

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

First Miscellaneous Appeal No. 212 of 2023
With
Civil Rule No. 713 (FM) of 2023

In the matter of:

Shahajada Khan and others all sons and daughters of late Md. Saidur Rahman Khan and mother Mrs. Hosnara Sayed all of House No. 07, Road No. 23, Sector- 07, Uttara, Dhaka-1230.

... Appellants

-Versus-

Mohammad Zakaria Khan, son of late Fazlur Rahman Khan and mother late Safiya Begum House No. 09, Road No. 47, Gulshan-2, Dhaka and Director of the defendant nos. 10-17 Company and others.

...Respondents.

Mr. Shaikh Forhadul Haque with
Mr. G. M. Nazrul Islam, Advocates

...For the appellants-petitioners

Mr. Md. Mahbubur Rahman Kishore with
Ms. Roksana Parvin Kabita,
Ms. Tanzima-Tul-Mowla,
Mr. Khandoker Sultan Ahmed and
Mr. Md. Nazmus Sakib, Advocates
...For the respondents-opposite-party nos. 26 and 27

Heard and Judgment on 26.05.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and fact so figured in the appeal and that of the rule are intertwined, they have heard together and are being disposed of by this common judgment.

At the instance of the plaintiff nos. 1, 2, 4 and 7 of Title Suit No. 287 of 2020 (Title Suit No. 33 of 2020), this appeal is directed against the judgment and order dated 14.06.2021 passed by the learned Joint District Judge, Additional Court, Dhaka in the said suit rejecting an application filed by the present appellants and others for injunction.

The salient facts leading to preferring this appeal are:

The present appellants and others (eight in number) filed the aforesaid suit for partition in respect of the suit land which has been described in schedule- ‘ka’ to ‘ta’ to the plaint seeking following prayers:

“(ক) নালিশী নিম্ন “ক-ট” নং তপছিল বর্ণিত সম্পত্তির
আন্দরে উক্ত তপছিলে উল্লেখিত বাদীগণের অংশ
বাদীগণ মালিক ও তদমতে বাদীর অনুকূলে
ছাহামের ডিক্রী দিতে,

(খ) নালিশী “ক-ট” নং তপছিল বর্ণিত সম্পত্তির
আন্দরে বাদীগণের মালিকানাধীন “ক-ট” নং তপছিল
উল্লেখিত অংশ বিভাগ বন্টন করিয়া সীমানা চিহ্নিত
করিয়া দেওয়ার আদেশ দিয়ে এক প্রাথমিক ডিক্রী দিতে,

- (গ) এক বা একাধিক বিজ্ঞ এডভোকেট কমিশনার নিয়োগ করিয়া প্রাথমিক ডিক্রী মোতাবেক সম্পত্তি বিভাগ বন্টন কার্যকরি করার ডিক্রী দিতে,
- (ঘ) উক্ত প্রাথমিক ডিক্রী মোতাবেক সম্পত্তি বন্টন করিয়া এক চূড়ান্ত ডিক্রী দিতে,
- (ঙ) বিবাদীগণের বিরুদ্ধে এবং বাদীগণের পক্ষে মোকদ্দমার যাবতীয় খরচার ডিক্রী দিতে,
- (চ) বাদীগণের ছাহামে প্রাপ্য সম্পত্তির উপর *Mesne profits* এর ডিক্রী সহ আইন ও ন্যায় বিচারে বাদীগণ আর যে যে প্রতিকার পাইতে হকদার তদ্রূপ বাদীগণের পক্ষে ডিক্রী দিতে বিহিত মর্জি হয়।”

On the date of filing the said suit dated 09.06.2020, the plaintiffs also filed an application under order XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure for injunction restraining the defendant nos. 1-17 from transferring ‘ka’ schedule of land measuring an area of two acres stating *inter alia* that by way of deed of agreement dated 01.10.1988, the predecessor of the appellants named, Md. Saidur Rahman Khan and his three full-brothers namely, Mohammad Zakaria Khan, Zillur Rahman Khan and Mizanur Rahman Khan got the schedule properties and accordingly, on 10.11.1988, a deed of declaration of transfer of share has been made in their favour of the establishment named, ‘M/s Sikander Industries’, a partnership firm and accordingly, their said firm has been registered with Registrar of Joint Stock Company and Firm under registration no. PF-13062EP comprising 25% share each in the said firm and the properties belonged to it.

