

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

**First Miscellaneous Appeal No. 356 of 2015.**

Nur Mohammad

.....Appellant.

Vs.

Asen Ali and others,

.....Respondents.

Mr. Ali Imam Khaled Rahim, Advocate

.....For the Appellant.

Mr. Md. Khalilur Rahman, Advocate

Mr. Mohammad Babrul Amin, Advocate

.....for the Respondent Nos. 1-9.

**Present:**

***Mr. Justice Quazi Reza-Ul Hoque***

***And***

***Mr. Justice J.N. Deb Choudhury.***

*Heard on: 25.01.2016*

*and Judgment on : 26.01.2016.*

**J.N. Deb Choudhury, J**

This first miscellaneous appeal was filed against the judgment and order dated 02.11.2015 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 984 of 2014, rejecting an application for temporary injunction.

The appellant as plaintiff filed Title Suit No. 984 of 2014 on 28.10.2014 before the learned Joint District Judge, First Court, Dhaka, for declaration of title and declaration that the present revisional record of rights are wrong and for staying the proceeding of Miscellaneous Case Nos. 97 of 2014 and 115 of 2014, pending before the Assistant Commissioner (Land) Gulshan Circle, Dhaka, the defendant-respondent No. 10.

Plaintiff's case as stated in the plaint in short, is that, 164 decimals land of C.S. Plot No. 130 under C.S. Khatian No. 13 originally belonged to Jamir Bhuiyan, Kadam Bhuiyan and Jabu in 4 annas share each and Sayed Bhuiyan and Hayed Bhuiyan in 2 annas share each and C.S., S.A. and R.S. record of rights were duly prepared. Sayed Bhuiyan while in possession of his 21.05 decimals of land also purchased 20.5 decimals from Abu Bhuiyan, son of C.S. tenant Jamir Bhuiyan and 5 decimals from another co-sharer Hayed Bhuiyan by registered kabala dated 16.03.1944 and thus became owner of total 47 decimals. Sayed Bhuiyan sold 17.5 decimals and 24.75 decimals by two registered kabalas dated 26.02.1964 and 27.01.1967 respectively and 4.75 decimals remained with him. Sayed Bhuiyan died leaving behind 3 sons namely Asan Uddin, Basir Uddin alias Kerali and Rustom Ali and a daughter Saleman Nessa. Rustom Ali sold his entire share to his brother Asan Uddin by registered kabala dated 26.10.1978. Asan Uddin also purchased 16 decimals, 20 decimals and 17 decimals from his co-sharers by three separate registered deeds dated 07.02.1973, 05.07.1986 and 25.07.1996 respectively. By that way Asan Uddin became the owner of total 63.10 decimals of land by way of inheritance and purchase. Asan Uddin died leaving behind 6 sons namely Miaz Uddin, Yar Uddin, Saiz Uddin, Taiz

Uddin, Azim Uddin and Laiz Uddin. Thereafter they sold the suit land to Saidur Rahman Dipu and Mafizul Islam by registered Kabala dated 08.11.2009 who subsequently sold the suit land to the plaintiff through their constituted attorney by registered kabala dated 25.07.2010.

The further case of the plaintiff is that, after purchase, the plaintiff constructed a boundary wall and possessing the same by mutating his name vide Mutation Case No. 3821 of 2010-2011 and on payment of rent to the Government. The vendors of the plaintiff also paid rent to the Government by mutating their names. The defendant No. 1 filed Miscellaneous Case No. 97 of 2014 and the defendant Nos. 1-9 jointly filed Miscellaneous Case No. 115 of 2014 before the Assistant Commissioner (Land), Gulshan Circle, Dhaka for cancellation of the mutation of the plaintiff.

