

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

**Present:**

**Mr. Justice Md. Badruzzaman.**

**And**

**Mr. Justice Sashanka Shekhar Sarkar**

**First Misc Appeal No. 55 of 2020.**

**With**

**Civil Rule No. 972 (F.M) of 2019**

**Zayed Begum .**

...Appellant.

-Versus-

**Md. Rafiqul Islam @ Fenu and others**

....Respondents.

Mr. Md. Dedar Alam Kallol, Advocate

... For the appellant

Mr. Surojit Bhattacharjee with

Ms. Farhana Siraj Ronnie, Advocates

... For the respondents

**Heard on: 14.01.2024, 16.01.2024 and 04.02.2024.**

**Judgment on: 05.02.2024.**

**Md. Badruzzaman, J:**

This Appeal, at the instance of the plaintiff, is directed against an order dated 26.11.2019 passed by learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet in Title Suit No. 21 of 2018 rejecting an application for temporary injunction filed under Order 39 rule 1 of the Code of Civil Procedure.

Upon an application for injunction, this Court vide order dated 24.12.2019 issued a Rule calling upon the respondent-opposite parties to show cause as to why an order of injunction restraining the defendant-respondents from transferring the suit land to anybody else in any manner should not be passed and the parties were directed not to transferring the suit land for a period of 3 (three) months which was

extended on 09.11.2021 for a further period of 2 (two) years with retrospective effect from the date of expiry. The Rule has been registered as Civil Rule No. 972 (F.M) of 2019.

Facts, relevant for the purpose of disposal of the appeal and the Rule, are that the appellant as plaintiff instituted Title Suit (Partition) No. 21 of 2018 against the respondents in 2<sup>nd</sup> Court of Joint District Judge, Sylhet for a decree of partition claiming one-ninth share out of the suit property with another decree of cancellation of registered gift deed dated 01.08.1978 being No. 30460 and registered gift deed dated 01.09.2004 being No. 13823 contending, *inter alia*, that total 1.67 acre land along with other land was owned and possessed by Md. Ekram Ullah by purchase and while he was owning and possessing said land made an oral will in favour of the plaintiff, defendant Nos. 1-5 and their mother Hazera Bibi. During his life time, Md. Ekram Ullah has been owning and possessing said land and he died on 04.01.1988 leaving behind the plaintiff, defendants and their mother Hazera Bibi and thereafter, Hazera Bibi died on 19.04.2006. After death of Hazera Bibi the plaintiff and defendants inherited the share of their mother in the suit property. According to the will and by way of inheritance from her mother the plaintiff got one-ninth share and defendant Nos. 1-5 got their respective shares in the suit property and the plaintiff was owning and possessing her share in ejmali with the defendants from her husband's house. In last part of June, 2016 the plaintiff requested defendant No. 1 for making partition of the suit property whereupon a *salish* was held. In that *salish* defendant No. 1 made contradictory statements in regards entitlement of her share and in the last part of July, 2017 he refused to make partition of the suit property by metes and bounds. While the plaintiff was owning and possessing the suit

property in ejmali with her co-sharers came to learn that defendant Nos. 1-3 by showing two gift deeds dated 01.08.1978 and 01.09.2004 applied for mutation of their name and being learnt about the gift deeds she collected certified copies thereof and found that the defendants created gift deed No. 30460 dated 01.08.1978 by forging the signature of their father Md. Ekram Ullah. On the other hand, by forging signature of their mother Hazera Bibi defendant Nos. 1-3 also created another gift deed dated 01.09.2004 being No. 13823 in favour of defendant Nos. 1-3. In fact, those gift deeds are products of forgery and by those deeds defendant Nos. 1-3 could not acquire any right, title or interest in the suit property. In the fifth schedule of the gift deed of 1978 it has shown that .55 acre land of plot No. 1226 was transferred in favour of the plaintiff and defendant Nos. 4-5 but said land was not owned and possessed by their father Md. Ekram Ullah. In fact, said .55 acre land was owned and possessed by Aton Sama Singha who transferred the same by registered sale deed dated 31.10.1981 being No. 31782 in favour of Md. Lutfor Rahman and others who, thereafter, transferred .18 acre land to the plaintiff by registered sale deed No. 9878 dated 18.07.1988 and handed over possession thereof to her and while she was owning and possessing said .18 acre land of plot No. 1226 mutated her name vide Mutation Case No. 86 of 1988-89 and also recorded her name in B.S Khatian No. 11497 and thereafter, transferred the same to her husband. Since defendant Nos. 1-3 refused to partition the suit property and they created two fraudulent and forged deeds of gift, the plaintiff constrained to file the instant suit on 22.1.2018.

