

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. 66 of 2013

In the matter of:

An application under Section 115(1) of the Code of
Civil Procedure, 1908

And

In the matter of:

Subol Mukharjee

---Defendant-petitioner.

-Versus-

Dr. Arifur Rahman Notun and others

--- Plaintiffs-opposite parties.

Mr. Md. Aktaruzzaman, Advocate

--- For the petitioner.

Not represented

--- For the opposite parties.

Heard on: 14.08.2024

Judgment on: 15.08.2024

Md. Bashir Ullah, J

At the instance of the defendant in Title Suit No. 14 of 2009, this Rule was issued calling upon the opposite party nos. 1-4 to show cause as to why order No. 63 dated 29.08.2011 passed by the Joint District Judge, First Court, Barishal in the said suit allowing the application for mandatory injunction filed by the plaintiffs directing defendant no. 1 to remove all structures from the suit land within 30 days, at his own cost which he has done after passing the order of *status quo* and to maintain

the position of the suit land as it was at the time of filing of the suit 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 stayed all further proceedings of Title Execution Case No. 4 of 2011 arising out of Title Suit No. 14 of 2009 pending in the Court of learned Joint District Judge, 1st Court, Barishal for a period of 04(four) months, which was subsequently extended time to time and it was lastly extended on 09.11.2014 till disposal of the Rule.

Facts, relevant for the disposal of the Rule, are:

One Mujibur Rahman Talukdar the predecessor of the opposite party nos. 1-4 as plaintiffs filed Title Suit No. 14 of 2009 against the petitioner and others as defendants praying for partition of the suit land seeking the following reliefs:

(ক) 'ক' তফসিল বিভাজ্য ভূমিতে বাদীর দাবীকৃত অংশ বাবদ পৃথক ছাহামের ডিক্রী দিবার।

(খ) বিভাজ্য বিরোধীয় ভূমির অবস্থান অনুসারে মূল্যমান নির্ধারনে যতদুর সম্ভব নিজামল বহালীতে বন্টনের চূড়ান্ত ডিক্রী দিবার।

(গ) মোকদ্দমা সম্যক ব্যয় বিবাদী প্রতিকূলে ডিক্রী দিবার।

(ঘ) আইন ও ইকুইটি মতে বাদী আর যে যে প্রতিকার পাইতে পারে উহার ডিক্রী দিবার।

It is stated in the plaint that the suit land is joint property and for the convenience of enjoying possession, the plaintiffs asked defendant

for partition of the suit land but it was refused. Under such a compelling situation, the plaintiffs instituted the above-mentioned suit for partition.

Then on 4.5.2010, the plaintiffs filed an application for temporary injunction restraining the defendants from disturbing the peaceful possession of the plaintiffs and dispossessing them and cutting the trees and changing the nature and character of the suit land and also from erecting houses in the suit land. The application was heard on the same date and the trial court issued show cause notice upon the defendant asking them as to why an order of injunction will not be granted within seven days when it passed an interim order to maintain *status quo*.

Thereafter, the plaintiffs filed Violation Miscellaneous Case No. 2 of 2011 under order XXXIX Rule 2(3) of the Code of Civil Procedure against defendant no. 1 alleging that he cut some trees, erected wall, constructed dwelling house and dug hole on the suit land violating the order of *status quo*. In the said Miscellaneous Case the plaintiffs examined as many as 5 witnesses and adduced documentary evidence in support of their case. The trial Court upon perusal of pleading and evidence eventually passed an order on 29.08.2011 detaining the defendant no. 1 in civil prison for 3 months for his disobedience.

Afterwards, the plaintiffs filed an application for mandatory injunction on 28.02.2011 and upon hearing, the trial Court allowed the said application on 29.08.2011 directing defendant No. 1 to remove all the establishments constructed after passing of the order of *status quo*

within 30 days at his own cost and bring back the position of the suit land as it was at the time of institution of the suit.

Being aggrieved by and dissatisfied with the said order dated 29.08.2011 the defendant as petitioner preferred the instant Civil Revision and obtained Rule and order of stay.

Mr. Md. Aktaruzzaman, learned Advocate appearing on behalf of the defendant-petitioner submits that the plaintiffs-opposite party nos. 1-4 filed an application for mandatory injunction on 12.06.2011, which was heard and rejected on 16.06.2011 on the finding that the plaintiffs earlier filed an application under Order XXXIX Rule 2(3) of the Code of Civil Procedure. He contends that the learned Court below rejected the application for mandatory injunction by order No. 50 dated 16.06.2011 which was filed by the plaintiffs on 12.06.2011. So, the trial Court has become *functious officio* to entertain similar application for mandatory injunction on 29.08.2011.

He further submits that the trial Court committed an error of law resulting in an error in the decision occasioning failure of justice in granting mandatory injunction and finally prays to make the rule absolute.