After filing of the suit, the plaintiff filed an application under Order 39 rule 1 and 2 read with Section 151 of the Code of Civil Procedure and prayed for an order of temporary injunction against the defendants to restrain them from entering into the suit land forcefully and from destroying the boundary wall of the petitioner along with an order of stay of further proceeding of Miscellaneous Case No. 97 of 2014 and 115 of 2014. On 28.10.2014 the Trial Court issued show cause

notice along with an ad-interim order of injunction in the following terms:

“ইতিমধ্যে আগামী ধার্য্য তারিখ পর্যন্ত বিবাদীগণ যাহাতে জোর পূর্বক নালিশী সম্পত্তিতে প্রবেশ করিতে না পারে বা দখল করিতে না পারে বা তপছিল বর্ণিত সম্পত্তির কোন রকম পরিবর্তন করিতে না পারে এবং সহকারী কমিশনার ভূমি, গুলশান সার্কেল এ চলমান মিস কেস নং- ৯৭/১৪ এবং ১১৫/১৪ এর কার্যক্রম গ্রহণ করিতে না পারে তৎমর্মে বিবাদীগণকে অন্তবর্তীকালীন আদেশ দ্বারা বারিত করা হইল।”

Which remains in force till 21.05.2015, while the application for extension of the same filed under Section 151 of the Code of Civil Procedure was rejected on the ground that, there is no scope for any extension, if the party, whose favour ad-interim order was passed, prays for any adjournment.

The defendant Nos. 1-9 filed written statement on 09.06.2015 and also filed written objection against the prayer for temporary injunction on the same date on stating that the plaintiff on creating false documents trying to grab the suit land and also got the mutation of the record of rights beyond the knowledge of the defendants. The present City Khatian also stood in the name of the defendant Nos. 1-9 concerning 1864 decimals of land against which the plaintiff's vendors filed Land Survey

Case No. 1111 of 2008 before the Land Survey Tribunal, Dhaka against the defendants, which is still pending.

By the impugned order dated 02.11.2015 the Trial Court rejected the application for temporary injunction mainly on the reasoning that without taking evidence the question of possession cannot be decided.

Being aggrieved the plaintiff-appellant preferred the instant First Miscellaneous Appeal and the same was admitted on 24.11.2015. After admission filed an application for stay of further proceeding of Miscellaneous Case No. 97 of 2014 and 115 of 2014, pending before the defendant-respondent No. 10 and also prays for an order of status-quo in respect of possession and position of the suit property and after hearing a Division Bench passed an ad-interim order, which is as follows:

*“Heard the learned Advocate and perused the application, considering the facts and circumstances the application is allowed. Let all further proceeding of Miscellaneous Case Nos. 97 of 2014 and 115 of 2014, now pending before the defendant opposite party No. 10 be stayed and the parties are directed to maintain status-quo in respect of possession and position of the suit property till disposal of the appeal.”*

Mr. Ali Imam Khaled Rahim, the learned advocate appearing for the plaintiff-appellant submits that the Trial Court while rejecting the application for temporary injunction failed to consider that the plaintiff is in possession of the suit land by constructing boundary wall and the defendant Nos. 1-9 trying to enter into the suit land forcefully and unless an order of temporary injunction is passed, the defendants will dispossess the plaintiff, which will render multiplicity of proceedings. He next submits that in the proceedings before the defendant-respondent No. 10 being Miscellaneous Case No. 97 of 2014 and 115 of 2014 are related to selfsame property and the fate of the said proceedings depends upon the result of the present suit and accordingly, the proceedings of Miscellaneous Case Nos. 97 of 2014 and 115 of 2014 are liable to be stayed till disposal of the suit. In support of his contention he relied upon two decisions, reported in 47 DLR (AD) 38 and 14 BLD (AD) 1 and accordingly, prays for allowing the appeal on allowing the application for temporary injunction as prayed for.

On the other hand, Mr. Md. Khalilur Rahman, the learned advocate appearing with Mr. Mohammad Babrul Amin, the learned advocate for the respondent Nos. 1-9 submits that so far the order of status-quo as passed by this Court on 24.11.2015, is concern, they have

no objection, if the same is continued till disposal of the suit; but, so far the stay of further proceeding of Miscellaneous Case No. 97 of 2014 and 115 of 2014 pending before the defendant-respondent No. 10, submits that the said proceedings cannot be stayed by a civil court in view of Section 4 of the Code of Civil Procedure and in view of the provisions of Section 143 of the State Acquisition and Tenancy Act, 1950. He next submits that the mutation proceeding being an independent proceeding and after disposal of the same there are independent forum for the aggrieved parties and as such the civil court has no jurisdiction to stay the further proceeding of the said miscellaneous cases. In support of his contention he relied upon some decisions, reported in 18 BLC 46, 6 BLC 241, 60 DLR (AD) 38 and 12 MLR (AD) 137.

