

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. S.M. Iftekhar Uddin Mahamud

First Miscellaneous Appeal No. 193 of 1997

In the Matter of:

Taslimuddin Ahmed being dead his heirs:-
 Ferdous Ahmed and others

.....Plaintiff -appellants.

-Versus-

Md. Habibullah, Manager, Dhaka Nowab
 Estate, Court of Wards and another

.....defendant-respondents.

No one appears

..... For the appellants.

Ms. Papia Sultana, A.A.G.

.....For the Govt. respondents.

Judgment on 11.03.2026

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the order No. 4 dated 06.7.1997 passed by the then subordinate Judge 4th Court, Dhaka in Title Suit No. 129 of 1997 rejecting the plaintiff's application under Order 39, Rule 1 and 2 read with section 151 of the Code of Civil Procedure.

The facts relevant for the purpose of disposal of this appeal are that appellant as plaintiff filed Title Suit No. 129 of 1997 in the Court of the then sub-ordinate Judge, 4th Court, Dhaka praying for declaration of Title in the suit land on the basis of a registered deed of lease being No. 3581 dated 12.04.1952 granted by the defendants infavour of father of the plaintiff taking salami amounting to Tk. 60/=(Sixty).

Thereafter, while the suit was in progress the plaintiff filed an application for temporary injunction restraining the defendants from transferring or leasing out the suit property in any manner whatsoever.

The defendants resisted the said application by filing written objection.

No one appears to press the Appeal on repeated calls.

In view of the fact that this petty old First Miscellaneous Appeal of 1997 arising out of an ad-interim order, we are inclined to dispose of it on merit perusing the available materials on record.

The learned trial Judge after hearing the parties by his order dated 06.07.1997 rejected the application on the ground that the plaintiff miserably failed to establish a clear case that defendants have taken any steps on particular date or particular time to lease out the suit property to any third party whatsoever.

On an analysis of the impugned order we find no flaw in the reasonings of the trial Court or any ground to assail the same. It is the duty of the plaintiff or the applicant to prove his case clearly. It is found that in this case the plaintiff as to lease could not make out his clear case.

In view of the above, this appeal must fail.

In the result, this First Miscellaneous appeal is dismissed without any order as to costs.

Communicate this order at once.

S.M. Iftexhar Uddin Mahamud, J:

I agree.