We have heard the learned Advocate for the petitioner, perused the Civil Revision, impugned judgment and order and other materials on record.

The record shows that, the opposite parties as plaintiffs instituted Title Suit No. 14 of 2009 before the Joint District Judge, First Court, Barishal on 02.03.2009 for partition of the suit land. During the pendency of the suit, the plaintiffs filed an application under Order XXXIX, Rules 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction on 04.05.2010 and upon hearing, the learned Joint District Judge, First Court, Barishal issued a notice on 04.05.2010 calling upon the defendant to show cause within seven days as to why a temporary injunction should not be issued as prayed for and directed the parties to maintain *status quo* in respect of the possession of the suit land till submission of the written objection. Subsequently, the plaintiffs filed an application under Order XXXIX, Rule 7 of the Code of Civil Procedure for local inspection of the suit property on 23.01.2011 and upon hearing, the Court appointed an Advocate commissioner and accordingly, the Advocate Commissioner submitted the inspection report after visiting the scheduled property physically on 02.03.2011. In the meantime, the plaintiffs filed an application for mandatory injunction directing defendant no. 1 to remove all the establishments which were constructed violating the order of *status quo* on 28.02.2011. They also filed an application for an extension of the period of *status quo* till disposal of the suit. Upon hearing, the court extended the period of *status quo* till disposal of the suit and issued a notice to show cause within seven days as to why a temporary mandatory injunction should not be granted against the defendants. Thereafter, the plaintiffs filed Violation Miscellaneous Case no. 2 of 2011 under Order XXXIX, Rule

2(3) of the Code of Civil Procedure for violation of the order. The trial Court upon perusal of the record passed an order that defendant no. 1 would be detained in civil prison for a term of three months for his disobedience on 29.08.2011 and also heard the application for mandatory injunction which was allowed directing defendant no. 1 to remove all structures constructed after passing the order of *status quo* within 30 days at his own cost and bring back the position of the suit land as it was at the time of institution of the suit.

It appears from the record that the notice of issuing show cause as well as the order of *status quo* was served upon the defendant no. 1 on 5.5.2010. However, upon receipt of the *status quo* order, defendant No. 1 cut mehguny trees on 15.05.2010 and dug a hole in the suit land. Defendant no. 1 also started constructing a wall and dwelling house on 23.06.2010. The order of extension of *status quo* dated 23.02.2011 was also duly intimated to defendant no. 1. Despite that, defendant no. 1 constructed wall and homestead violating the order of *status quo*. Thereafter, the plaintiff filed a General Diary no. 1372 on 26.02.2011 with Barishal, Kotwali Model Police Station. At this juncture, police went to the suit land and asked defendant no. 1 to stop construction works but when the police left the suit land, then again he flouted the court's order and started construction work. Two Advocate Commissioners submitted their respective reports stating that the construction works were done during the existence of the order of *status quo*.

The plaintiff then on 28.02.2011 filed an application for mandatory injunction upon facing extreme hardship and compelling circumstances and considering the facts and circumstances, the trial court granted mandatory injunction on 29.08.2011.

It appears from the record that the plaintiffs filed another application on 12.06.2011 praying for a mandatory injunction and *status quo*. But no notice was issued in this regard and upon hearing, the learned court rejected the said application for mandatory injunction on 16.06.2011 by order no. 50. Thereafter, the trial Court passed the impugned order on 29.08.2011 by order no. 63 on the basis of earlier application for mandatory injunction filed on 28.02.2011. We find there happened no illegality in passing the order dated 29.08.2011 because the original application was pending in the court and show cause notice was issued and duly served upon defendant no. 1 and thus the order dated 29.08.2011 passed by the Court stands valid and the submission advanced by the learned Advocate appearing for the defendant-petitioner is not acceptable because refusal of second application for mandatory injunction does not bear any merit. The facts and circumstances of the present case falls squarely within the perimeter in the cases of ***Abdul Jalil Munshi Vs. Abu Bakar Siddique, 35 DLR (AD) 42; Babul Kanti Das Vs. Abul Hasem, 47 DLR(AD) 6***. Because in an appropriate cases and to ensure administration of justice it is the duty of the Court to issue injunction in mandatory form to restore the *status quo ante*.

Regard being had to the above facts and circumstances, we do not find any substance in the submission of the learned advocate appearing for the defendant-petitioner. We find that the trial Court has committed no error of law, that resulted in an error in the decision occasioning failure of justice in granting mandatory injunction vide impugned order dated 29.08.2011 passed by the learned Joint District Judge, 1st Court, Barishal in Title Suit No. 14 of 2009.

Accordingly, the rule is discharged, however without any order as to cost.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

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

Md. Mozibur Rahman Miah, J.

I agree.