

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

First Miscellaneous Appeal No. 193 of 2025
with
(Civil Rule No. 57 (FM) of 2025)

In the matter of:

Mr. Sahil Humayun and others
... Appellants-petitioners
-Versus-

Mrs. Rina Humayun and another
... Respondents-opposite parties
Mr. Md. Abdul Qaium with
Mr. Hasan Imam Talukder, Advocate
... For the appellants-petitioners
Mr. M.M. Shafiullah, Advocate
.... For the respondent-opposite party nos.
1 and 2

Heard and Judgment on 29.06.2025

Present:

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

Md. Mozibur Rahman Miah, J.

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

This appeal is directed against the judgment and order dated 29.07.2024 passed by the learned Joint District Judge, 1st court, Dhaka in Title Suit No. 696 of 2023 disposing of an application (in part) so filed by the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure.

The short facts leading to preferring this appeal are:

The present appellants as plaintiffs filed the aforesaid suit seeking following reliefs:

a, To pass a decree for partition of the schedule A,B,C,D,E,F and G properties in accordance with law;

b. To pass a decree for partition of the schedule A,B,C,D,E,F & G in preliminary form;

c. If the defendants nos. 1 and 2 fail to partition the scheduled A,B,C,D,E,F & G properties within the specified time limit set by this learned court, to appoint a survey knowing Advocate Commissioner for relaying the Suit properties and thereby to allot a suitable saham for the plaintiffs and after submission of the report be accepted the same and the suit be decreed finally making the report of the commissioner a part of the decree;

d. To pass a decree for the cost of the suit in favour of the plaintiffs and against the defendants;

e. Any other relief or relieves which the plaintiffs are entitled in according to law and equity,

And for this act of your kindness the plaintiffs as in duty bound shall ever pray.

The said suit has been filed in respect of the suit properties that have been described as scheduled nos. 'A to G' to the plaint.

Soon after filing of the suit, the plaintiffs also filed an application for injunction under Order 39 Rule 1 read with section 151 of the Code of Civil procedure restraining the defendant nos. 1 and 2 from transferring and selling the properties to anybody else described in schedules 'A to G' to the application and direct the defendant- opposite parties to remove the gate installed by the defendants-opposite parties on the common space that is, at the 3rd floor of schedule 'A' building. Against that very application, the defendant opposite party nos. 1-2 filed written objection denying all the material averment so made in the application for temporary injunction and finally prayed for rejecting the application.

Ultimately, the application brought by the plaintiffs was taken up for hearing by the learned judge of the trial court and vide impugned judgment and order allowed the same in-part directing the defendants not to make any hindrance using the common space by the plaintiffs to go to the roof of schedule 'A' building and directed the defendants to handover one set of key of the gate setup at the 3rd floor by the defendants though rejected the prayer for injunction sought in respect of schedules 'B to G' properties.

It is at that stage, the plaintiffs as appellants preferred this appeal. After preferring appeal, the self-same plaintiffs as petitioners filed an application for injunction seeking reliefs akin to the prayer made before the trial court. This court then upon hearing the petitioners on 29.01.2025, issued rule and passed an order, restraining the opposite parties from transferring the suit property mentioned in schedules 'A to

G' to the application to any 3rd party for a period of 06(six) months which gave rise to the above civil rule.

Mr. Md. Abdul Qaium, the learned counsel appearing for the appellants-petitioners upon taking us to the impugned judgment and order and all the documents appended therewith at the very outset submits that, since it is admitted position that the plaintiffs and the defendants are co-sharers in the suit properties so they are entitled to their respective *saham* and if during pendency of the suit, the plaintiffs-appellants are dispossessed by the defendants, then they would be highly prejudiced. He further submits that, since the plaintiffs have got prima facie case in getting an interim order yet the learned judge of the trial court erred in law in not granting injunction in respect of schedules 'B to G' properties.

The learned counsel finally contends that, since in the meantime there are some developments among the parties in getting their respective *saham* from the trial court so a direction may kindly be given to the trial court to dispose of the suit by fixing a time frame and till that date, the order of injunction granted by that Hon'ble court at the time of issuance of the rule remain in place. With such submissions, the learned counsel finally prays for allowing the appeal as well as making the rule absolute.

On the contrary, Mr. M.M. Shafiullah, the learned counsel appearing for the respondent-opposite party nos. 1 and 2 by supplying us a photocopy of the order sheet dated 25.05.2025 and 23.06.2025 passed by the trial court at the very outset submits that, upon admitting *saham*

so entitled by the plaintiffs, the defendants-opposite parties filed an application before the trial court under Order 12 Rule 6 of the Code of Civil Procedure and prayed for dispose of the suit but the learned judge of the trial court ultimately fixed on 27.07.2025 for disposing the said application and then prays that, a direction may kindly be given to the trial court so that on the date fixed, the application filed under Order 12 Rule 6 be disposed of and till that very date, the order of injunction so granted by this Hon'ble court at the time of issuance of the rule may continue. With that submission, the learned counsel finally prays for disposing of the appeal as well as the rule.

We have considered the submission so advanced by the learned counsel for the appellants-petitioners and that of the respondents-opposite party nos. 1-2, perused the memo of appeal including the impugned judgment and order and all the documents annexed with the application for injunction. On going through the impugned judgment and order, we find that though the learned judge of the trial court did not find prima facie case in respect of schedules 'B to G' properties but it is the settled proposition followed in a suit for partition that until and unless the property is partitioned through metes and bounds all the co-sharers in the suit property is entitled to enjoy title and possession in every inch of the same. Even though the learned judge of the trial court admitted the said legal proposition, still he was not inclined to pass any interim order over 'B to G' properties which we find to be incorrect. Because, the defendants admitted the share of the plaintiffs in the suit land and ultimately filed an application praying for giving respective *saham* to the

plaintiffs. It thus construe that the plaintiffs have prima facie case in the suit property. However, the learned counsels for both the parties assert that none of the parties to the suit has got any objection if they get their respective *saham* in the suit land as per their claim made in the plaint as well as in the written statement. Because, the defendants are not contesting the suit rather prayed for *saham* in the suit property. That being the case, there is no reason to pass an interim order till disposal of the suit. It is submitted by the learned counsel for the respondents-opposite parties that since they already filed an application under Order 12 Rule 6 of the Code of Civil Procedure to pass a decree as prayed by the plaintiffs so it would be expedient if that application is disposed of by the learned judge of the trial court on the date fixed, that is, on 27.07.2025.

Regard being had to the above facts, circumstances and observation we find substance to the joint submission made by the learned counsels for the appellants-petitioners and the respondents-opposite parties.

Accordingly, the appeal is disposed of.

The impugned judgment and order dated 29.07.2024 so passed by the learned judge of the trial court is thus set aside.

The learned judge of the trial court is hereby directed to dispose of the suit as per the application so filed by the defendants-respondents under Order 12 Rule 6 of the Code of Civil Procedure on 27.07.2025. The order of injunction so granted by this court dated 29.01.2025 will continue till that date that is, up to 27.07.2025.

Since the appeal is disposed of, the connected rule being Civil Rule No. 57(FM) of 2025 is hereby disposed of.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.