

Present:-

Mr. Justice Mahmudul Hoque

**Civil Revision No. 782 of 2025**

Nargis Akter and others

..... Petitioners

-Versus-

Sayed Mahbub-E-Jamil

..... Opposite-Party

Mr. Md. Iqbal Hossain, Advocate with

Mr. Md. Syful Islam, Advocate

... For the Petitioners

Mr. M.M. Shafiullah, Advocate

... For the Opposite Party

**Judgment on 15.05.2025**

In this revision Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order No. 02 dated 06.02.2025 passed by the learned District Judge, Dhaka in Miscellaneous Appeal No. 21 of 2025 disallowing the appeal and thereby affirming the judgment and order dated 10.03.2024 passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Dhaka in Title Suit No. 111 of 2019 rejecting the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioners, as plaintiff, filed Title Suit No. 111 of 2019 in the Court of

learned Joint District Judge, 3<sup>rd</sup> Court, Sadar, Dhaka, against the opposite party, as defendant, for declaration of title and recovery of possession. In the suit, the plaintiff filed an application under Order 39 Rule 1 and 2 praying for temporary injunction against the defendant in the following term:

“অতএব, উপরোক্ত অবস্থা ও করনাধীনে ন্যায় বিচারের স্বার্থে হুজুর আদালত সমীপে বাদী পক্ষের বিনীত আরজ এই যে, দেওয়ানী কার্যবিধি আইনের ৩৯ আদেশের ১(ক) নিয়মের বিধান মতে বিবাদী যাহাতে অত্র দরখাস্তের তফসিল বর্ণিত সম্পত্তি তৃতীয় ব্যক্তির নিকট হস্তান্তর করিতে না পারে বা তৃতীয় ব্যক্তির সহিত বায়নাবদ্ধ হইতে না পারে বা কোন অর্থ লগ্নী প্রতিষ্ঠানের নিকট থেকে ঋণ গ্রহণ করে বন্ধক দিতে না পারে বা নালিশী সম্পত্তির আকার ও প্রকারের কোন রূপ পরিবর্তন ঘটাইতে না পারে বা অন্যের নিকট ফ্ল্যাটের শেয়ার বিক্রি করিতে না পারে এবং সংশ্লিষ্ট সাব-রেজিষ্ট্রি অফিসে উক্ত আদালতের প্রদত্ত অস্থায়ী নিষেধাজ্ঞার একটি কপি জারির আদেশ প্রদান করে বিবাদীর বিরুদ্ধে এক অস্থায়ী নিষেধাজ্ঞার আদেশ দান করিতে মহোদয়ের সদয় মর্জি হয়।

এবং

অস্থায়ী নিষেধাজ্ঞার দরখাস্ত শুনানী না হওয়া পর্যন্ত এক অন্তর্বর্তীকালীণ নিষেধাজ্ঞার আদেশ দিতে বিজ্ঞ আদালতের আজ্ঞা হয়।”

The defendant opposed the application by filing written objection. The trial court heard the application for injunction and written objection and after hearing by the judgment and order dated 10.03.2024 rejected the application for injunction with costs of Tk. 3000/-. Thereafter, one of the heirs of original plaintiff Abdul Monayem Ashraf moved before the

District Judge, Dhaka by filing Miscellaneous Appeal No. 21 of 2025 at a delay of 288 days with an application under Section 5 of the Limitation Act for condonation of such delay. The appellate court fixed the appeal on 06.02.2025 for admission hearing. On the date fixed, the appellate court after hearing by the impugned judgment and order dismissed the appeal summarily for want of admissibility as hopelessly barred by limitation. At this juncture, the petitioners moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status quo.

Mr. Md. Iqbal Hossain with Mr. Md. Syful Islam, learned Advocates appearing for the petitioners submit that the plaintiff filed the instant suit for declaration of title and recovery of possession. During pendency of the suit, the defendants are taking various steps for construction of multistoried building thereon and selling the flat to be constructed to the intended purchasers and for that purpose the defendant taking step for taking loan from bank by mortgaging the property. Consequently, the plaintiff filed an application praying for temporary injunction to prevent the defendant from doing the act aforesaid. The trial court while rejecting the application wrongly observed that the relevant

city khatian is different from the khatian of the defendant and failed to find that a portion of the property wrongly recorded in the name of the defendant in City Khatian No. 229.

He submits that since the matter is still pending before the trial court for decision, the parties may be directed to maintain status quo to prevent multiplicity of judicial proceeding directing the trial court to dispose of the suit as early as possible.

Mr. M.M. Shafiullah, learned Advocate appearing for the opposite party submits that for granting injunction the plaintiff is to prove a prima facie case, balance of convenience and inconveniences and irreparable loss. In the instant case from the face of plaint and the prayer made therein, it is admitted that the defendant not in possession of the suit property. The property is situated within the city corporation area, relevant record of right i.e, city khatian stands prepared in the name of the defendant.

He submits that the trial court while rejecting application for injunction correctly observed that khatian in the name of plaintiff is city khatian No. 183 and city khatian No. 229 is in the name of the defendant. In both the khatian plot number is different from each other. On that

observation, the trial court found that the plaintiff apparently failed to show a prima facie case in their favour.

He argued that a person out of possession is not entitled to get order of injunction. In the instant case, the plaintiff failed to show a prima facie case, they have no possession in the suit property and the property situated within the metropolitan city. In this situation, under the circumstances, the plaintiff is not at all entitled to get order of injunction. The trial court rightly rejected the same. After rejection of the application for injunction they moved an appeal at a delay of 288 days. wherein, the petitioner could not satisfy the court for such delay giving explanation and sufficient cause, as such, the appellate court summarily dismissed the appeal and both the courts below committed no illegality and error of law occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, application for injunction, written objection thereto and impugned judgment and decree of both the courts below.

Plaint in suit shows that the plaintiff claiming title in the suit property filed the instant suit for declaration of their title and recovery of

possession and also sought for a declaration to the effect that S.A., R.S. and City Khatian No. 229 stand recorded in the name of the defendant wrongly, illegally and not binding upon the plaintiffs. Principles for granting injunction have been settled now. To seek injunction, the plaintiff is to satisfy that they have a good prima facie case, balance of convenience and inconveniences in their favour and there will be irreparable loss if order of injunction is not granted.

The trial court found that as admitted by the plaintiff S.A. Khatian No. 44, R.S. Khatian No. 40 and City Jorip Khatian No. 229 stand recorded in the name of defendant No. 1. Validity of such record of right is awaiting for decision. Apparently, all the documents exist in favour of defendant No. 1. Unless and until the court declared those khatians prepared wrongly and finds title of the plaintiffs in the suit property, the plaintiffs are not entitled to get an order of injunction.

Moreover, the trial court observed that the document filed by the plaintiffs show that in deed No. 3773 of 2009, the plaintiffs purchased the property covered by Plot Nos. 405, 406 and 407 under City Jorip Khatian No. 183 and the defendant claiming the property covered by Plot No. 40 under City Jorip Khatian No. 229 which is different from each other.

Whether any portion of the property under Khatian No. 183 went in Khatian No. 229 is a matter to be decided by the trial court after taking evidence and obtaining local investigation report, but at this stage no prima facie case exist either in respect of document or in respect of possession in favour of the plaintiffs. In the event of transferring the property by the defendant, making construction thereon will not prejudice the plaintiff in getting their relief in the instant suit. If the suit is decreed, any transfer made by defendant during pendency of the suit will be hit by Section 52 of the Transfer of Property Act and in the event of getting decree for recovery of possession the plaintiff will get the property along with all structures standing thereon. Therefore, I find that for refusing injunction there is no chance for suffering any loss by the plaintiff. The trial court has not committed any illegality in passing the order rejecting the application and the appellate court also rightly refused to admit the appeal being barred by limitation, however, since this is a suit for declaration of title and recovery of possession, the trial court may be directed to dispose of the suit within shortest possible time giving top most priority.

In view of the above, I find no merit in the rule as well as in the submissions of the learned Advocate for the petitioner.

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

The trial court is hereby directed to dispose of the suit within shortest possible time preferably within 06 (six) months from the date of receipt of this judgment and order.

The order of status quo granted at the time of issuance of the Rule stands vacated.

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