

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

First Miscellaneous Appeal No.173 of 2025

Kazi Md. Rafiqul Islam and others appellants

-Versus-

Rahela Akther alias Rahima Akther and others

..... respondents

Mr. M.M. Shafiullah, Advocate

..... for the appellants

Mr. Md. Zakir Hossain, Senior Advocate

..... for respondents 2-10

Judgment on 16.11.2025

Bhishmadev Chakrabortty, J:

This appeal at the instance of the plaintiffs is directed against the judgment and order of the Joint District Judge, Court 3, Dhaka passed on 16.03.2025 in Title Suit 155 of 2019 allowing the application filed by defendants 1-7 and 9-11 under Order 40 Rule 1 of the Code of Civil Procedure (the Code) read with section 151 of the same Code for appointment of receiver.

At the time of admission of appeal, we passed an order of stay operation of the impugned order for a limited period which was subsequently extended till disposal of the appeal.

Facts relevant for disposal of the appeal, in brief, are that the plaintiffs instituted the suit in aforesaid Court praying for declaration of title in the suit land with partition claiming share of 1.64 acres out of 3.615 acres as described in the schedule to the plaint with further prayer that City jarip *khatian* prepared in the name of the plaintiffs

showing less land than they are entitled to is erroneous. Defendants 1-7 and 9-11 have been contesting the suit by filing written statement denying the facts stated in the plaint. They claimed there that they have share of the suit property as heirs of the original owner but ultimately they prayed for dismissal of the suit.

During pending of the suit, the aforesaid defendants filed an application under Order 40 Rule 1 of the Code for appointment of receiver for collecting rent in respect of the shops and property described in the application. The plaintiffs filed written objection against the said application denying the statements made in the application. However, the Joint District Judge upon hearing both the parties allowed the application for appointment of receiver and appointed Officer-in-Charge of Vataru police station as receiver to collect rent from the tenants and others.

Feeling aggrieved by the plaintiffs approached this Court with the present appeal which was admitted and interim order of stay was passed.

Mr. M.M. Shafiullah, learned Advocate for the appellants taking us through the materials on record submits that admittedly the schedule property is *ejmali* property for which the plaintiffs instituted the suit for declaration of title as well as for partition. The plaintiffs have .665 acres of land in the suit schedule which they purchased through registered *kabalas* and are in possession of the same. The

plaintiffs erected houses thereon and other parts of their share which they have got by inheritance have been enjoying as shops and buildings by collecting rents therefrom. The defendants are also enjoying parts of the suit land by erecting houses and shops by collecting rents therefrom. In the premises above, there is no necessity of appointment of receiver to collect the rent as prayed by the defendants. He refers to the cases of Md. Salahuddin Khan vs. Mst. Halima Akhter Khatoon and others, 13 MLR (AD) 36 and Faiz Ahmed Chowdhury and another vs. Bakter Ahmed Chowdhury and others, 36 DLR (AD) 97 and relied on the principle laid in those cases that in a suit for partition a Court shall not allow an application for appointment receiver except consent of the parties due to special circumstances such as danger to the property. In this case, no such danger is found because the parties are enjoying their respective shares separately. He then refers to the written statement of the defendants and further submits that in written statement the defendants admitted that they have been enjoying their part of the suit property of different plots. They have buildings and other infrastructures thereon. They also admitted that they received compensation from the government for a part of the suit land which has been acquired by the government. In the premises above, the trial Court travelled beyond the settled provisions of law and allowed the application and created disturbance and chaos in the enjoyment of the

suit land. The appeal, therefore, would be allowed and the judgment and order passed by the trial Court be set aside.

Mr. Md. Zakir Hossain, learned Senior Advocate for respondents 2-10 on the other hand opposes the appeal and the interim order of stay passed by us and supports the judgment and order of the trial Court appointing receiver. He submits that the plaintiffs have been collecting and enjoying rents more than Taka 58 lac per month without giving any share to these defendants. In the plaint and in written objection filed against the application for appointment of receiver it is clear that appointment of receiver is required for mismanagement of the joint properties. The appellants have been enjoying the rents of the shops and houses without paying any farthing to the defendants. This is a fit case for appointment of receiver. The circumstances prevailing in this case are exceptional and the trial Court allowed the application on proper appreciation of fact and law. The *ratio* of the cases cited by the appellants shall not apply in this case considering the facts upon which the *ratio* has been laid. The appeal, therefore, would be dismissed and the judgment and order passed by the trial Court be affirmed.

We have considered the submissions of both the sides, gone through the materials on record and *ratio* of the cases cited by the appellants. The plaintiffs instituted the suit praying for partition of the suit land measuring 3.615 acres claiming their share of 1.64 acres therefrom with further prayer that City Jorip khatian is partly

erroneous. In the schedule to the plaint CS *Khatian* 221 corresponding SA *Khatian* 576 consisting of 5 plots and CS *Khatians* 194 and 188 corresponding to SA *Khatians* 523 and 533 consisting of 2 plots have been mentioned. In the plaint it is found both the parties claimed land as heirs of Md. Amzad Ali. Apart from that it is found in the statement made in the plaint that in the schedule land the plaintiffs have .66½ acres which they have purchased through registered *kabalas*. In the written statement the defendants claimed that they received compensation for part of the suit property which has been acquired by the government. In the application for appointment of receiver they prayed for appointment of receiver in respect of the properties of plots 1744, 1751 and 1544 to collect rent which the plaintiffs have been collecting. In the written objection filed against the application the plaintiffs denied the facts stated in the application for appointment of receiver and further contended that the defendants have been enjoying other properties of late Md. Amjad Ali and they have constructed a 6 storied building and have shops. They have been collecting rents therefrom about Taka 45 lac each month.

In view of the above statement of the plaint, written statement, the application for appointment of receiver and the objection made thereto *prima facie* it can be safely presumed that both the parties have been enjoying *ejmali* property left by Md. Amjad Ali separately. In such a case, appointment of receiver is found not proper. If receiver is appointment in this case to collect rent of the shop as claimed by the

defendants both the parties would suffer difficulties in the enjoyment of the suit property and the plaintiff would be seriously prejudiced. It is well settled by our Apex Court in numerous cases that order of appointment of receiver should not be passed in a suit for partition except by the consent of the parties or due to some special circumstances such as danger to the property. We do not find any danger in the enjoyment of the property by the parties for which appointment of receiver in the suit property is required. We further find no special circumstances to appoint a receiver to collect rent only. The order of appointment of receiver passed by the Court below is against the settled principle laid by our apex Court in numerous cases.

Therefore, we find merit in this appeal. Accordingly, the appeal is allowed. No order as to costs. The impugned judgment and order passed by the Joint District Judge is hereby set aside. The order of stay stands vacated.

However, the Joint District Judge is directed to dispose of the suit expeditiously, preferably within 06(six) months from the date of receipt of this judgment and order. In dealing with the case, the trial Court shall not allow either party any adjournment without extreme exigency.

Communicate this judgment and order to the Court concern.

Murad-A-Mowla Sohail, J.

I agree.