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

Present:
Mr. Justice S M Kuddus Zaman
And
Ms. Justice Tamanna Rahman Khalidi

FIRST MISCELLANEOUS APPEAL NO.157 OF 2019
WITH
CIVIL RULE NO.291(FM) OF 2019

Dr. Zaidi Omar Sattar and others
....Appellants
-Versus-
Khaleda Sattar @ Khaleda Khanom and others
.... Respondents
Mr. Md. Mustafizur Rahman, Senior Advocate with
M. Harun-ur Rashid, Advocate
Mr. Shafayet Ahmed, Advocate
... For the appellants.
Mr. M. Belayet Hossain, Senior Advocate with
Mr. M. Mahmudul Hasan, Advocate
Mr. Shubho Shatta Rafique, Advocate
Mr. Habib Bahen Arif, Advocate
… For the respondent Nos.8 and 9.
Heard on 27.10.2026 and Judgment on 10.11.2026.

S M Kuddus Zaman, J:

This First Miscellaneous Appeal at the instance of the plaintiff is directed against the judgment and order dated 21.03.2019 passed by the learned Joint District Judge, 1st Court, Chattogram in Other Suit No. 216 of 2018 rejecting a petition for injunction under Order 39 Rule 1 of the Code of Civil Procedure, 1908.

Civil Rule Nos.291(FM) of 2019 having arisen out of this First Appeal above Civil Rule is heard along with this First Appeal and being disposed of by this single judgment.

Facts in short are that the appellants as plaintiffs filed above suit for partition of 0.8980 decimal land claiming saham for 0.1098 decimal. In above suit plaintiffs filed a petition under Order 39 Rule 1 of the Code of Civil Procedure, 1908 for an order of injunction restraining the defendant Nos.1-9 from transferring scheduled land till disposal of the suit. It was alleged that the plaintiffs entrusted the predecessor of the defendant Bazlus Sattar for superintendence and possession of above land who died leaving defendant Nos.1-7 as heirs. Above defendants executed and registered an agreement with defendant Nos.8 for construction of a ten storied building in above land and despite protest of the plaintiff they continued construction work and now attempting to transfer above property.

Defendant Nos.1, 8 and 9 contested above petition for injunction by filing a joint written objection alleging that the defendants were in exclusive possession in 2553 decimal land and they executed an agreement with defendant Nos.8 on 15.11.2011 for construction of a 10 storied building and defendant No.9 has sold flats of his share to raise fund for construction and he is required to execute and register sale deeds to above purchasers. If defendant No.8 is restrained from executing sale deeds above purchasers will

suffer irreparable loss. The plaintiff has transferred greater part of his land to defendant Nos.32 and 33 and he has no possession in above property.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Joint District Judge rejected above petition for injunction.

Being aggrieved by and dissatisfied with above judgment and order of the learned Joint District Judge above plaintiffs as appellants moved to this Court and preferred this First Miscellaneous Appeal.

Mr. Md. Mostafizur Rahman Khan, learned Senior Advocate for the appellants submits that this is a suit for partition and the plaintiff admits that the defendants are co-sharers and they have subsisting interest in above undivided property. Defendant Nos.1-7 executed an agreement with defendant No.8 for construction of a 10th storied building who despite protest of the plaintiff continued construction work and now trying to transfer apartments to several persons which needs to be stopped. If above defendants transfers above property to several persons then serious legal complications will be created and multicity litigations will come up and ends of justice will be met if defendant Nos.1-9 are restrained from transferring above land till disposal of the suit and the learned Joint District Judge is directed to dispose of above suit expeditiously within a specified period of time.

On the other hand Mr. M. Belayet Hossain, learned Senior Advocate for respondent Nos.8 and 9 submits that on the strength of the deed of agreement and the deed of power of attorney dated 14.08.2011 executed by defendant Nos.1-7 defendant No.8 has already constructed a 10th storied building in above land. To raise fund for above construction defendant No.8 sold flats of his share to several persons and now he is required to execute and registered sale deeds to above purchasers. If defendant No.8 is restrained from executing and registering sale deeds above purchasers will unnecessarily suffer irreparable loss and injury. On consideration of above materials on record the learned Joint District Judge rightly rejected the petition for injunction which calls for no interference.

We have considered submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

A suit for partition can be filed by co-sharers against other co-sharers for partition of Joint Property by meets ad bounds. Plaintiff of a suit for partition cannot implead a non co-sharer as a defendant. Plaintiffs did not admit defendant No.9 as co-sharer. Nor above defendant has claimed ownership over any part of the disputed joma. But the plaintiffs have made above person as defendant and sought an order of injunction against him.

It is admitted that defendant Nos.1-7 executed registered deeds of agreement and power of attorney on 15.11.2011 and empowered

defendant No.8 for construction of a tenth storied building in above land. Plaintiff has further admitted that on the basis of above two deeds defendant No.8 constructed above building. A property development company raises construction fund by selling out apartments of his share. The learned Advocate for respondents submits that defendant No.8 has already transferred apartments of his share to several persons and he is required to execute and register sale deeds to those purchasers.

A suit for partition generally takes a longer time for final determination and in such a suit the parties admit their respective lawful share in the undivided property. The dispute of such a suit is the extent or quantity of share and possession. The right to transfer is an important element of right of ownership and a rightful owner should not be restrained from transferring his property for an indefinite period of time. An order of prohibition on transfer of property conflicts the rule against perpetuity. The fate of transfer of any property during pendency of the suit depends on the outcome of the suit. The plaintiff may prefer an application for pre-emption against such a transfer if transfer is not a co-sharer by inheritance. In a suit for partition no party should be prohibited to meet the urgent needs of money by transferring the land of his share.

In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in this First Miscellaneous Appeal which is liable to be dismissed.

In the result, the First Miscellaneous Appeal is dismissed.

The connecting Civil Rule No.291(FM) of 2019 is discharged.

The order of status-quo granted at the time of issuance of the Rule is hereby recalled.

However, there will be no order as to cost.

Tamanna Rahman Khalidi , J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER