

**Order No- 09**  
**Date -24.11.2024**

Today is fixed for hearing of injunction petition as per order dated 20.11.2024 in presence of both parties.

The plaintiffs and the defendant no.1/3-7/10-13 are present by filing Hazira and the defendants has filed W.O against the injunction petition.

Now the record is taken up for hearing. Heard learned advocate for both parties and perused the documents filed by the both parties.

This is an application filed by the plaintiffs under Order 39, Rules 1 and 2, read with Section 151 of the Code of Civil Procedure, seeking a temporary injunction to restrain Defendant Nos. 1/3-7/10-13 from entering or disturbing their alleged peaceful possession of the suit land and from fencing the same until the final disposal of the suit.

**The petitioner's case in brief is** The petitioner (plaintiffs) claims that 22 decimals of land from R.S. Plot No. 2236, corresponding to B.S. Plot No. 2772, was originally owned by Mabia Khatun, whose name was recorded in B.S. Khatian No. 925. The land was documented as a pond in the B.S. survey records. Adjacent to the north of this pond is a government road, while on the southwest corner lies Plot No. 2784, where the plaintiffs have resided for generations. The plaintiffs have historically used a road located to the south of the pond, which they assert is over a century old, as their only access route to the government road from their residence.

On August 15, 1989, Mabia Khatun sold 14 decimals of Plot No. 2236 to Mohammad Sharif and Amin Sharif via Kabala No. 4327. Upon Mohammad Sharif's death, his heirs, including Mimuna Begum, inherited 7 decimals of the land, and their names were recorded in Mutation Khatian No. 1864. Similarly, Amin Sharif's name was mutated for the remaining 7 decimals. After Amin Sharif's death, his 7 decimals were further subdivided among his heirs: his wife, Sokina Khatun, received 0.875 decimals, his three daughters received 0.875 decimals each, and his two sons inherited 1.75 decimals each.

On January 24, 2024, Mimuna Begum and her children transferred 3 decimals of land from the disputed plot to the plaintiffs through a deed of gift and handed over possession. However, the plaintiffs allege that the defendants are now attempting to construct a boundary wall over the suit land, which would obstruct the plaintiffs' only walkable route to the government road. This

prompted the plaintiffs to file for an injunction to restrain the defendants from further construction on the disputed land.

In their written objection, Defendants Nos. 1, 3–7, and 10–13 denied all material allegations made by the plaintiffs and contended that the suit plot no. 2772, comprising 22 decimals of land, was originally owned and possessed by Mabia Khatun whose name was reflected later on in B.S. Khatian No. 925. On **28.12.1986**, Mabia Khatun entered into a contract for sale and handed over 22 decimals of the land to Defendants Nos. 1 and 2 and the predecessor of other defendants. Subsequently on **18.02.1988**, through deed of gift No. 975, Mabia Khatun transferred 1.5 decimals of the land to Defendants Nos. 1 and 2 and the predecessor of the other defendants. Thereafter on **29.03.1988**, through Kabala No. 1694, she transferred 20.50 decimals of land to the same parties.

**It is further case of the defendants that** for rectification of plot descriptions in the above two deeds, Defendants Nos. 1 and the predecessors of other defendants filed **Others Suit Nos. 167/1989 and 168/1989** against Mabia Khatun. These suits were decreed on contest. The heirs of Mabia Khatun appealed the judgment, but the appellate court upheld the decision of the subordinate court. **The defendants asserted that** they have constructed a brick road on the southern side of the pond and three shops (দোকানঘর) on the northern side. They reside on plot no. 2776, located on the western side of the pond, which is not part of the disputed land. The claim that the plaintiffs have been using the road for over a hundred years is denied as false. No historical records, including P.S. or B.S. sheets, indicate the presence of such a road. The road on the southern *pukur par* (pond bank) is a family road used by 14 families, including the plaintiffs, as a common walking path. The defendants again assert that Mabia Khatun lacked transferable rights over the disputed land and could not validly transfer it to the plaintiffs' vendors through the Kabala dated **15.08.1989**. Consequently, the plaintiffs acquired no ownership or title to the suit land by the purchase deed of **2024**. The defendants contend that the plaintiffs filed the petition with malicious intent and jealousy, lacking any rightful claim or interest in the disputed land. Based on these grounds, the defendants assert their rightful possession of the land and pray for the rejection of the plaintiffs' petition, claiming it is baseless and devoid of merit.