Defendants Nos. 1-3 filed joint written statement on 18.04.2019 to contest the suit contending, *inter alia*, that the suit is not maintainable in its present form; that the suit is bad for defect of

parties and hotchpotch as well as barred by limitation. Their positive case is that the father of the plaintiff and defendants namely Md. Ekram Ullah was owner in possession total 2.44 acre + 3.5750 acre = 6.0150 acre land including the suit land and he had two wives. While he was owning and possessing the said land transferred 2.45 acre land including the suit land by registered deed of gift dated 01.08.1978 being No. 30460 in favour of the plaintiff, defendant Nos. 1-5 and their mother Hazera Bibi and on the same day he transferred 3.5750 acre land by registered gift deed being No. 30461 in favour of his first wife Sitara Banu and her son and daughters and handed over possession thereof to them. According to said two registered gift deeds the sons, daughters and wives of Md. Ekram Ullah become owner in possession of their respective shares as per distribution made by those two gift deeds. According to the gift deed dated 01.08.1978 the plaintiff and defendant Nos. 5 and 6 (i.e three sisters) got .55 acre land jointly from plot No. 1226 and defendant Nos. 1-3 (three brothers) got total 1.60 acre and their mother Hazera got .30 acre land including the suit land from other plots. While Hazera Bibi was owning and possessing her share i.e .30 acre land as per gift deed dated 01.08.1978 she transferred the same to defendant Nos. 1-3 vide registered deed of gift dated 01.09.2004 being No. 13823 and handed over possession thereof to them. In the aforesaid way defendant Nos. 1-3 become owner in possession of total 1.90 acre land including the suit land vide gift deed dated 01.08.1978 and 01.09.2004 and constructed residential and commercial buildings therein and have been owning and possessing the said property including suit property by using the same as their residence in some portion of the building and through tenants in other part of the building. Md. Ekram Ullah was owner in possession of .55

acre land of plot No. 1226 which was gifted to his daughters vide gift deed dated 01.08.1978 but one Md. Lutfur Rahman and others claimed said land by way of purchase and for avoiding future complications Md. Ekram Ullah re-purchased said .55 acre land in the name of the plaintiff and his two sisters (plaintiff and defendant Nos. 4-5) vide registered sale deed No. 9478 dated 18.07.1988. By said sale deed dated 18.07.1988 the plaintiff and her two sisters could not get separate interest in said .55 acre land because they became owner in possession of .55 acre land by gift deed dated 01.08.1978. The plaintiff did not bring said land in the hotchpotch of the suit though she has challenged said gift deed dated 01.08.1978. The plaintiff had or has no right, title, interest or possession in the suit property and as such, she is not entitled to any decree as prayed for.

After filing written statement, the plaintiff on 05.06.2018 filed an application under Order 39 rule 1 of the Code of Civil Procedure praying for temporary injunction restraining defendant Nos. 1-3 from transferring the suit land to anybody else and from changing the nature and character of the suit land contending, *inter alia*, that after being learnt about filing of the suit defendant Nos. 1 and 3 at about 10.00 a.m on 3.6.2018 came to the suit land and disclosed that they would transfer the suit land to third party and construct building in vacant part of the suit land so that the plaintiff could not get her *saham* from the suit land. Defendant No. 3 came from United Kingdom on 1.6.2018 for the purpose of selling the suit land. In such situation, if injunction is not granted, the plaintiff would suffer irreparable loss and injury.

Defendant Nos. 1-3 filed written objection against the application for temporary injunction stating that the application for injunction was filed with false statements; that the plaintiff has no title and possession

in the suit land; that after getting the suit land including other land by oral gift from their father and mother defendant Nos. 1-3 constructed boundary walls, residential buildings, shops etc. in their *saham*; that the recent record-of-rights has been prepared in their names. Defendant Nos. 1-3 have been owning and possessing the suit property by residing and running business therein and as such, the application for injunction is liable to be rejected.

The trial Court, upon hearing the parties and considering the materials on record, rejected the application for temporary injunction by impugned order dated 26.11.2019 against which the plaintiff has preferred this appeal and obtained the Rule and ad-interim injunction, as stated above.

Defendant-respondent Nos. 1 and 2 have filed counter-affidavit and supplementary affidavit to contest the Rule. In the supplementary affidavit sworn in on 29.01.2024 it has stated that after getting the suit property by way of registered gift deeds defendant Nos. 1-3 constructed commercial and residential buildings in the suit plots and the suit property is situated within Sylhet City Corporation area. The defendants constructed the buildings with the approval of plan from Sylhet City Corporation and they have mutated their names in respect of the suit land in the concerned revenue office and they have been owning and possessing the suit land in their specific portion by using the suit property as residential house and business place.