Subsequently, the predecessor of the plaintiffs-appellants died on 28.02.2020 and the appellants took 'ka' schedule property as of their own and accumulated all old machineries and different sort of vehicles therein by erecting a shed. They also used to enjoy title and possession in *ejmali* in respect of 'kha' to 'ta' schedule properties with the defendants. The plaintiffs-appellants who are the heirs of Saidur Rahman Khan who owned 25% share in the firm and other landed properties then on 18.03.2020 approached the defendants and requested them to partition the properties but they denied to do so for which the suit was thus filed. On the same date of filing of the suit, the appellants also filed an application for injunction alleging that on 21.03.2020, they came to learn that the defendants were going to transfer 'ka' schedule property where different sort of old machineries and vehicles were stored by the appellants and the defendants kept on threatening them of dispossessing the plaintiffs from the said 'ka' schedule land and hence, the application for injunction was filed. However, basing on the said application, the trial court initially issued show cause notice upon the defendant nos. 1-17 and passed an order of ad-interim injunction vide order dated 10.06.2020. However, the said application for temporary injunction was taken up for hearing and vide impugned judgment and order, the application was ultimately rejected by the trial court holding that the property is an *ejmali* property and the plaintiffs and the defendants have been in possession and the suit land has not been partitioned through metes and bounds. It is at that stage, the plaintiffs as appellants preferred this appeal. After preferring the appeal, the appellants as petitioners also

filed an application for injunction and this court upon hearing the petitioners issued rule on 10.07.2023 and directed the parties to maintain status quo in respect of 'ka' schedule property for a period of 3(three) months which was extended from time to time and it was lastly extended on 14.05.2025 for another three months when the rule as well as the appeal was fixed for hearing.

It is worthwhile to mention here that during pendency of the appeal as well as the rule one, namely, Multibrand Workshop Limited as well as Hi-Tech Steel and Plastic Industries (Pvt.) Limited filed two separate applications for adding them as parties to the appeal as well as the rule and this court upon hearing those two applicants, vide order dated 27.02.2024 allowed the same and added those two applicants as respondent nos. 26 and 27 respectively. Today when the matter was taken up for hearing, at the instance of those two respondents, an application was filed for vacating the order of status quo.

Mr. Shaikh Forhadul Haque, the learned counsel appearing for the appellants-petitioners upon taking us to the impugned order and all the documents appended with the application for injunction at the very outset submits that since the learned Judge of the trial court in the impugned judgment and order clearly found that the property so have been left by the predecessor of the appellants is an *ejmali* property and it has not been partitioned through metes and bounds so the learned Judge ought to have passed an order of status quo so that during pendency of the suit, none of the parties to the suit can transfer the suit property in term of the specific prayer made in the application for injunction.

The learned counsel further contends that the learned Judge of the trial court misappreciated the apprehension of the appellants-petitioners with regard to transfer of the property by other co-sharers made as defendants in the suit and passed the impugned order which is devoid of any material substance.

The learned counsel also contends that since it is admitted fact that both the plaintiffs and the defendant nos. 1-17 are the co-sharer of the firm and the landed properties so if any co-sharers of the property ever transfer the same in particular, 'ka' schedule property, which the plaintiffs-appellants have been enjoying is transferred in that case, no one other than, the plaintiffs-appellants will be highly prejudiced as the balance of inconvenience clearly stands in their favour yet the learned Judge of the trial court has failed to consider that aspect and therefore, the impugned judgment and order cannot be sustained and finally prays for allowing the appeal.

On the contrary, Mr. Md. Mahbubur Rahman Kishore, the learned counsel appearing for the respondent-opposite party nos. 26 and 27 vehemently opposes the contention taken by the learned counsel for the appellants-petitioners and by taking us to the application for vacating the order of status quo mainly contends that since at the time of purchasing the property by the respondent nos. 26 and 27 dated 08.08.2022 from defendant nos. 5-9 there had been no interim order, so they cannot be restrained by any interim order let alone by an order of status quo and if an order of status quo remains in place it is none but the said two respondents will be highly prejudiced.