Considering the above facts and the documents it appears that the plaintiffs' claim relies on their alleged ownership and possession of 3 decimals of the suit land acquired through a deed of gift dated 24.01.2024. However, the defendants have denied this ownership, asserting that the entire 22 decimals of the suit plot were lawfully transferred to them by the original owner, Mabia Khatun, through a series of transactions (**deed of gift dated 18.02.1988 and Kabala dated 29.03.1988**) culminating in decrees in Suit Nos. 167/1989 and 168/1989, upheld on appeal.

In view of documents filed by the parties it appears that the plaintiff's vendor's predecessors purchased lands in the suit plot on 15.08.1989 from Mabia Khatun. On the other hand the defendants predecessors purchased the suit land from Mabia Khatun on 29.03.1989 which reveals that Mabia Khatun lacked transferable rights over the disputed land and the validity of transfer it to the plaintiffs' vendors through the Kabala dated **15.08.1989 is very much questionable**. Consequently it is my view that the plaintiffs acquired no ownership or title to the suit land by the purchase deed of **2024**.

Furthermore, the plaintiffs allege long-standing use of a walkway over the suit land as their only access to the government road situated in northern side of the Pond. The plaintiffs' reliance on uninterrupted use of a walkway as an easement is not supported by R.S or B.S records. Neither P.S. nor B.S. survey sheets identify such a road. The existence of a "family road" used by multiple 14 Nos of families as admitted by defendants, including the plaintiffs, diminishes the exclusivity of their claim. On the other hand, the defendants have demonstrated possession of the suit land, backed by legal decrees and a history of transactions. Thus it is my considered view that the plaintiffs have failed to establish a prima facie case regarding their ownership or exclusive possession of the suit land.

It appears from the records that the plaintiffs have claimed that they have been using the disputed road for access to the government road and that fact has been admitted by the defendants as well. The inspection reports also speak about the existence of these roads. The right of access to essential infrastructure, such as a public road, is a critical aspect of property use and is protected under the principle of necessity. The alleged construction of a boundary fence or wall risks permanently altering the situation, potentially depriving the plaintiffs of access during the pendency of the suit.

The inconvenience caused to the plaintiffs if the boundary wall/fence obstructs their access outweighs the defendants' inconvenience from a temporary injunction. Blocking the plaintiffs' only alleged access to the government road could cause irreparable harm, as it directly affects their mobility, daily life, and ability to access essential services. Such harm cannot be adequately compensated through monetary damages.

It is pertinent to note that any obstruction to public access can be adequately addressed during the trial. The plaintiffs have alternative remedies available, including the possibility of seeking easement rights if their claims are proven.

**In the case of Md. Mokhlesur Rahman vs. Abdul Khaleque** reported in 1996 BLD 320, the court held that that a right of access to public roads is integral to property rights and must be protected unless proven otherwise. In another case of **Khorshed Alam vs. Bangladesh** (2005 MLR 456) it was held that temporary injunctions should be granted where refusal could lead to irreparable harm and an imbalance of convenience between the parties.

Considering the facts and circumstances, this court is of the view that though the petitioners primarily failed to established prima facie case but a temporary injunction is necessary here to preserve the plaintiffs' alleged access to the government road and prevent potential hardship pending trial.

**Hence, it is ordered**

that the temporary injunction petition filed by the plaintiff is hereby allowed.

The Defendant Nos. 1/3-7/10-13 are hereby restrained from taking any action that obstructs the plaintiffs' alleged access to the government road through the disputed walkway until the disposal of the suit or further order by this court.

Both parties are directed to maintain the current state of the suit property road and avoid altering its physical features during the pendency of the case.

Petitioner to put in requisites at once. To-----for  
W/S.

D/C by Me

Md. Hasan Zaman  
Senior Assistant Judge  
Senior Assistant Judge 2<sup>nd</sup> Court, Patiya  
Chattogram

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