

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

**First Miscellaneous Appeal No. 61 of 2012
with
(Civil Rule No. 1103 (FM) of 2011)**

In the matter of:

Md. Habibur Rahman Mia and another
... Appellants-petitioners
-Versus-

Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Faridpur
... Respondents-opposite parties

Mr. A.K.M. Shamsul Hoque, Advocate
... For the appellants-petitioners

Mr. A.S.M. Mokter Kabir Khan, D.A.G
with

Mr. Mostafizur Rahman (Tutul), A.A.G
with

Mr. Md. Moniruzzaman, A.A.G and
Ms. Sonia Tamanna, A.A.G

....For the respondents-opposite
parties

Heard and Judgment on 18.05.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

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

This appeal is directed against the judgment and order dated 11.09.2011 passed by the learned Joint District Judge, 1st court,

Faridput in Title Suit No. 6 of 2010 rejecting an application filed Under 39 Rule 1 and 2 of the Code of Civil Procedure filed for granting temporary injunction.

The short facts leading to preferring this appeal are:

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

(ক) আরজির বর্ণিত কারনে ও অবস্থাধী

প্রতিকূলে নালিশী জমিতে শুধু প্রচারের ডিক্রী দিতে,

(খ) সমস্ব আদালত ব্যয় বাবদ বাদীর অনুকূলে বিবাদীগন

প্রতিকূলে ডিক্রি দিতে।

(গ) আইন ও ইকুইটি, মতে বাদী বিবাদীগ

প্রতিকার পাইতে পারে তাহার ও ডিক্রী দিতে মর্জি হয়।

The suit has been filed in respect of the suit land measuring an area of 39.0 acres out 41.11 acres of land so described in the schedule of the plaint.

The case of the plaintiffs-appellants in short is that they got the property by way of unregistered *amolnama* (আমল নামা) from one, namely, Shorot Kumar Laheri of 27th of Ashin, 1359 BS and the said land lord then accordingly delivered possession in their favour and RS record was though prepared in the name of the predecessor of the plaintiff but when SA record came in to being it was wrongly prepared in the name of their predecessors Shorot Kumar Laheri in SA khatian no. 1. In spite of wrong recording, the title and possession over the suit property of the plaintiffs were not hampered. It has further been stated that out of 41.11 acres of land the plaintiffs got possession in respect of

39.0 acres of land and has been enjoying title and possession over the same. Subsequently BS record was also wrongly prepared in the name of the government in khatian No. 1. When the plaintiffs went to pay the land development tax (খাজনা), the *thwshilder* declined to receive *khajna* and denied the title of the plaintiffs compelling the plaintiffs to file suit being Title Suit No. 21 of 2008. But due to having some formal defect in the suit, the plaintiff no. 2 then withdrew the said suit. It has further been stated that, the suit property has wrongly been prepared both in SA and BS khatian khatian no. 1 in the name of the government though the plaintiffs have got right title and interest in the suit property and hence the suit was filed.

After filing of the suit, the self-same plaintiffs also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure on 11.09.2011 stating *inter alia* that, the defendant nos. 4 and 5 were trying to transfer the suit property by way of lease and they on 21.03.2010 tried to lease out the property and if the property is leased out, to a third party, it is none but the plaintiffs would be highly prejudiced and for that, the plaintiffs filed the said application for injunction.

However, the application for injunction was taken up for hearing by the learned judge of the trial court and vide impugned order dated 11.09.2011 rejected the same contending that, the plaintiffs had earlier filed similar application on 22.03.2010 and it was rejected. It was further held by the learned judge that, since in the subsequent application there has been no new ground so on that score as well the

application was rejected. It is at that stage, the plaintiffs as appellants preferred this appeal. After preferring the appeal, the appellants as petitioners filed an application for injunction giving self-same averment so made in the application filed earlier and the trial court after considering the materials on record issued rule on 13.12.2011 and directed the parties to maintain status quo in respect of possession and position of the suit property initially for a period of 6 months which was extended from time to time that gave rise to Civil Rule No. 1103(FM) of 2011.

Mr. A.K.M. Shamsul Hoque, the learned counsel appearing for the appellants-petitioners upon taking us to the memo of appeal including the impugned order at the very outset submits that, since the plaintiffs-appellants are still in possession in the suit property, so the plaintiffs are entitled to get an order of injunction from the trial court but in a very slipshod manner, the learned judge has passed the impugned order which is rather a non-speaking order.

The learned counsel further contends that, though the assertion made in the application filed earlier which was found by the trial court while passing the impugned order was totally different than that of subsequent one, and without discussing the principle supposed to be followed in disposing of application for injunction, the learned judge has erroneously rejected the application which cannot be sustained in law. On those counts, the learned counsel finally prays for allowing the appeal as well as making the rule absolute.

On the contrary, Mr. A.S.M. Mokter Kabir Khan, the learned Deputy Attorney General appearing for the respondents-opposite parties by filing a counter-affidavit vehemently opposes the contention so taken by the learned counsel for the appellants-petitioners and submits that, since it is evident from the materials on record that two consecutive records have been prepared in the name of the government so there has been no scope to assert that the plaintiffs have been in possession in the suit property.

The learned Deputy Attorney General further submits that, finding the government in possession both SA and BS record was prepared in the name of the government and therefore the learned judge of the trial court has rightly passed the impugned order rejecting the application for injunction which is liable to be sustained.

We have considered the submission so advanced by the learned counsel for the appellants-petitioners and that of the respondents-opposite parties. We have also gone through the memo of appeal including the impugned judgment and order and the application for injunction annexed with the documents therein. There has been no gainsaying the fact that the present appellants claimed the property as of lease hold property by way of an unregistered *amolnama* back in the year 1359 but what prevented the plaintiffs-appellants to get their name recorded in the two consecutive records that is, SA and RS record has not been found in the entire application for injunction. Furthermore, the documents so have been annexed with the counter-affidavit by the government clearly shows that, the SA and BS record was prepared in

the name of the government, so it construe that the plaintiffs have got no prima facie case in getting an order of injunction because it is now well settled proposition of law that the record of right is regarded as a vital document of having possession over the suit property. Since in disposing of an application for injunction, possession has been regarded as a vital point and plaintiffs have got no possession on the back of preparing two consecutive records in the name of the government so in not finding the prima facie case and balance of inconvenience for the plaintiffs the learned judge has thus rightly passed the impugned order.

Regard being had to the above facts and circumstances we don't find any illegality or impropriety in the impugned judgment and order that warrants any interference by this court.

Accordingly, the appeal is dismissed however without any order as to cost.

Since the appeal is dismissed, the connected rule being Civil Rule No. 1103(FM) of 2011 is hereby discharged.

The order of status quo granted at the time of issuance of the rule stands recalled and vacated.

At this, the learned Deputy Attorney General submits that, since the suit is very old one, the trial court be directed to dispose of the suit as expeditiously as possible. We find substance in it. Accordingly, the trial court is directed to dispose of the Title Suit No. 6 of 2010 as expeditiously as possible preferably within a period of 03(three) months positively from the date of receipt of the copy of this order.

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

Md. Bashir Ullah, J.

I agree.