The learned counsel by taking us to the application for vacating the order of status quo mainly Annexure-‘1’ thereof, also submits that since by the time, the respondents-opposite parties already erected workshop and a substantial number of workers are employed in that workshop so if an order of status quo is there the respondent nos. 26 and 27 will be highly prejudiced. On those scores, the learned counsel finally prays for dismissing the appeal and discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellants-petitioners and those of the respondents-opposite party nos. 26 and 27. We have also very carefully gone through the impugned judgment and order and the documents so have been appended with the application for injunction on which order of status quo was granted.

There has been no gainsaying the fact that the property so have been described in schedule- ‘ka’ to ‘ta’ have been enjoying by the plaintiffs and that defendant nos. 1-17 in *ejmali* in equal share belongs to four co-sharer out of which the predecessor of the appellants-petitioners died and since the suit has been filed for partition so as per the principle so have been followed all the co-sharers are entitle to enjoy title and possession equally. Now question remains, whether any interim order can be passed in regard to transfer of the suit land. Further, in a suit for partition, if any party to a partition suit can satisfy the court that he/she has been in possession in a particular portion of such undivided land giving a specification butted and bounded by boundary, in that case, only an interim order can be granted for protecting his/her peaceful

possession. However, from the prayer of the application for temporary injunction sought by the plaintiffs we find that, the plaintiffs filed an application in regard to transfer of 'ka' schedule property they claimed to have been possessing entirely by accumulating different sorts of rundown vehicles as well as machineries.

The trial court in that event could pass an order of status quo in regard to transfer of 'ka' schedule property. But in the impugned judgment and order, we don't find that the learned Judge has ever taken into consideration of the prima facie case of the plaintiffs in proper perspective. Had the trial court considered the gravity of the prayer of the plaintiffs made in the application of injunction, there would have no prejudice to any of the parties to the suit. In any view of the matter, we don't find any substance in the impugned judgment and order.

At this, the learned counsel appearing for the respondent nos. 26 and 27 expressed apprehension that, if an order of status quo on the transfer of 'ka' schedule of land remains in place in that case, the respondents will be highly prejudiced since they have already erected a workshop and a good number of workers have been working therein but we don't find any substance in the said submission because their predecessor who are defendant nos. 5-9 were quite aware of filing and proceeding of the suit and we further find from the record that, against the application for temporary injunction which was filed far back in the year 2020, they (defendant nos. 5-9) also filed written objection so the predecessor of respondent nos. 26-27 had every knowledge about filing of the suit as well as application for injunction. And even though no

order of injunction was passed by the trial court but if the order of status quo subsists, the respondent nos. 26 and 27 have nothing to be prejudiced. So we don't find any substance in the said submission of the learned counsel for the respondent nos. 26 and 27 as if ultimately the suit is decreed and the plaintiffs-appellants is found to have possession in 'ka' schedule property then as per the principle followed in a suit for partition, the Advocate Commissioner is bound to give *saham* to the plaintiffs in that 'ka' schedule property provided the quantum of share the plaintiffs claim in the suit covers from 'ka' to 'ta' schedule property.

Regard being had to the above facts and circumstances, we find ample substance in the submission of the learned counsel for the appellants-petitioners.

Accordingly, the appeal is allowed however without any order as to costs.

The impugned judgment and order dated 14.06.2021 passed by the learned Joint District Judge, Additional Court, Dhaka in Title Suit No. 287 of 2020 is set aside.

Since the appeal is allowed, the connected rule being Civil Rule No. 713 (FM) of 2023 is hereby made absolute.

The parties are thus directed to maintain status quo in respect of possession and position in 'ka' schedule property described in the plaint till disposal of the suit.

However, the learned Judge of the trial court is hereby directed to take necessary step so that the suit can be disposed of within a period of 6(six) months from the date of receipt of the copy of the order.

Let a copy of this judgment be transmitted to the learned Joint District Judge, Additional Court, Dhaka forthwith.

Md. Bashir Ullah, J.

I agree.