

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 617 OF 2016.

Md. Humayun Kabir and others

...Petitioners.

-Versus-

Deputy Commissioner, Dhaka and others .

....Opposite parties.

Mr. Md. Sultan Uddin, Advocate

... For petitioners.

Mr. Lutfor Rahman, Advocate

... For opposite party No. 03.

Heard on: 24.01.2024.

Judgment on: 12.02.2024,

Md. Badruzzaman,J

This Rule was issued calling upon opposite party Nos. 3, 7 and 8 to show cause as to why order No. 11 dated 29.02.2016 passed by learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 144 of 2014 should not be set aside.

At the time of issuance of Rule opposite party Nos. 3, 7 and 8 were directed to maintain *status quo* in respect of possession and position of the suit property for a period of 6(six) months which was, subsequently, extended till disposal of the Rule and the trial Court was directed to dispose of the application for injunction as expeditiously as possible.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioners as plaintiffs instituted Title Suit No. 144 of 2014 on 07.03.2016 for a decree of partition claiming .5831 acre land out of .83

acre suit land contending, *inter alia*, that the suit land was originally belonged to Ananda Mohan Saha and others who transferred the same to Siraj Miah and S.A Khatian No. 59 was prepared and published in his name. Thereafter, Siraj Miah transferred said land to his wife Meskadi Bibi by registered deed of heba-bil-ewaj No. 6823 dated 29.04.1966 and while she was owning and possessing the same, R.S Khatian No. 53 was prepared in her name in R.S Plot No. 18. Meskadi Bibi died leaving behind four daughters namely Hason Banu, Hossen Banu, Jihad Banu and Sajon Banu who inherited said .93 acre land who thereafter, transferred .6175 acre land by registered deed of sale No. 19350 dated 24.08.1976 in favour of the parents of the plaintiffs namely Abul Kashem and Hasina Khatun. Hason Banu transferred .2124 acre land to Hasina Khatun vide registered sale deed No. 16392 dated 06.06.1977 and while the parents of the plaintiffs were owning and possessing their purchased land, mutated their names in the concerned Revenue Office of the Government. Thereafter, the Government through the Deputy Commissioner, Dhaka acquired .12 acre land vide L.A Case No. 32/1988-89 for construction of embankment for protection of Dhaka City. After acquisition of .12 acre land the rest .71 acre land remained under ownership and possession of Abul Kashem and Hasina Khatun and during Dhaka City Survey said .71 acre land was recorded in Dhaka City Jarip Khatian No. 31 in Plot No. 301/383. Hasina Khatun then transferred .02 acre land by registered sale deed No. 3149 dated 30.05.1989 to Abul Basher who, thereafter, transferred the same by registered heba-bil-ewaj deed No. 6066 dated 26.09.1994 to plaintiff No.1 and handed over possession thereof to him. Hasina Khatun on 23.11.2000 transferred .21 acre land to plaintiff No. 1 by registered heba-bil-ewaj deed No. 6999, .04 acre land to plaintiff No. 2 vide heba-

bil-ewaj deed No. 6998, .04 acre land to plaintiff No.3 vide heba-bil-ewaj deed No. 7000 and .0463 acre land vide heba-bil-ewaj deed No. 7001 in favour of plaintiff No. 4 and handed over possession thereof to them and after transfer of said land Hasina Khatun remained in ownership and possession of .1050 acre land and then died on 09.04.2001 leaving behind husband Abul Kashem and plaintiff Nos. 1-4 as one son and three daughters and accordingly .1050 acre land was inherited by the plaintiffs and their father in accordance with Mahomedan Law of Inheritance. In the aforesaid way Abul Kashem became owner in possession of .2663 acre land, plaintiff No.1 become owner in possession of .2650 acre land, plaintiff No.2 become owner in possession of .0575 acre land, plaintiff No.3 become owner in possession of .0575 acre land and plaintiff No.4 became owner in possession of .0638 acre land. While the plaintiffs and their father were owning and possessing said land the defendants suddenly on 18.12.2011 came to the suit property for constructing boundary pillar towards the Eastern side of the suit land when the plaintiffs requested them not to construct any boundary pillar but they constructed two boundary pillars towards Northern and Southern side of the suit land. Thereafter, Abul Kashem died on 12.11.2013 leaving behind the plaintiffs as his legal heirs and accordingly, plaintiff No.4 got .033 acre land, plaintiff No.1 got .0583 acre land, plaintiff No.2 got .0291 acre land, plaintiff No.3 got .0291 acre land, plaintiff No.4 got .0291 acre land, plaintiff No. 5 got .0291 acre land and plaintiff No.6 got .0583 acre land. In the aforesaid way the plaintiffs are owning and possessing total .5831 acre land out of .83 acre suit land.

