

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashefa Hussain

**Civil Revision No. 3673 of 2017**

Sahida Akter Rani

.....petitioner

-Versus-

1(ka) Mst. Joynob Bibi and others

----- Opposite parties.

Mr. Shasti Sarker, Advocate with

Mrs. Lily Rani Saha, Advocate

----- For the petitioner

Mr. Muhammad Nazrul Islam, Advocate with

Mr. Abdul Baten, Advocate

----- For the Opposite Parties.

Heard on: 22.10.2018, 24.10.2018,  
31.10.2018, 07.11.2018 and Judgment  
on 11.11.2018.

Upon condoning a delay of 36 days in filing the civil revisional application Rule was issued in the instant Civil Revisional application calling upon opposite parties No. 1(ka)-1(chha) to show cause as to why the impugned judgment and decree dated 21.08.2016(decree signed on 15.09.2016) passed by the learned Joint District Judge, Additional Court, Narayangonj in Title Appeal No. 22 of 2016 affirming the judgment and decree dated 13.01.2016 (decree signed on 20.01.2016) passed by the learned Senior Assistant Judge, Bandar Adalat, Narayangonj in Title Suit No. 73 of 2006 dismissing the suit should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The present petitioner as plaintiff instituted Title Suit No. 73 of 2006 in the court of learned Senior Assistant Judge, Bandar Adalat, Narayangonj praying for permanent injunction and subsequently mandatory injunction upon impleading the present opposites party as defendants. Upon hearing both sides the trial court dismissed the suit by judgment and decree dated 13.01.2016.

Being aggrieved by the judgment and decree of the trial court dated 13.01.2016 in Title Suit No. 73 of 2006 the plaintiffs as appellants preferred Title Appeal No. 22 of 2016 which was heard by the learned Joint District Judge, Additional Court, Narayangonj and the court of learned Joint District Judge disallowed the appeal by its judgment and decree dated 21.08.2016. Being aggrieved and dissatisfied by the judgment and decree of the appellate court the sole plaintiff appellant as petitioner filed the civil revisional application which is before me for disposal.

Facts relevant for disposal of the Rule in short is that Brajahari Das was owner of an area of 3 decimals of land out of 9 decimals of plot No. 16 under C.S khatian No. 49, 27 decimals of land out of 54 decimals of Plot No. 17 and undisputed land in area of .42 acres in total .72 decimals of land. Before C.S record Brajahori Das died leaving behind Chandra Mohan Das and Rajmohan Das and it was recorded in 11 annas share in C.S

record. Raj Mohan Das died unmarried and Chandra Mohan Das received sixteen annas share, who died leaving behind 39 three sons namely Mon Mohan Das, Gopal Chandra Das and Hari Charan Das. Hari Charan Das died leaving 1(one) son Laxmi Kanta Das. Gopal Chandra Das leaving behind 1(one) son Lal Mohan Das and S.A record published in S.A khatian No. 30. Laxmi Kanta Das died leaving his uncle Monmohan Das and cousin Lal Mohan Das. Monmohan Das and his brother's son each got 110 annas share who got 36 decimals of land each. Lalmohan Das got 1.33 acres of land from plot No. 16 and Lal Mohan Das got 9 decimals of land from Plot-17. Thereafter Lal Mohan Das while in possession of the land appointed one Julhas Bhuiyan as Attorney by dint of a power of Attorney Deed No. 2878 dated 14.05.1997. The power of attorney holder sold the suit land by registered deed No. 3257 to Sahida Akter on 25.05.1997. Sahida Akter got 9 decimals of land and used to possess the land by erecting two shed house which consists of 4(four) rooms, 2(two) pucca bathrooms, Latrine, Tube well. The petitioner as plaintiff instituted a suit for declaration of title and correction of R.S khatian in the Court of Second Assistant Judge, Narayangonj in Title Suit No. 128 of 1997 and the said suit was transferred to the Assistant Judge, and renumbered as Title Suit No. 16 of 2001. The learned 4<sup>th</sup> Assistant Judge upon hearing was pleased to dismiss the suit. Thereafter the plaintiff filed an appeal in the court of learned District Judge, Narayangonj being