We have heard the learned advocates for both the parties and perused the impugned judgment and order along with other annexures which were annexed with the applications.

We have earlier mentioned that so far the order of status-quo is concern both the learned advocates for appellant and respondent Nos. 1-9 have no objection, if the same is continued till disposal of the suit.

Now the only consideration before this Court, whether the further proceedings of Miscellaneous Case Nos. 97 of 2014 and 115 of 2014,

now pending before the defendant-respondent No. 10, Assistant Commissioner (Land) Gulshan Circle, Dhaka can be stayed by a civil Court.

It appears from the prayer of the plaint that the plaintiff not only prayed for declaration of title; but, also prayed for further declaration regarding the revisional record of rights and proceedings of Miscellaneous Case Nos. 97 of 2014 and 115 of 2014.

It appears that the contesting defendants filed an application before the Trial Court for rejection of plaint and the said application has been rejected by the Trial Court on 15.09.2015 and the defendants till today did not challenge the said order. It is settled principle of law that the record of rights are not a document of title and it is always subject to the result of a civil suit, where title is disputed. The revenue authority is bound to give effect of the ultimate decision of the civil court concerning any record of rights. In our view proceeding of a mutation case or a case concerning correction or cancellation of a record of rights will be a futile exercise, while a civil suit is pending concerning the land of that record of rights in between the parties thereto.

In appreciating the respective arguments we have considered the decisions referred by the learned advocate for the appellant.



It appears that in the case of Syed Mohammad Salem Azam and others vs. The Secretary, Ministry of Works, Government of Bangladesh and others, reported in 47 DLR (AD) 38 our Hon'ble Appellate Division held that,

*“We are not impressed by this argument. Respondent No. 1 had every jurisdiction to review its own order if the earlier order dated 08.08.1984 was obtained by the appellants by fraud and misrepresentation, but the impugned order on review must reveal what fraud and misrepresentation the appellants made or committed while obtaining the order dated 08.08.1984. The impugned order dated 08.11.1993 does not contain any indication to that effect. It simply says that the previous order dated 08.08.84 is cancelled. Furthermore, no indication has been given as to why criminal proceeding shall be instituted against the appellants for misappropriating Government property. What materials prompted respondent No. 1 to review its earlier order and what facts weighed upon him are simply absent in the impugned order. The impugned order is therefore not a speaking order and cannot be sustained.*

*There is however a more fundamental objection to the impugned order. Respondent No. 4 has filed Title Suit No. 106 of 1984 for a declaration that the order dated 8.8.84 passed by respondent No. 1 is collusive and void and has amended the plaint for a further declaration that the appellants are not the son and daughter of the said Syed Mohammad Azam. The suit is still pending and respondent No. 1 is very much a party to the suit. Any decision taken by respondent No. 1 concerning the order dated 8.8.84 or any conclusion drawn by him regarding the death or otherwise of Syed Mohammad Azam during the pendency of the said title suit is an affront to a judicial proceeding and is an attempt to pre-empt a judgment. Respondent No. 4 being dissatisfied with the order dated 8.8.84 lodged a three-pronged attack on it by filing a case in the Court of Settlement, by filing a title suit and by making a representation to respondent No. 1. He lost the Settlement Court case, the title suit is pending and during the pendency of the title suit he obtained an order in his favour on those very matters which are the subject matter for trial in the*

*title suit. His conduct too is not free from censure because it was at his instance that the impugned order dated 8.11.93 was passed. It was an unwarranted inroad into a judicial proceeding and cannot be condoned in any way.”*

And in the case of Basarat Howlader, Secretary, Gutapara Matshajibi Samabay Samity Ltd. vs. Muramara Matshajibi Samabay Samity Ltd., reported in 14 BLD (AD) 1, their Lordships held that,

*“Whether the order for enquiry was made before the issuance of the Rule Nisi or thereafter, it was absolutely improper on the part of the learned Advocate for the Writ petitioner-Respondents to pray for postponement of hearing “in order to afford the Government an opportunity of settling the dispute”, nor do we think it was proper for the Court to allow the Government “to decide the matter according to law” when the Court itself was in scission of the matter to do exactly the same. The Government is within its rights to conduct any number of internal inquiries into the disputed question of settlement, but as long as the legality or illegality of settlement is before the Court, the Government has no power to decide the issue this way or*

