favour of both the parties. Therefore, the trial Court committed no wrong in not allowing injunction in favour of any contesting party whatsoever.

In any view of the matter, having regard to the fact as aforesaid, this appeal must fail.

In the result, the appeal is dismissed without any order as to costs.

Since the appeal is dismissed, the connected Rule being Civil Rule No. 571 (FM) of 2013 is also discharged.

Communicate this order at once.

Md. Mansur Alam, J:

I agree.