Title Appeal No. 29 of 2000 and the appeal was transferred to the court of learned Additional District Judge, 2<sup>nd</sup> Court, Narayangonj, The appellant filed an application for withdrawal of appeal being No. 29 of 2000 in the court of learned Additional District Judge, 2<sup>nd</sup> Court, Narayangoj and the court allowed the said application and dismissed the said appeal on 06.03.2004. Thereafter the defendants on 25.04.2004 at about 7.00 A.M attempted to dispossess the plaintiff from the suit land but the defendants failed in their attempt and the plaintiff filed an application for permanent injunction. The defendants as plaintiffs filed Title Suit No. 17 of 2000 in the court of learned Assistant Judge, 4<sup>th</sup> Court, Narayangonj and the said suit was decreed. Thereafter the plaintiff in Title Suit No. 17 (being defendant in the present suit) filed Execution Suit No. 1 of 2000 and the said Execution Suit was decreed. The plaintiff in Title Suit No. 17 with the help of court and along with police forces went to take possession of 5 decimals of land on 11.02.2007 but while taking possession of the 5 decimals of land decreed they also dispossessed the present plaintiff from their 9 decimals of land with four rooms and two rooms wide poucca tin shed house, one kitchen room and two tube-well and consequently for that reason the plaintiff lost 1,50,000/- (Taka one lac fifty thousand). The Advocate commissioner submitted a report and in the said report he reported that there were set-up houses and others structures in the said 9 decimals of land. The plaintiff filed an application for

mandatory injunction before the learned court to restore his possession.

The defendants respondent Nos. 1-6 contested the suit upon filing a written statement before the learned court alleging inter alia that Bashiram Das was recorded tenant in C.S khatian No. 57 and C.S Plot Nos. 16 and 17 and other plot No. 126. Bashiram died leaving behind one son Ram Mohan Das. Thereafter Ram Mohan Das died leaving behind one son Monoranjan Das and S.A khatian No. 38 was prepared in the name of Monoranjan Das. Monoranjan Das possessed 3 decimals of land out of 9 decimals of land in C.S plot No. 16 and also possessed 27 decimals of land out of 54 decimals of land in c.S plot No. 17. Thereafter Monoranjan Das sold 1.50 decimals of land from the plot No. 16 and 13.50 decimals of land from the plot No. 17 dated 13.04.1974 to Amina Khatun and Monoranjan Das also sold 1.50 decimals of land from plot No. 16 and 13.50 decimals of land from the plot No. 17 dated 13.04.1974 to Saleha Khatun. Thereafter the said Amina Khatun and Saleha Khatun sold 30 decimals of land to the defendant Nos. 3, 4 and 5 dated 08.08.1977, 09.08.1977 and 10.08.1997. C.S khatian No. 45 was prepared in the name of the Gopal Chandra Das and the heirs of Gopal Chandra Das sold 16 decimals of land from Plot No. 16 and 17 to Mir Wazed Ali. Thereafter Mir Wazed Ali sold 15 decimals of land to Md. Mohiuddin and others on 22.02.1980.