On 03.03.2017 at 8.00 a.m the officials of defendant No. 3 came to Northern side of the suit land and smashed away the trees and

dwelling houses of the plaintiffs and started to digging earth while plaintiff No.1 went there and requested them to make construction in the government land after measuring the private land of the plaintiffs. After acquisition of .12 acre land the suit property was not partitioned by metes and bounds and the defendants refused to make any partition as was requested by the plaintiffs and as such, the plaintiffs filed the suit for partition.

During pendency of the suit, the plaintiffs filed an application under Order 39 rule 1 and 2 of the Code of Civil Procedure praying for an order of temporary injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs and from constructing any demarcation pillar till disposal of the suit. The trial Court, upon hearing, directed the defendant to show cause within 4 (four) weeks as to why temporary injunction should not be granted. Thereafter, the plaintiffs filed an application on 29.02.2016 under section 151 of the Code of Civil Procedure praying for an order of *ad interim* injunction till disposal of the temporary injunction application and the trial Court vide order dated 29.02.2016 issued 5 days show cause notice upon the defendants.

Challenging said order dated 29.02.2016 the plaintiffs have preferred this revision and obtained the instant Rule and order of *status-quo*.

Opposite party No. 3 (defendant No.3), the Executive Engineer of BIWTA, Dhaka Division filed counter-affidavit to oppose the Rule denying the material averments of the plaintiff-petitioners as stated in the revisional application. The case of defendant No.3 is that the suit land and the acquired land are distinct and different land and the plaintiffs are land grabbers who illegally made some construction

encroaching the foreshore of Turag River and as per section 10(1) of the Port Act, 1908 the BIWTA is legally authorized to evict unauthorized occupants from the foreshore land. Earlier Human Rights and Peace for Bangladesh filed Writ Petition No. 3503 of 2009 before the High Court Division for eviction of unauthorized occupants from the foreshore of Turag River surrounding Dhaka City and a Division Bench of this Court by judgment dated 25.06.2009 disposed of said writ petition by giving various directions including a direction to take over the foreshore land from the land grabbers of the Turag River and other Rivers surrounding Dhaka City within five years. After pronouncement of the judgment of the High Court Division BIWTA took effective initiatives and measures to recover the land of the Rivers from the unauthorized occupants after constituting a High Powered Committee consisting of the District Administration, Land Survey Directorate, Public Works Survey Division and BIWTA who prepared maps demarcating the foreshore river area. Thereafter, BIWTA started to construct demarcation pillars and in the meantime, completed the construction of the demarcation pillars after making demarcation of the private land and the land of the river and also evicted unauthorized occupants from the foreshore of Turag River. The defendant has no reason to encroach any private land which has been claimed by the plaintiffs. The plaintiffs by suppression of facts got the order of *status-quo* from this Court which is liable to be vacated. The plaintiff-petitioners did not file any affidavit-in-reply controverting the facts stated in the counter-affidavit.

Mr. Md. Sultan Uddin, learned Advocate appearing for the plaintiff-petitioners submits that the plaintiffs are owners in possession of the suit land since years together and the name of their predecessors have been recorded in C.S, S.A, R.S and City Jarip Khatian and the

Government is owner of only .12 acre land but while constructing demarcation pillars, they illegally tried to dispossess the plaintiffs from their private land and as such, if the defendants are not restrained from their illegal activities, the plaintiffs will be highly prejudiced and will suffer irreparable loss and injury and as such, the *status-quo* order should be continued till disposal of this suit.

