

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 806 of 2006

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Nurul Islam and others

..... Petitioners

Versus

Md. Shafiullah

.....Opposite party

No one

.... For the petitioners

No one

..... For the Opposite party

Judgment on: 02.01.2022.

Md. Riaz Uddin Khan, J-

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 03.07.2005 passed by the learned Special District Judge, Khulna in Misc. Appeal No. 122 of 2003 dismissing the Appeal and thereby affirming the order dated 31.08.2003 passed by the learned Senior Assistant Judge, Batiaghata, Khulna in Title Suit No. 131 of 2002 allowing the application under Order 39 Rule 1 & 2 read with section 151 of the Code of Civil Procedure for temporary injunction should not be set aside and or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of Rule there was no interim order but the lower court record was called for. The plaintiff-opposite party entered appearance by filing Wakalatnama. Neither the petitioners nor opposite party took any step for hearing this rule.

When the matter was taken up for hearing no one appears to support or oppose the Rule.

The succinct facts for disposal of this Rule is that the opposite party as plaintiff filed Title Suit No. 131 of 2002 before the Senior Assistant Judge, Batiaghata, Khulna for permanent injunction stating inter-alia that the suit land described in the schedule of the plaint and other properties belonged to one Imadi Sheikh in D.S. khatian No. 19 in plot Nos. 151, 187 and 8 measuring 15.47 acres of land. Imadi Sheikh died leaving behind his 3 sons namely Abdul Bari Sheikh and others who became the owners of the suit land and other property of late Imadi Sheikh which was recorded in SA Khatian No.18. Plaintiff by purchase owned and possess .25 acre of land of plot no.187 under DS khatian no.19 by a registered deed being No. 1655 dated 04.05.1981. After purchasing the suit property plaintiff by constructing house and planting trees thereon is residing at the suit land. The defendants have no right, title or interest over the suit land but the defendants on the southern part of the adjacent to the suit land constructed a dairy farm causing bad odor to live for the plaintiff. Plaintiff raised objection but the defendants did not pay any heed to that rather they are trying to forcibly enter into the suit land and they have also cut some trees from the suit property and lastly on 15.09.2002 they tried to enter into the suit land of the plaintiff.

On this claim the plaintiff filed the instant suit for permanent injunction. Thereafter the plaintiff filed an application for temporary injunction under Order 39 Rule 1 & 2 read with section 151 of the Code of Civil Procedure. Thereafter the plaintiff filed another application under section 151 of the Code of Civil Procedure for ad-interim injunction. After hearing the plaintiff the learned Senior Assistant Judge by his order dated 14.07.2003 was pleased to pass an order of ad-interim injunction restraining the defendant nos.1 & 2 from excavating or to fill up earth or in any

way change the nature of the suit land till hearing of the application filed for temporary injunction under order 39 Rule 1& 2 read with section 151 of the Code of Civil Procedure. The defendant petitioners filed an objection against the application filed for temporary injunction contending inter-alia that one Abdul Bari Sheikh was the original owner of the suit Jote who sold 1.93 acres of land in 1965 to one Idrish Ali. Thereafter said Idrish Ali sold out .66 acres of land to Joynab and also 1.27 acres of land to Sayed Gazi. Joynab and Sayed Gazi sold 20 ½ decimals of land to one Reazul Karim in 1978. Reazul Karim sold his land to Rezaul Hoque in 1988. Said Rezaul Hoque on 28.11.1995 sold his land to Jinnat Jahan, wife of defendant no.1 by a registered deed. Meanwhile Government vide L.A. Case No. 64 of 63-64 acquired 1.50 acres of land in the SA Khatian No. 18 for WAPDA. However, after the derequisition of .55 acres out of that 1.50 acres of land one Rustom Ali by purchase became owner of .37 ½ acres of land in plot No. 187 and Rustom Ali sold 0.750 decimals of land to Jinnat Jahan, wife of defendant no.1 and 0.475 decimals to defendant No. 2. Then defendants mutated the suit land in their names. Suit land is unspecified and not demarcated as such plaintiff has no prima facie case for permanent injunction, hence the suit is liable to be dismissed and the application for temporary injunction is also liable to be rejected.

After hearing the parties the learned trial Judge by his impugned order dated 31.08.2003 was pleased to make his earlier order dated 14.07.2003 absolute and directed the parties to maintain status-quo in relation to the suit land.