Thereafter Md. Mohiuddin and others sold the said land to the predecessors of Israfil Hossain defendant Nos. 2-5 vide 6 kabala deeds dated 17.05.1980, 18.05.1980, 16.05.1980, 22.06.1981, 23.06.1981 and 24.06.1981 in favour of defendant Nos. 3, 4 and 5. The recorded tenant of S.A khatian No. 45 of plot Nos. 16 and 17 heirs of Gopal Chandra Das settled 16 decimals of land from plot Nos. 16 and 17 on 10<sup>th</sup> Chaitra, 1351 B.S to Mr. Wazed Ali. Mir Wazed Ali sold 15 decimals of land on 22.02.1980 to Md. Mohiuddin and others. Subsequently Md. Mohiuddin and others sold 15 decimals of land on 17.05.1980, 18.05.1980, 16.05.1981, 22.06.1981, 23.06.1981 and 24.06.1981 by 6 registered deeds to the predecessor of defendant Nos. 2 to 5, Ismail Hossain subsequently Ismail Hossain Sarker died leaving behind defendant Nos. 2-5. The plaintiffs father-in-law died in the year 1974 during the middle part when the plaintiff's husband was in Khulna. Plaintiff's mother in law became helpless and she prayed for shelter before the predecessor of defendant Nos. 2-5, Israfil Hossain Sarker. Firstly he occupied plot No. 17 to live thereon, subsequently he gave permission to plaintiff's husband to live there temporarily. Plaintiff's mother in law Munchehara as a licensee began to live in the house by erecting houses thereon. Subsequently Ismail Hossain Sarker asked her to leave the premises. Later on defendant Nos. 3, 4 and 5 also asked them to do the same in 1985. Munchehara assured them that she would leave very soon, but instead of vacating the premises she filed a

case for specific performance of contract by way Title Suit No. 75 of 1985. The said suit was dismissed against which she preferred Title Appeal No. 38 of 1995 before the court of learned District judge and the same was also dismissed. Later on plaintiff's mother in law preferred Civil Revision being No. 3602 of 1995 and Rule was discharged in Civil Revision No 3602 of 1995 and consequently the said judgment and decree is binding upon the plaintiff's mother in law. The present plaintiff was impleaded as defendant in the suit which was filed by the defendants in Title Suit No. 134 of 1995 wherein the schedule of suit land is the same land as in Title Suit No. 75 of 1985. The plaintiff filed a suit for declaration of Title in the court of learned Assistant Judge, 4<sup>th</sup> Court, Narayangonj being Title Suit No. 16 of 2000 and the same was dismissed on 15.02.2002.

Learned Advocate Mr. Shasti Sarker along with Mrs. Lily Rani Saha, Advocate appeared on behalf of the petitioner while Mr. Muhammad Nazrul Islam, Advocate with Mr. Abdul Baten, Advocate represented the opposite parties.

Learned Advocate for the petitioner submits that both courts below upon misreading and misappreciation of the evidences erroneously dismissed the suit and disallowed the appeal respectively. By way of elaborating his submissions he asserts that the judgment and decree passed in Title Suit No. 75 of 1985 filed by the mother in law of the plaintiff is not binding

upon them mainly on the ground that the subject matter of Title Suit No. 75 of 1985 and the instant suit are not the same but that the courts below overlooked this material fact. In this context he submits that during delivery of possession the defendants while taking possession of the 5 acres of land in dag No. 16 and 17 by dint of court order also unlawfully encroached upon 9 acres of land of the plaintiff's land in the same dag and thereby unlawfully dispossessed the petitioner from her lawful possession. He further contends that the petitioner was in possession of the property but that she was unlawfully dispossessed by the defendants opposite parties. He further argues that the petitioner's claim arises by dint of a power of attorney given by the heirs of the original C.S recorded owner to one Julhash Bhuiyan vide power of attorney deed No. 2878 dated 14.05.1997 and further persuaded that by dint of that power of attorney dated 14.05.1997 the power of attorney holder lawfully registered the sale deed in favour of the petitioner by registered deed No. 3257 dated 25.05.1997. It is further contended that thereby the petitioner has been in lawful possession and holds lawful title to the 9 acres of suit land including other property. He stresses upon the issue that the petitioner was unlawfully evicted by the defendants opposite parties from her 9 acres of land. In support of his submissions that the judgment and decree of the trial court in Title Suit No. 75 of 1985 is not being binding on them since the subject matter of the 2 suits are different, he



