

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4775 of 2025

IN THE MATTER OF :

An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:

Tuhin Ahmed and others

... Plaintiff-Petitioners

Versus

Md. Anarul Islam and others

... Defendant-Opposite parties

Mr. Mohammad Salah Uddin, Advocate with

Mr. M.G. Mahmud (Shaheen), Advocate and

Mr. Abdullah Al Mahmud, Advocate

... For the petitioners

Mr. Shakil Ahmad, Advocate

... For the Opposite Party Nos. 14-15

Judgment on: 28.04.2026

Md. Riaz Uddin Khan, J:

Upon an application filed by the plaintiffs Rule was issued asking the defendant-opposite parties to show cause as to why the judgment and order dated 27.10.2025 passed by the District Judge, Meherpur in Miscellaneous Appeal No.09 of 2025 dismissing the appeal summarily and thereby affirming the order dated 19.01.2025 passed by the Senior Assistant Judge, Gangni, Meherpur in Title Suit No.72 of 2025 rejecting an application for temporary injunction should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule this Court was pleased to direct the parties to maintain status-quo in respect of possession and position of the suit land for a period of 06 (six) months which was extended time to time.

The opposite party nos. 14-15 entered appearance and filed an application for vacating the order of status-quo passed by this Court which was kept with the record to be considered at the time of hearing of the Rule but they did not file any counter-affidavit controverting the assertion made in this revisional application.

Brief facts for disposal of this Rule are that the present petitioners being plaintiffs filed Title Suit No.72 of 2025 before court of Assistant Judge, Gangani, Meherpur against the present opposite parties for partition of the suit property. The plaintiff also filed an application for temporary injunction under Order-XXXIX, Rule-1 and 2 of the Code of Civil Procedure against some defendants (not the present opposite parties) and got an interim order. However, the plaintiff again filed an application for temporary injunction under the same provisions of law against the present opposite parties who were the defendant Nos.14-15, praying for restraining them so that they cannot make any construction on the suit land as mentioned in the schedule of the application by sketch map by hand. The opposite parties as defendant Nos.14-45 contested that application by filing written objection. Meanwhile, the trial court upon an application directed for local investigation and an advocate commissioner upon receiving the order of the

court after investigating the suit property submitted an investigation report. Considering the report upon hearing both the parties the trial court was pleased to reject the application for temporary injunction by order dated 19.01.2025 on the findings that the advocate commissioner's report states that at the present time there was no construction on going on the suit land.

Against that order dated 19.01.2025 passed by the trial court the plaintiffs filed Miscellaneous Appeal No.09 of 2025 before the District Judge, Meherpur who after hearing both the parties were pleased to reject the Miscellaneous Appeal summarily by his judgment and order dated 27.10.2025 on the concurrent finding with trial court.

Being aggrieved by and dissatisfied with the said judgment and order dated 27.10.2025 passed by the District Judge the plaintiffs filed this Civil Revision before this Court and obtained Rule and order of status-quo as stated at the very outset.

Mr. Mohammad Salah Uddin, the learned advocate appearing for the plaintiffs candidly submits that since it is suit for partition, generally the co-sharer cannot get an injunction against other co-sharers unless there is any specific case of changing the nature and character of the suit property which may hamper the partition suit. The learned advocate then submits that it is true that he did not challenge the local investigation report submitted by the advocate commissioner but if the construction is continued by the defendant Nos.14-15 it may ultimately hamper the partition suit. However, he submits that he has no

objection if the opposite parties make construction at their own risk and peril subject to the ultimate result of the partition suit.

Per-contra Mr. Shakil Ahmed, the learned advocate appearing for the opposite parties submits that the report of the advocate commissioner clearly states that the defendant Nos.14-15, the present opposite parties possessing their land by demarcating boundary wall which is outside the suit property claimed by the plaintiff-petitioners. The defendant Nos.14/15-opposite parties at present constructing their residential building investing their hard-earned money and if their construction is stopped the opposite parties will suffer irreparable loss and injury which cannot be compensated by money. The learned advocate then submits that it is consistent decision by this Court that the construction on the suit property at urban area cannot be stopped by an interlocutory order of injunction as the suit for partition may continue for years together. In support of his contention the learned advocate refers three decisions in the case Nasir Uddin Howlader (Md) Vs Abul Kalam, reported in 8 BLC (AD) 156 and the case of Golden Tower International Ltd and others Vs Md. Sazzad Ali and others, reported in 9 BLC 596 and the case of Abul Kalam Engineer and another Vs M. Nasir Uddin Howlader and others, reported in 10 BLT 435.

I have heard the learned advocate for both the parties, perused the application along with annexures. I have also examined the judgment and orders passed by the courts below.

It appears that the advocate commissioner submits a report after investigation of the suit property and in his report clearly states that there was no construction on the suit property rather a construction of boundary wall was going on which was outside the suit property.

In the case of Golden Tower International Ltd and others Vs. Md. Sazzad Ali and others reported in 9 BLC 596 this Court observed that when the defendants are in lawful possession and making construction by spending valuable money, the balance of convenience and inconvenience is definitely against the plaintiffs and in favour of the defendants. Any order of restraint of any nature would harm the defendants severely. In the case of Abul Kalam Engineer and another Vs. M. Nasir Uddin Howlader and others reported in 10 BLT 435 this Court observed that scarcity of land and pressure for accommodation either for residential or commercial purposes in urban areas are growing hand in hand every day while the time for resolution of a dispute particularly, regarding partition is so uncertain that nobody can say certainly when it will finally come to an end. In such situation, right of a co-sharer to develop the land in his specific possession cannot be denied by an interlocutory order of injunction till partition, which would be inequitable. This decision was upheld by the Appellate Division, Supreme Court which is reported in 8 BLC (AD) 156 wherein the Court observed that it has been admitted by the learned for the petitioner that the principle has now been settled that in case of land in urban areas there shall not be any injunction restraining construction by a co-sharer.

In the present suit it is admitted position that the suit land is situated in an urban area of Gangni Upazila under Meherpur District. According to the advocate commissioner's report defendant nos.14-15 are making construction outside the area of the suit land and considering that and after hearing both the parties the trial court was pleased to reject the application for injunction and his finding was affirmed by the court of appeal below. In such circumstances, I am not inclined to interfere with the concurrent findings of the courts below. However, since it is a suit for partition hence during pendency of the suit the parties should maintain their possession. But in the present case since the construction was outside the suit property as appeared from the advocate commissioner's report and the plaintiff did not raise any objection regarding that report there cannot be any order of restraint of any nature as it would harm the defendant-opposite parties severely. Be that as it may, the defendant opposite parties may continue their construction at their risk and peril subject to the result of the partition suit.

With this observation the Rule is **disposed of**. The interim order earlier passed by this Court stands vacated.

Communicate the judgment and order at once.