The plaintiff-appellant did not file any affidavit-in-reply against the counter-affidavit and supplementary-affidavit filed by the respondents.

Mr. Md. Dedar Alam Kallol, learned Advocate appearing for the plaintiff-appellant by taking us to the plaint, application for temporary

injunction, written statement, written objection, the impugned order and other relevant documents submits that admittedly, the plaintiff is the heir of Md. Ekram Ullah; that as per oral will and after death of Md. Ekram Ullah the plaintiff inherited 1/9<sup>th</sup> share of the suit property; that since Md. Ekram Ullah made will and as per said will the plaintiff is owning and possessing her share in the suit property and if during pendency of the suit, the suit property is transferred to third party or the nature and character of the suit property are changed the plaintiff would be deprived of her share from the suit property and as such, temporary injunction should be granted against the defendants; that since the plaintiff has good *prima facie* and arguable case and balance of convenience and inconvenience are in favour of the plaintiff the trial Court committed illegality in refusing to grant temporary injunction as prayed for by the plaintiff and as such, the same is liable to be set aside. In support of his contention learned Advocate has referred to the case of Nargis Majid and others vs. Kamol Ram Pashi and others 20 BLT (AD) 220 and case of Abdul Jabbar being dead his heirs Md. Humayun Kabir and others vs. Sultan Mia and others 2 BLT 139.

In opposing the submissions of the learned Advocate for the appellant, Mr. Surojit Bhattacharjee learned Advocate appearing for respondent Nos. 1-3 submits that as per registered deed of gift dated 01.08.1978 and 01.09.2004 defendant-respondent Nos. 1-3 become owner in possession of total 1.60 acre + .30 acre = 1.90 acre land including the suit land and on the other hand, vide gift deed dated 1.8.1978 the plaintiff and defendant Nos. 4-5 become owner in possession of .55 acre land of Plot No. 1226 jointly and the plaintiff upon getting .18 acre land as per gift deed transferred the same to her husband and he has been owning and possessing the same; that by gift

deed dated 01.08.1978 total 2.45 acre land was transferred by Md. Ekram Ullah to the plaintiff, the defendants and Hazera Begum and by gift deed dated 01.09.2004 Hazera Begum transferred her share i.e .30 acre land to defendant Nos. 1-3 and though the plaintiff has challenged those deeds but she did not bring total land covered by those deeds in the hotchpotch of suit but filed the instant suit covering an area of 1.67 acre land only and the plaintiff filed the suit by suppression of facts and as such, she is not entitled to any equitable relief of injunction as prayed for; that admittedly, the suit land is situated within Sylhet City Corporation but the plaintiff did not state anything about said fact in the plaint as well as in the application for temporary injunction; that it is settled principle of law that no injunction in partition suit in case of land in urban area can be granted; that the plaintiff in her plaint could not specify that she is in possession in a specific and separate share of the ejmali property and as such, she is not entitled to any injunction against her brothers, who are admitted co-sharers in the suit property; that the trial Court, upon considering all aspect of the matter, rightly refused to grant temporary injunction as prayed for by the plaintiff and as such, interference is not called for by this Court.

The defendant-respondents produced before us the copy of registered gift deed No. 30461 dated 01.08.1978, finally published City Jorip Khatians, building plans, DCR, rent receipts (Annexure X-X(7) to the supplementary affidavit). The plaintiff-appellant does not deny the genuineness of those documents. On perusal of gift deed dated 01.08.1978 it appears that Md. Ekram Ullah transferred total 2.45 acre land to his wife Hazera Bibi, three daughters (plaintiff and defendant No. 4-5) and three sons (defendant No.1-3). As per recital of the deed, Hazera got .30 acre land from Plot Nos. 259, 260, 264, 269 and 263;

defendant No. 1 Rafiqul got .30 acre land from Plot Nos. 259, 260, 264, 269 and .23 acre land from Plot No. 1643; defendant No. 2 Md. Shafiqul Islam got .30 acre land from Plot Nos. 260, 264, 269 and .23 acre land from Plot No. 1643; defendant No. 3 Koysor Hasan got .30 acre land from Plot Nos. 259, 260, 264, 269 and .24 acre land from Plot No. 1643; the plaintiff and her two sisters (defendant Nos. 4-5) got total .55 acre land of Plot No. 1226 in equal share. By said deed of gift dated 01.08.1978 Md. Ekram Ullah specified the share of the plaintiff, defendants and their mother and accordingly transferred specific land in their favour by which the plaintiff and her two sisters got .55 acre land from plot No. 1226. In the deed the land of Plot Nos. 259, 260, 264, 269 and 263 was mentioned as homestead land but in the plaint, the plaintiff mentioned the nature of the suit land as "*Shail*" and "*Chara*". Admittedly, the plaintiff has challenged registered gift deed dated 01.08.1978 but she did not bring entire land of gift deed dated 01.08.1978 by which 2.45 acre land was purportedly transferred by Md. Ekram Ullah.