As against the above contention, Mr. Lutfur Rahman, learned Advocate appearing for opposite party No.3, the Executive Engineer of BIWTA submits that in view of the direction passed in Writ Petition No. 3503 of 2009 by the High Court Division on 25.06.2009 the BIWTA took effective initiatives to implement the directives and after preparing map by a High Powered Committee consisting of the District Administration, Land Survey Directorate, Ministry of Works, Public Works Survey Division and BIWTA constructed demarcation pillars by separating private land from the land of the river and in the meantime, the BIWTA constructed walk way after such demarcation and no person is entitled to possess or occupy any land within the territory of the foreshore area. Learned Advocate further submits that since the BIWTA, in the meantime, has demarcated the foreshore area and took over possession of the unauthorized land, there is no cause of action of the application for injunction. Learned Advocate further submits that the plaintiffs have no *prima-facie* case to get any order of injunction and as such, the Rule should be discharged by vacating the order of *status-quo*.

We have heard the learned Advocates, perused the plaint of the title suit, application for temporary injunction, the application filed under section 151 of the Code of Civil Procedure, written objection filed by the defendant before the trial Court, the counter-affidavit, the

impugned order and other materials available on record. It appears from the plaint that the plaintiffs are claiming title to .5831 acre land in their *saham* out of total .83 acre land. Their claim is that they acquired title to said land by way of various registered transfer deeds and inheritance. The plaintiffs filed the suit when the defendants went to the suit land for demarcation of the land of Turag River and construction of demarcation pillars in the bank of Turag River. It is not denial of the fact that Government has acquired .12 acre land for construction of embankment for protection of Dhaka City from flood and the embankment was made covering the acquired land and there is no connection with the plaintiffs or BIWTA with the land acquired by the Government. Defendant No.3, BIWTA is a Government entity who has been implementing the verdict of the High Court Division passed in Writ Petition No. 3503 of 2009 wherein a Division Bench of this Court gave various directions for protection of the river area including Turag surrounding Dhaka City. It has been stated in counter-affidavit that a High Powered Committee consisting of the officials of the District Administration, Land Survey Directorate, Public Works Survey Division and BIWTA prepared maps identifying the foreshore area of the river Turag and as per map prepared by said committee the BIWTA has already constructed demarcation pillars separating the private lands from the land of the River. The plaintiffs do not deny such fact by filing affidavit-in-reply which means that those facts are admitted by the plaintiffs.

It is settled principle of law that in order to get a temporary or ad-interim injunction the plaintiff must establish that he has a *prima facie* title to and possession in the suit property and the balance of convenience and inconvenience is in his favour and in the event of

refusal to grant temporary injunction the plaintiff will suffer irreparable loss. It is also settled principle of law that when the Court found that the plaintiff failed to establish his *prima facie* title to and possession in the suit property he is not entitled to get an order of temporary injunction and not even an order of *status-quo* which is in substance an order of injunction.

Moreover, a co-sharer in specific and separate share of the ejmali property is entitled to retain his possession till legal partition by injunction against another co-sharer threatening dispossession. It is also settled principle of law that no injunction can be granted in an unspecified and un-demarcated land.

On perusal of the plaint it appears that the plaintiffs claim a share of .5831 acre land out of .93 acre suit land. They mentioned in the schedule the boundary of their claimed land as: On the West-Turag River. But they did not give any sketch map identifying their land from Turag River. So, this type of boundary cannot be considered as specified land and accordingly, the plaintiffs are not entitled to any injunction in such an unspecified land. From the schedule of the plaint as well the schedule of the temporary injunction application it appears that the plaintiffs could not specify the suit land in order to get injunction against the defendants. Moreover, defendant No. 3 is a Government entity who has no personal interest over the matter. Since, in the meantime, construction of demarcation pillars have been completed and the cause of action of the suit has arisen because of constructing demarcation pillars by the defendants, we are of view that the plaintiffs have no cause of action in getting injunction restraining the defendants from constructing demarcation pillars. Accordingly, the application for injunction has become infructuous.

Considering above facts and circumstance of the case, we find no merit in this Rule.

In the result, the Rule is discharged however, without any order as to costs. The order of *status-quo* granted earlier is vacated.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)

Md. Nurul Islam