cites a decision of this court in the case of Md. Rajiuddin Chowdhury Vs. Suruj Ali reported in 16 BLD (1996) 96. On the issue of maintainability of the mandatory injunction he contends that the suit as a suit of mandatory injunction is maintainable. In support of his submissions that mandatory injunction is maintainable in the case of the petitioner, he cites a decision of this court in the case of Bangladesh Vs. Md. Ferozur Rahman reported in 45 DLR (1993) 762. He continues his submissions asserting that the petitioner as plaintiff instituted a suit for declaration of title and correction of R.S. khatian in the court of Assistant judge, Narayangonj in Title Suit No. 128 of 1997 for declaration of title. He also submits that the plaintiff has been possessing .09 acres of land from plot No. 17 of S.A khatian No. 30 whereas the defendant No. 1(ka) to 1(chha) and defendant No. 2 has claimed in respect of .05 acres of land from plot No. 16 of S.A khatian No. 30. He contends that in these circumstances the courts below without solving the same evicted the petitioner on 11.05.2007 by demolishing houses from the land of the plot for which the plaintiff prays for mandatory injunction to restore the same but the court below did not consider her prayer causing failure of justice. He concludes his submissions upon assertion that the both the courts below overlooked all these materials factors and erroneously passed the two judgments and therefore the judgments ought to be set aside and the Rule be made absolute for ends of justice.

On the other hand learned counsel for the opposite parties submits that the courts below correctly passed their judgments upon accurately reading into the evidences and upon proper appraisal of the deposition taken from the witnesses from both sides. By way of his contention he takes me to the records of the case and to the judgments of the courts below wherefrom he shows that the mother in law of the plaintiff filed a Title Suit being Title suit No. 75 of 1985 regarding the same schedule of land as the instant suit wherein parties were also the same. He points out that Title Suit No. 75 of 1985 was dismissed by the trial court and such dismissal was later affirmed by the appellate court against which the present petitioner filed a Civil Revision being Civil Revision No. 3602 of 1996 before the High Court Division and in which Rule was discharged. He also submits that against the judgment and order of the High Court Division in Civil Revision No. 3602 of 1996 the petitioner did not take resort to the appellate division. He persuaded that such being the position the judgment and decree dated 14.03.1995 in Title Suit No. 75 of 1985 stands valid and it is in operation and cannot be questioned any more and the instant suit is barred by the principle of resjudicata. Controverting the submissions of the petitioner that the subject matter of the two suits are different the learned Advocate for the opposite parties opposes and submits that both courts below upon carefully sifting through the evidences and records arrived upon the finding that the subject

matter of the two suits are the same. He agitates that therefore the instant suit of the plaintiff respondent petitioner is not maintainable in limine. Regarding the issue of eviction he submits that Title suit No. 75 of 1985 by the plaintiffs which was ultimately rejected up to the High Court Division by way of Civil Revision No. 3602 of 1996. He takes me to the record and shows that during pendency of the Civil Revision No. 3602 of 1996 the plaintiff respondent petitioner created a kabala deed being deed No. 3257 dated 25.05.1997 by dint of power of attorney being given by one Julhas Bhuiyan and claimed her title to the suit land there from by way of a “so called” purchase.

He continues that pursuant to the kabala deed No. 3257 dated 25.05.1997 comprising of 10.33 decimals of land in total from dag Nos. 16 and 17, the petitioner as plaintiff instituted a suit for declaration of title and correction of R.S khatian in the court of learned Assistant Judge, Narayangonj in Title Suit No. 128 of 1997 for declaration of title which was subsequently transferred and renumbered as Title Suit No. 16 of 2000. He submits that in the said suit the trial court dismissed the suit and against which the petitioner as appellant preferred an appeal being Title Appeal No. 29 of 2000 but later on withdrew the appeal and the appeal was accordingly dismissed on 19.08.2002 and ultimately the petitioner filed an application for permanent injunction. He argues that subsequently the present opposite