*that way. It is for the Court to decide the matter. The Court cannot simply abandon its judicial responsibility in favour of the Government. It was open to the Writ-Petitioners to withdraw the writ petition and submit themselves to the jurisdiction of the Government, but it was not open to them to keep the writ petition pending and allow the Government to “decide the matter according to law”. In other words, the Writ petitioners cannot pursue two remedies at the same time, one at the Governmental level and the other in a Court of law, more so in the constitutional jurisdiction. The High Court Division also misjudge the submission of the learned Advocate for the Writ Petitioners and should not have acceded to his prayers.”*

Now let us examine the law and decisions as cited by the learned advocate for the respondents.

We have gone through the Section 4 of the Code of Civil Procedure. The revenue authority cannot decide the title of the respective parties and it is only the civil court which can decide so and from that point of view Section 4 of the Code of Civil Procedure is not restricting power of a civil court in deciding title which will be reflected in the

record of rights. Similarly Section 143 of the State Acquisition and Tenancy Act, 1950 is also subject to decision of title by a civil Court.

In a case of Golden Re-Rolling Industries Ltd. vs. Subordinate Judge, Artha Rin Adalat No. 1, Dhaka and another, reported in 60 DLR (AD) 38, our Apex Court held that,

*“The High Court Division held that it is an established principle of law that where an alternative remedy exists a party cannot have recourse to the inherent jurisdiction of the Court under Section 151 of the Code of Civil Procedure. In this connection, the High Court Division relied on the case of Shahidur Rahman Majumder (Md) Shahidullah Majumder and others vs. Sahirunnesa and others reported in 1 BLC (AD) 43.”*

In the case of Fatema Khatun vs. Fazil Mia, reported in 6 BLC 241, a single Bench of the High Court Division held that,

*“the recent record of right would prevail inasmuch as presumption attached to the State Acquisition record of right.”*

In the case of Faizur Rahman (Md) and another vs. Md. Mokarram Hossain and others, reported in 18 BLC 46, a Division Bench of the High Court Division held that,

*“the suit was filed without exhausting the procedure as laid down in section 147(c), as such, the suit is not maintainable.”*

And in the case of Mr. Bazlur Rahman Sarker vs. Kamala Kanta Barman and another, reported in 12 MLR (AD) 137, our Hon'ble Appellate Division held that,

*“On reading provision of Section 143 of the Act and the Rule 23(4) of the Tenancy Rule, 1955 we are of the view that the Revenue Officer in the facts and circumstances of the instant case in cancelling the mutation obtained by the plaintiff in respect of the land in suit was quite legal. It may be mentioned plaintiff got his name mutated upon sticking out name of Bipin Chandra who said to have acquired the land in suit by settlement from landlords, but in support of claim of settlement no evidence was brought on record. As stated hereinbefore the appellate Court set aside the judgment of the trial Court which dismissed the suit,*

*primarily on the ground that revenue authority had no jurisdiction to correct the record of rights by cancelling the mutation earlier made in the name of the plaintiff on the view that the correction so made affected the right, title and interest of the person whose name was entered in the record of right upon mutation. In view of the provision of Section 143 of the Act and the Rule 23(4) of the Tenancy Rule, 1955 in our opinion the appellate Court was in serious error in setting aside the judgment of the trial Court on the view that the revenue officer had no jurisdiction to correct the record of rights prepared upon mutation in the name of the plaintiff.”*

On going through the decisions cited by both the learned advocates for both sides it appears that none of the decision directly related with the issue before us. In the present case the only question before this Court is whether a civil court can stay the proceeding concerning record of rights pending before the revenue authority i.e. the Assistant Commissioner (Land) Gulshan Circle, Dhaka by way of temporary injunction. In a suit for declaration of title the civil court can decide both title and possession while the revenue authority only

authorized to deal with the record of rights regarding amalgamation subdivision and consolidation of holdings as provided in Chapter XV of Part V of the State Acquisition and Tenancy Act, 1950. All the record of rights concerning which any dispute arise shall subject to decision regarding title by a civil Court apart from amalgamation, subdivision and consolidation of holdings as provided in Chapter XV of Part V of the State Acquisition and Tenancy Act, 1950. In view of Section 54 of the State Acquisition and Tenancy Act the revenue officer is bound to carry on the final order or decree as passed by a civil court. This proposition has been settled in the case of Abdul Moin vs. Bangladesh represented by the Secretary, Ministry of Land, Secretariat Building and others, reported in 53 DLR 506, wherein a Division Bench of the High Court Division held that,