From the materials on record it appears that the plaintiff has filed the suit by suppression of facts. The plaintiff claims that she purchased said .18 acre land from Lutfor Rahman on 18.07.1988 and thereafter, she mutated her name and gifted it to her husband. The defendants claim that their father purchased said .55 acre land from his own purse in favour of the plaintiff and her two sisters by said deed dated 18.07.1988 with a view to avoid future complications. Whether the plaintiff purchased said .18 acre land from her own purse or the said purchase was made by the money of her father for avoiding future complications, are matters to be decided at trial. Since the plaintiff challenged gift deed dated 01.08.1978 by which Md. Ekram Ullah

transferred 2.45 acre land and since the plaintiff did not bring total land of the gift deed dated 01.08.1978 within the hotchpotch of the suit, apparently, the suit is not maintainable in respect of cancellation of the deed of 1978.

On perusal of the plaint as well as the application for temporary injunction it appears that the plaintiff is not in physical possession of the land she claims. The plaintiff specifically claims that she is living with her husband elsewhere and she is possessing the suit property ejmali with her brothers from her husband's house.

In Moharram Ali & another vs. Mohammad Madhu Miah & others 41 DLR (AD) 92 it has been held that a co-sharer in specific and separate share of the ejmali property is entitled to retain his possession by injunction against another co-sharer threatening dispossession till legal partition. In the instant case though the plaintiff claims that she is a co-sharer of the suit property but she failed to show that she is in possession of a specific and separate share of the ejmali property.

In Nasir Uddin Howlader (Md) vs. Abul Kalam 8 BLC (AD) 156 it has been held that no injunction in partition suit in case of land in urban areas can be granted. Admittedly, the suit property is situated within the area of Sylhet City Corporation which is an urban area and as such, an injunction restraining the defendants from transferring the suit land or changing the nature and character of the suit land cannot be granted. Moreover, the defendants in their supplementary affidavit specifically stated that by getting the suit property by way of deed of gift of 1978 and 2004 they have constructed commercial and residential buildings in the suit property by approval of plan from the City Corporation. The plaintiff does not file any counter- affidavit to controvert said fact. The plaintiff have challenged two deeds of gift of

1978 and 2004 which are registered documents and as per claim of the defendants, they got the suit property from their father and mother by those registered deeds.

As per section 60 of the Registration Act, 1908 a registered document would be strong presumptive evidence of the fact that the document was explained to the executant before registration who admitted his execution and the receipt of consideration and that the whole proceeding and endorsement made therein were regular and in order and the said endorsement could only be rebutted by the plaintiff by adducing strong evidence proving the allegation that fraud was committed upon the Sub-Registrar. (Ref. Haji Kari Abdur Rahman vs. Abdur Rahim Gazi, 35 DLR 132). Since the defendants claim title to and possession in the suit land by impugned registered gift deed it is to be presumed that they have *prima facie* title to and possession in the suit property.

It is also settled principle of law that in order to get temporary injunction the plaintiff must establish that he has *prima facie* title to and possession in the suit property and the balance of convenience and inconvenience in his favour and in the event of refusal to grant temporary injunction the plaintiff will suffer irreparable loss. Since, in this case, the plaintiff could not make out a case that she has *prima facie* title to and possession in the suit land and on the other hand, defendants could make out a case of *prima facie* title to and possession in the suit land, the balance of convenience and inconvenience are in favour of the defendants. Moreover, the plaintiff could not show that in the event of refusal to grant temporary injunction she will suffer irreparable loss and injury. Accordingly, she is not entitled to injunction, as prayed for.

The cases referred by the learned Advocate for the appellant are not applicable in this case because the facts and circumstances of those cases and those of the present one are distinguishable.

On perusal of the impugned order it appears that the trial Court, upon considering all aspect of the matter and relevant provisions of law, came to proper findings and decision and rightly refused to grant temporary injunction in favour of the plaintiff.

Accordingly, we find no merit in this appeal.

In the result, the appeal is dismissed, however, without any order as to costs.

The order of *ad-interim* injunction granted in the Civil Rule is hereby vacated.

Consequently, Civil Rule No. 972 (F.M) of 2019 is disposed of.

The trial Court is directed to proceed with the suit and conclude the trial as expeditiously as possible.

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

**(Justice Md. Badruzzaman)**

**I agree.**

**(Mr. Justice Sashanka Shekhar Sarkar)**