parties filed an eviction suit for declaration of title being Title Suit No. 134 of 1995 in the court of learned senior Assistant Judge, 2<sup>nd</sup> Court, Narayangonj and the case was heard by senior Assistant judge, 4<sup>th</sup> court, Narayangonj being renumbered as Title Suit No. 17 of 2000. The opposite parties continue that the eviction case which was dismissed on 15.02.2000 against which the present opposite parties filed title Appeal No. 34 of 2000 and which appeal was allowed by judgment and decree dated 22.02.200. Against the Judgment and Decree in the Appeal the present petitioner filed a Civil Revision No. 1116 of 2001 against the eviction arising out of the evection case but the Rule in Civil Revision No. 1116 of 2001 was discharged by this division on 01.08.2006. In pursuance of the judgment of the High Court Division in Civil Revision No. 1116 of 2001 affirming the order of the appellate court the opposite parties by dint of judgment and decree in Title suit No. 17 of 2000 filed an execution case being execution case No. 01 of 2001 for eviction of the defendant and delivery of possession through the court and thereby lawfully evicted the petitioner from the suit land on 11.02.2007 through a court order. Relying upon his argument he asserts that the defendants have been evicted from the suit land lawfully through the order of the court and further asserted that there is nothing on record to indicate that they were unlawfully evicted therefrom. He continues that the instant petitioner along with her mother in law was also a party in Title Suit No. 17 of

2000 which is the eviction case. He further submits that the plaintiff could not at any point prove during trial in the instant suit that they are in exclusive possession of the property. He draws this Court's attention to the effect that this division in Civil Revision No. 3602 of 1996 made an observation that the plaintiff is only in possession upon permission to the mother in law of the plaintiffs and asserts that the mother in law was only in permissive possession under the defendant-opposite party Nos. 3-16. He continues that therefore the plaintiff petitioners' case arising out of the same subject matter and holding the same interest as her mother in law, she has no right to claim any title or ownership to the property. He claims that the issue of title being settled in Title Suit No. 75 of 1985 and also in the subsequent Title Suit No. 134 of 1995 regarding the same land therefore since plaintiff was made a party in Title Suit No. 134 of 1995 subsequently renumbered as 17 of 2000, the plaintiffs petitioner can not raise any further claim of title to the suit land by any other suit since it is a matter of resjudicata. In support of his submission that the courts below came upon concurrent finding of facts and evidences correctly, learned Advocate for the opposite parties cited a decision of this Court in the case of Bilkish Miah Vs. The State reported in 17 BLD (AD)(1997)297. In the light of his submission he concludes that both the courts having arrived into their finding upon proper sifting through evidences and proper appraisal into the facts and circumstances

and in the absence of any illegality the judgment and decree of the courts below do not call for interference and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates, perused all materials on record including the judgments of the courts below, perused the L.C.R and decisions cited by the learned advocates for both sides.

Upon perusal of the record and the judgment and decree of the courts below it appears from the record that the mother in law of the plaintiff in the instant suit filed a Suit being Title Suit No. 75 of 1985 which was dismissed, appeal therefrom was also disallowed and Civil Revision No. 3602 of 1996 was also discharged by this division against the plaintiff's mother in law arising out of that suit. It also appears that the Title Suit No. 75 of 1985 which was filed by the mother in law of the plaintiff, the defendants in that suit were the instant opposite parties. Subsequently the instant opposite parties filed Title Suit No. 134 of 1995 which was later renumbered as Title Suit No. 17 of 2000 before the court of learned Assistant judge, Narayangonj for declaration of title and eviction of the defendant No. 1 the mother in law of the petitioner. It is also revealed that instant petitioner was also added as defendant No. 2 in that suit. The suit ultimately went up to the High Court Division where the mother in law as petitioner filed Civil Revision No. 1116 of 2001 and

Rule was ultimately discharged on 01.08.2006. Subsequently by dint of the order of the High Court Division in Civil Revision No. 1116 of 2001 the opposite parties filed an execution case being Execution Case No. 01 of 2001 and by dint of the execution case the concerned court passed an order on 11.02.2007 for delivery of possession and delivery of possession was made in favour of the present opposite parties by evicting the petitioner in Civil Revision No. 1116 of 2011 along with the instant petitioner from the suit land. It also appears from the records and from the judgments of courts below that after affirmation of the judgment and decree in title Suit No. 75 of 1985 which was ultimately affirmed by the High Court Division in Civil Revision No. 3602 of 1996, the plaintiffs in the instant suit show 'purchase' of the suit land from one Julhash Bhuiyan who supposedly is the power of attorney holder of Lal Mohon Das. The power of attorney deed is dated 14.05.1997 and the registered sale deed is dated 25.05.1997. In that event the Registered Deed for sale dated 25.05.1997 was executed only 11 days after the power of attorney Deed and it concerns the same property as in Title Suit No. 75 of 1985. It is needless to mention that once the title and ownership of property has been settled in a suit and which was ultimately affirmed by the higher court it cannot be questioned any more. It is only proved that the creation of the kabala deed dated 25.05.1997 is a forged deed created by the petitioner to seize the suit land. It is to be noted that in Civil

