

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

Civil Revision No. 4428 OF 2003.

IN THE MATTER OF:

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

IN THE MATTER OF

Md. Maula Box and others.

... Plaintiff-Appellant-Petitioners.

-Versus-

Government of the Peoples republic of Bangladesh,
represented by the Deputy Commissioner, Sirajganj
and others.

... Defendant-Respondent -Opposite Parties.

Mr. Arobinda Kumar Roy with

Mr. Sajal Ahmed and

Mr. Md. Jumon Ali, Advocates.

... For the Plaintiff-Appellant-petitioners.

Mr. Mohammad Mujibur Rahman, DAG with

Mr. Md. Jashim Uddin Khan, AAG and

Mr. Al Amin Siddiqui, AAG.

... For the Defendant-Respondent -Opposite Parties.

Present:

Mr. Justice Md. Hamidur Rahman

Heard on: 06.03.2025 and

Judgment on: 10.03.2025.

This Rule under Section 115(1) of the Code of Civil
Procedure was issued on 19.10.2003 in the following terms:

“Let a Rule issue calling upon the opposite party No.1 to show cause why the judgment and order dated 23.07.2003 by the Joint District Judge, 2nd Court, Sirajganj in Miscellaneous Appeal No. 30 of 2002 affirming the judgment and order dated 02.04.2002 passed in Other Class Suit No. 02 of 2002 by the Assistant Judge, Sirajgonj, rejecting an application for temporary injunction should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The petitioners preferred this revisional application against the judgment and order dated 23.07.2003 passed by the learned Joint District Judge, 2nd Court, Sirajganj in Miscellaneous Appeal No. 30 of 2002, affirming the judgment and order dated 02.04.2002 passed by Assistant Judge, Raiganj, Sirajganj passed in Other Class Suit No. 10 of 2002 rejecting an application for temporary injunction.

The facts necessary for disposal of the Rule, in short, are that the petitioners as plaintiffs filed Other Class Suit No. 10 of 2002 in the Court of Assistant Judge, Raiganj for declaration of title contending *inter alia* that the land of C.S. Khatian No. 16 belong to Taherunnesa and while she was in ownership and possession of the said land, the same was recorded in S.A. Khatian No. 23. Thereafter, she died leaving behind two sons

namely- Gulzar Hossain and one daughter Kadarjan, Gulzar Hossain died leaving 3 sons being plaintiff Nos. 2-4 and 6 daughters plaintiff Nos. 5-10. The plaintiffs planted eucalyptus trees, Shishu trees and other valuable trees in the said property. The Fuljor River had been flowing by the side C.S. Plot No. 438 and gradually the said river was silted up and the sands of the said river attached to the suit plot. At the time of RS record operation the land of the said river and the land of the suit plot No. 438 had been recorded wrongly in the R.S. Plot No. 422 and the suit plot is not the land of the river and by any means the opposite parties cannot claim as their Khas land. On 04.02.2002 the staff of Thana land office claimed the Suit land as their own land the plaintiffs constrained to file the Suit.

During pendency of the suit the petitioners filed an application for temporary injunction with a prayer for restraining the defendants from disturbing the petitioners into the Suit land.

The Opposite party Nos.1 and 2 contested the said application for temporary injunction contending inter alia that the total land comprising an area 17.15 acres of land being accreted from the river. After S.A. operation the said land became the Khas land as sandy land and at the time of R.S. operation the entire land has been recorded as R.S. Plot No. 422c.

Out of the said land the Government decided to set up ideal village and for that purpose 5.33 acres of land from the said plot has been allotted and the Government has started the function for setting up the 'ideal' village. The opposite party prayed for rejection of the application of temporary injunction.

After hearing both the parties the learned Assistant Judge, vide its judgment and order dated 02.04.2002 rejected the application for temporary injunction on the finding that without evidence of the title it cannot be decided at this stage. Government has decided to set up the ideal village which is the part of the development work. The balance of convenience and in convenience is in favour of the defendants.

Against the said judgment and order the petitioners preferred Miscellaneous Appeal No. 20 of 2002 in the Court of Joint District Judge, Sirajganj and the learned Joint District Judge, 2nd Court, vide its judgment and order dated 23.03.2003 dismissed the appeal on finding that the R.S. khatian has been recorded in the name of the Government it can be presumed that defendant No.1 has been in possession and now it cannot be ascertain that the plaintiffs have been in possession. The suit land is not specified and the plaintiffs have no prima facie arguable case in their favour and thereby affirmed the judgment and order of the trial Court.

Being aggrieved by the judgment of the Courts below the petitioners filed Civil Revisional application which is present before the Court for disposal.

Mr. Arobinda Kumar Roy, the learned Advocate for the petitioners submits that it is evident from the schedule of the property that C.S. and S.A. Plot No. is 438 and land of the said plot is 46 decimil and as the C.S. Map has not been abolished and R.S. Map has not come in to picture finally, so it is presumed that 46 decimil of land has been well demarcated and identified. He further submits that during pendency of the appeal this petitioners filed an application for local inspection and that prayer was allowed and the learned Advocate Commissioner inspected and filed report stating that on the Suit Plot No. 438 there are 29 eucalyptus and 11 Shishu trees and those are aged about 6-7 years.

He also submits that upon non-consideration of relevant facts and laws without taking prima facie balance of convenience and inconvenience into consideration, the application for temporary injunction unjustly passed the order of rejection causing injustice to the defendants and therefore the judgment and order of the Courts below are not sustainable and liable to be set aside.

He next submits that the opposite party has not been possessing any portion of land of C.S. Plot 438 and finally published in the name of Tahurunnesa in C.S. and S.A. record. It cannot be presumed that the said land of Plot No. 438 is part of accreted land of the river.

On the other hand, Mr. Mohammad Mujibur Rahman, the learned Deputy Attorney General opposes the Rule and submits that the Courts below upon correct valuation of the circumstances and the law passed concurrent judgment and rightly rejected the application for temporary injunction. He next submits that by referring the schedule of the suit land that is not properly demarcated. He states that the Government already established “আদর্শ ভিলেজ” in the said suit land. He further submits that the suit land in question accreted of the land of the river and the said land vested to the Government.

I have heard the learned Advocates for both sides, also perused the application and materials on records including both the judgment of the Courts below. But on perusal of order book find that lower court's record are lying with the High Court Division because in the interim order it was order that the records be called for. The suit is still pending before the trial Court. It is also observed that the petitioner got order of statusquo and enjoyed the Government property till date.

I am of the view that the petitioner did not come with the clean hands before this Court. The trial Court as well as appellate Court rightly rejected the application for temporary injunction.

In the Result, the Rule is discharged without any order as to costs. The trial Court is hereby directed to dispose of the matter as expeditiously.

The order of status quo granted by this Court is hereby recalled and vacated.

Lower Court's record be sent down along with copy of the judgment at once.

(Md. Hamidur Rahman, J:)