Being aggrieved by and dissatisfied with the said order dated 31.08.2003 the defendants filed Miscellaneous Appeal No. 122 of 2003 before the learned District Judge, Khulna. However, the Misc. Appeal was disposed of by the Special District Judge, Khulna by his impugned judgment and order dated 03.07.2005. The

learned District Judge was pleased to dismiss the Misc. Appeal and thereby affirmed the order passed by the trial Court on the findings that since admittedly the property is ejmali property and at this stage it can't be decided who are in possession of which portion of the land and as such the learned trial Court did not commit any mistake by directing the parties to maintain status-quo.

Since the Rule was issued in the year 2006 and though no one appears for the parties to support or oppose the Rule when it was taken up for hearing, I am inclined to dispose of the Rule on merit.

In the revisional application the defendant-petitioners took 6 grounds for assailing the impugned judgment and order passed by the appellate Court as well as by the trial Court. Their 1st ground is that the appellate Court erred in law in dismissing the appeal with a wrong finding and not considering the petitioners case which occasioned failure of Justice. The 2nd ground is that the appellate Court failed to consider that the suit land in S.A. khatian No. 18 in plot No. 187 and aforesaid suit land is unspecified and undemarcated by boundary as such without partition amongst the co-owners or without specification of the suit land the plaintiff has no prima-facie case at all. Their 3rd ground is that both the court below failed to consider that the plaintiff uses the land of the defendant-appellants to enter and exit from his house to the main road. The 4th ground of the defendants is that the appellate court failed to consider that by impugned order the trial Court granted temporary injunction and not order of status-quo on an unspecified land. The 5th ground is that both the court below failed to consider that the plaintiff has no prima facie case without partition amongst the co-owners and in an unspecified land without demarcated by boundary. The 6th and the final grounds is that the judgment and order of appellate Court is otherwise bad in law.

I have gone through the revisional application as well as the supplementary affidavit and the annexures annexed therewith. I have also gone through the impugned judgment and order passed by the appellate Court as well as the orders passed by the trial Court along with other relevant papers.

It appears from the order dated 14.07.2003 passed by the trial Court that the learned Judge passed an interim order restraining the defendants from excavating or fill up mud in the properties or in any way change the nature of the suit property till hearing of the application for temporary injunction. However, by his order dated 31.08.2003 the learned Judge of the trial Court directed the parties to maintain status-quo in relation to the suit property on the findings that since the defendant no.2 and wife of the defendant No. 1 claimed that they are in the possession of the suit jote in their portion while the plaintiff claimed the possession in his portion and without deciding the case on merit after taking evidence at the stage the parties should be directed to maintain status-quo in relation to their respective possession.

It further appears from the impugned judgment and order passed by the learned District Judge who dismissed the miscellaneous appeal on the findings that from the submissions of both the parties it appears that both the parties claimed the suit land by purchase and it is also admitted that the suit land was not partitioned by metes and bounds and in such position of the case the trial Court by his order directing the parties to maintain status-quo did not commit any wrong.

The defendant-petitioners did not claim that the suit land is not owned by the plaintiff rather their claim is that the suit property is ejmali and has not been partitioned by metes and bounds and in such position there cannot be any order of temporary injunction. It is true that by order dated 14.07.2003 the

trial court passed an order of ad-interim injunction restraining the defendants from excavating or filling up earth or in any way change the nature of the suit land but the trial court did not pass any order of temporary injunction in favour of the plaintiff by impugned order dated 31.08.2003 though made the earlier order dated 14.07.2003 absolute rather he directed the parties to maintain status-quo in relation to the suit land. The appellate Court also said that since both the parties claimed their respective possession so maintaining status-quo in relation to the suit property should be the proper order. This is a very innocent order since both the parties claimed that they are in possession of the suit land. If there was any confusion regarding the order passed by the trial court on 31.08.2003 it has been removed by the impugned judgment and order of the lower appellate court that both the parties were directed to maintain status-quo in relation to the suit land. The defendant-petitioners should have taken steps for early disposal of the suit rather moved this court.

The facts and circumstances discussed above I find no error of law which occasioned failure of justice in the impugned judgment and order dated 03.07.2005 passed by the appellate court.

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

Since it is a suit of 2002, the trial court is directed to dispose of the suit expeditiously as early as possible.

Send down the lower court record along with a copy of this judgment and order to the trial court at once.