*“When the matter was subsequently brought before the Additional Deputy Commissioner (Revenue) he was required in law to decide the matter either giving a decision instead of forwarding the same to the Ministry of Land by giving unwarranted and illegal observations. Since the question of title and possession have been settled by the highest Court of the country the Additional Deputy*



*Commissioner (Revenue) had, in fact, no option in law but to mutate the name of the petitioner by correcting the record of right. The Additional Deputy Commissioner (Revenue) not only acted without jurisdiction in sending the matter to the Ministry of Land without deciding the matter himself with untenable observations but also did so in colourable exercise of his official power. The impugned order dated 3-6-1998 passed by the Additional Deputy Commissioner (Revenue) Sylhet is therefore declared to have been passed without any lawful authority.”*

Though the learned advocates for both the parties failed to cite any decision on the point, of this Court or our Hon'ble Appellate Division; we considered an unreported decision passed in the case of Durgawati and another vs. Nan Bai and others, passed in Writ Petition No. 4933 of 2005 by the Chattisgarh High Court of India (collected from internet), wherein his Lordship held that,

*“By this petition filed under Article 227 of the Constitution of India, the petitioners challenge the legality and validity of the order dated 29.07.2005 (Annexure P/7), passed by the IInd Additional District Judge, Ambikapur Distt.*

*Surguja, in Misc. Civil Appeal No. 07/05 (Nan Bai Vs. Durgawati and others) whereby, the learned Additional District Judge directed the parties to maintain status quo in mutation proceedings with regard to plaint schedule 'A' land as obtained on 27.09.2004.*

*I have heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the mutation does not confer any right of the title or ownership. However, when admittedly there is a dispute with regard to title ownership of the land, it is proper that the proceedings before the Revenue Authorities must await the decision of the Civil Court in respect of the ownership right of the land in dispute. The judgment and order dated 15.02.2005 (Annexure P/5) passed by the Civil Judge, Class I, is without any basis and as such if the mutation proceedings is permitted to go on, there would be unnecessary multiplication of the disputes. Therefore, it is well settled that the civil court proceedings with regard to the same land must be given precedent. The appellate Court has rightly considered the dispute in its*

*proper perspective and granted interim relief of status quo with regard to the mutation proceedings by the impugned order. There is no irregularity, illegality or perversity in the impugned order dated 29.07.2005 (Annexure P/7), passed by the IInd Additional District Judge, Ambikapur Distt. Surguja, in Miscs. Civil Appeal no. 07/05.”*

Upon considering the respective cases and the laws and decisions as stated above we are of the view that the civil court can restrain parties from proceeding with any case pending before a revenue authority. The mutation of record of rights does not confer any right title and interest over the concerned land, moreso, where there is dispute regarding title, Revenue authority should await till the result of the same by the civil Court. The proceeding before the Revenue authority if not maintain status-quo, then multiplicity of proceedings and conflicting decisions may arise and the proceedings of civil Court should be given precedent then the Revenue proceedings. In the present case though the application filed by the plaintiff-appellant for temporary injunction and stay is to some extent defective inasmuch as they could pray for restraining the defendant No. 10 from proceedings with the mutation proceedings instead of praying an order of stay. However, this is mere a technical

defect which cannot disentitle the plaintiff from getting a substantial order.

Accordingly, we find merit in the miscellaneous appeal.

In the result, the first miscellaneous appeal is allowed.

The application for temporary injunction is allowed in the form of status-quo, directing the plaintiff and the defendant-respondent Nos. 1-9 to maintain status-quo in respect of possession and position of the suit land and directing the defendant-respondent No. 10 also to maintain status-quo with regard to proceedings of Miscellaneous Case Nos. 97 of 2014 and 115 of 2014 pending before him, till disposal of the suit.

The Trial Court is hereby directed to dispose of the suit expeditiously preferably within 6(six) months from the date of receipt of this order.

Send a copy of this judgment to the court concern.

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**(J.N. Deb Choudhury, J)**

I agree.

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**(Quazi Reza-Ul Hoque, J)**