Revision No. 3602 of 1996 in which the subject matter was the same as in the instant suit land, in that case this division observed that the plaintiff is in permissive possession of the land under the defendants No. 3-16 opposite parties. I am in respectful agreement with the observation of this division given that facts and circumstances and the deposition of the witnesses in the courts below suggest that truly the plaintiffs were only in permissive possession. During trial it could not be found anywhere from the records that plaintiffs are in exclusive possession of the property. It is also revealed from the records that the Kabala Deed No.3257 dated 25.05.1997 is relied upon by the plaintiffs in support of their claim to Title to the Suit land. The same Kabala Deed was pronounced by the Trial Court to be a “manufactured ” Deed in Title Suit No. 16 of 2000, and the Trial Court’s Judgment was affirmed upon Appeal against which Civil Revision was filed in this Division but Rule was discharged. There is nothing on record to show that the matter went up to the Appellate Division. Therefore the Judgment of the trial Court is in operation and valid and so does its observation that the Kabala Deed of 1997 was a “manufactured deed”. It was created upon collusion to unlawfully usurp upon the suit land. I have gone through the judgment of the courts below and I have found that both the courts elaborately discussed the deposition of the witnesses from both sides. It also appears that P.W-1 admits that there is no identification of Lal Mohon Das from the records.



Apparently Lal Mohan Das's name could not be found either in the voter list of the relevant period or anywhere else. Moreover Julhash Bhuiya who is supposedly the power of attorney holder of the so called owner Lalmohan Das was also not produced as a witness before court during trial. The p.w-1 also admits that there is no mention of any schedule in the kabala deeds. It is also admitted that there is no mutation in their names in the records. The judgment of the courts below in the previous cases pertaining to the suit land have been produced as exhibits besides the C.S khatian, S.A khatian, R.S khatian and other relevant documents. From scrutiny it appears that the plaintiffs failed to produce any evidences to title in their name except the registered kabala deed dated 25.05.1997. As is evident, the said Kabala deed was pronounced to be a manufactured deed in the Judgment and Decree in Title Suit No. 16 of 2000 and which Judgment was ultimately affirmed up to the High Court Division. All the other documents that is R.S, S.A, C.S, rent receipts etc. are in the name of the present opposite parties.

Learned Advocate for the petitioner agitated that both the courts below came upon an "incorrect" correct finding and overlooked the fact that the subject matter of the 2 suits are different in as much as that the schedule of the 2 suit lands are different and shown upon comparison the name of the schedules in the respective suits do not match with one another. Learned

Advocate for the petitioner submitted that during delivery of possession the defendants while taking possession of their 5 decimals of land by dint of court order also encroached upon 9 decimals of land belonging to the plaintiffs in the same day and hence being aggrieved the petitioner was compelled to file the instant suit. In this regard the learned Advocate for the opposite parties by way of contention counters the petitioner's claim that no specification boundary of the land is mentioned in the kabala deed of 1997 through which the petitioner claims his title. Furthermore he argues that even if the petitioner believes that the defendants had encroached upon 9 decimals of the plaintiff's land during delivery of possession, the petitioner ought to have filed an application before the concerned court Order 21 Rule 100 and 101 of the Code of Civil Procedure but instead in this case he filed a fresh suit mandatory injunction which is not maintainable.

I am in agreement with the learned Advocate for the opposite parties given that even if there was any sort of encroachment by the defendants during delivery of possession of the suit land in that event the petitioner ought to have made an application under Order 21 Rule 100 and 101 of the Code of Civil Procedure in accordance with law, but suit for mandatory injunction whatsoever in the present form is not maintainable in this case.

Learned Counsels from both sides cited few decisions of this Court and our Apex Court. Supporting his contention that this case does not fall within the mischief of Res-Judicata, the learned Counsel for the petitioner cited a decision of this Court in the case of Md. Rajiuddin Chowdhury Vs Suruj Ali reported in 16 BLD(1996) page 96. The principle cited is reproduced hereunder:

**Res judicata** – *when the causes of action of the two suits are different and the subject-matter of the two suits is also completely different, the decision in one suit cannot be considered as res judicata in the other suit. In such case, the principle of res judicata is not applicable.*

Unfortunately, this decision is a misapplication in this case considering that as discussed above, the subject matters of the 2 suits have been proved to be the same upon concurrent findings of fact and upon comparison of the schedule land of the present suit with the schedules in the previous suits and therefore the principle of Res Judicata is not applicable in this case.

Learned counsel for the petitioner on the issue of maintainability of the suit for Mandatory Injunction, cited a decision of this Court in the case of Bangladesh Vs Md. Ferozur Rahman reported in 45 DLR (1983) page 762 where the principle cited is as below:

*Mandatory injunction would be available if dispossession had taken place during the pendency of the suit or during an order of ad interim injunction.*

On this issue I have already opined above that the defendants having taken possession of the suit land following a court order in an execution case, in that event even if the petitioner believes that while doing so the defendants wrongly dispossessed the petitioner from their property comprising of 9 acres of land, or whatsoever they could have filed an application under Order 21 Rule 100 and 101 of the Code of Civil Procedure, before the executing courts. But in the circumstances as in the present case fresh suit for mandatory injunction is not maintainable at all.

The opposite parties in support of the contention that in the absence of misreading or non-reading of evidences and in absence of error in law concurrent findings of fact must not be interfered with, cited a few decisions of this court and our Apex Court including the case of Hazari Bala Sana Vs Niron reported in 17 BLD(AD) (1997) page 295 and in the case of Abdul Latif (Md.) and others Vs. Mohammad Ali and others reported in 13 MLR (HCD) 2008 page 132.

The petitioner's assertion that he is entitled to a grant of injunction, permanent or mandatory whatsoever was controverted by the Opposite Parties. By way of controverting

the petitioner's claims the learned Advocate for the opposite parties cited a decision of the Apex Court in the case of Arefin Mehanati Bahomukhi Samabaya Samity Ltd Vs A.D.C Revenue and others reported in 16MLR(AD)(2011) page 68. In that case it was held that "Temporary" injunction cannot be granted when the plaintiff has no prima facie right, title and interest to the property. Drawing an analogy therefrom, the learned counsel for the opposite parties contends that the same principle is applicable to the instant case since the present suit is also a suit for 'injunction' and the plaintiffs failed to prove any right, title or interest in the suit land prima facie or otherwise. I am inclined to draw support from the 16 MLR (AD) 2011 given that the instant case is also a case for injunction. Initially suit was filed for permanent injunction and subsequently for mandatory injunction but the plaintiffs failed to show any right, title or interest in the suit land prima facie or otherwise and therefore is not entitled to any such relief.

The overall scenario of the case is that the plaintiff have failed to prove any prima title or interest in the suit land and further more has not been able to show their exclusive possession at any stage, by evidence or witness and therefore is not entitled to any relief and the suit is not maintainable being hit by the mischief of the principle of Res Judicata.

Under the foregoing facts and circumstances and in the light of the submissions made by the learned Advocates for both parties the discussions made above and relying upon the decisions cited by the learned Advocates for the both sides. Hence, I am of the considered view that the Judgments of the Courts below were correctly given and need not be interfered with. I find no merit in this Rule.

In the result, the Rule is discharged without any order as to cost.

The order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the lower courts records at once.

Communicate the judgment at once.

**Arif(B.O)**