

**Present : Md Hasan Zaman, Senior Assistant Judge,
Patiya, Chattogram**

Or No.
Dt.

Today is fixed for hearing on two applications filed by defendants no. 1-6:
(i) a petition for temporary injunction, and (ii) a petition for the appointment of a receiver.

Both the plaintiff and the defendants No.1-6 appeared and filed their respective Hazira. The plaintiff also submitted a written objection against the temporary injunction application and prayed for time to file an objection against the petition for the appointment of a receiver. The prayer for time is deemed to be unjustified and consequently rejected. The case proceeded to a hearing of the applications as per the prior schedule for January 19, 2025, in the presence of both parties.

Facts of Defendants/Petitioner :

Defendants no. 1-6 filed a **petition under Order 39, Rules 1 and 2, read with Section 151 of the Code of Civil Procedure**, seeking an interim temporary injunction against the plaintiffs concerning the properties detailed in Schedule-1 and Schedule-2 of the petition. The properties are described as follows:

- **Schedule-1:** BS Khatian Nos. 2227/3107, BS Plot Nos. 14564/14567, measuring 34 decimals of land, including an 11-decimal portion and a four-story concrete building.
- **Schedule-2:** BS Khatian Nos. 3106/189, BS Plot Nos. 14554/14526, measuring 29 decimals of land, including 14.50 decimals with two shop premises.

The primary contention of the defendants are that the land in R.S. Plot No. 8651 (16 decimals) was purchased by the plaintiffs and the defendants' predecessor late Mohammad Hossain. That Mohammad Hossain executed a Heba deed on 12.02.2012 (registered as Deed No. 12301) transferring 2 decimals, along with the semi-pucca house situated on the 4th floor of the RCC building, to Plaintiff No. 1. On the same date, he executed a Waqf deed for 1.33 decimals in Plot Nos. 8650/8651 (ground floor) in favor of the local "Challar Jame Mosque." Again Mohammad Hossain acquired 14.50 decimals of land in Schedule 2 through a purchase in 1978. Upon his death, the property devolved upon his legal heirs, including his second

wife, three sons, and four daughters—the plaintiffs and the defendants Nos. 1-6—as undivided joint heirs.

The defendants have claimed that the properties in both Schedule 1 and Schedule 2 remain undivided, and no partition by metes and bounds has ever occurred among the co-heirs.

The RCC building on Schedule 1 property consists of two Waqf-designated shops on the ground floor, 08 additional shops generating a monthly total rent of Tk 20,400. The 2nd and 3rd floors of the building are rented to Chattogram Community Hospital, generating monthly rent of TK 40,000 and the 02 shops on Schedule 2 property generate a combined monthly rent of TK. 24,500.

Following the death of Mohammad Hossain on 04.01.2024, the plaintiffs have unilaterally collected all rents from the shops and hospital premises. The defendants, despite being entitled to a share of the rental income, have been excluded from their rightful claims. The defendants estimated their share of unpaid rent for the past 12 months to be BDT 8,44,200. Thus the defendants sought an interim injunction to restrain the plaintiffs from collecting rental income from the shops and other properties described in Schedule-1 and Schedule-2. They further prayed for an order preventing the plaintiffs from transferring or otherwise alienating these properties during the pendency of the suit.

Facts of Plaintiff's/OP

On the other hand, the plaintiff/Opposite Party submitted a written objection, contending that the 16 decimals of land under RS Plot No. 8651, detailed in Schedule-1, were purchased by the predecessor of plaintiffs and the defendants no. 1-6, Md. Hossain, who became the lawful owner and possessor. On the basis of a registered *Hebanama* (Deed of Gift) dated 2012, Md. Hossain gifted 2 decimals of land, along with the semi-concrete fourth floor of the building on the land, to his wife, Plaintiff no. 1. On the same date, Md. Hossain also executed a *Waqfnama* (Deed of Waqf), donating 1.33 decimals of land located on the ground floor to the "Challa Jame Mosque." Following these transfers, 11 decimals of land from Schedule-1 remained jointly owned by the plaintiffs and defendants no. 1-6. Regarding Schedule-2, the plaintiffs contended that 14.50

decimals of land remained in the joint ownership of the plaintiffs and defendants no. 1-6.

The plaintiffs further state that *Schedules 1 to 3* properties are under their peaceful possession, while properties in *Schedules 4 to 12* remain jointly owned by defendants 1 to 6. They allege that the properties have not yet been divided, as per the relevant records, and are therefore undivided joint properties. The plaintiffs claim that due to obstructions caused by the defendants in their peaceful possession of *Schedules 1 to 3*, they have filed the present suit seeking partition of the undivided property.

It is further facts of the plaintiff/OP that the Plaintiff No. 1, constructed a three-story concrete building with a four-story foundation on *Schedule 1* property at their own expense. This building has been rented out, including to a hospital, and is partially used for the plaintiffs' residence. On the *Schedule 2* property measuring 14.50 decimals, the plaintiffs constructed semi-permanent shops and have been collecting rent from the tenants. It is contended that the plaintiffs have been jointly possessing *Schedules 1 to 3* properties (11 decimals + 14.50 decimals + 12 decimals = 37.50 decimals) with the defendants. The joint possession of these properties has been continuing from the time of their predecessor, Mohammad Hossain.

It is further stated that Mohammad Hossain, during his lifetime, entered into written agreements with the tenants occupying the building on *Schedule 1*, wherein it was explicitly mentioned that after his demise, only the plaintiffs would be entitled to collect rent from these tenants. This was intended to secure the financial future of the plaintiffs. Additionally, Mohammad Hossain appointed Plaintiff No. 1 as the *mutawalli* (custodian) of the *waqf* property, thereby entrusting her with the management of the *waqf* assets and the responsibility of bearing family expenses and mosque-related expenditures through rental income from the *Schedule 1* building.

The plaintiff again asserted that the defendants being heirs of Mohammad Hossain from his first wife, did not take any interest in his affairs during his lifetime, including providing financial support during his illness or contributing to his medical expenses. The plaintiffs, on the other hand,

relied heavily on the income generated from the disputed properties, which is their sole source of livelihood.

The defendants assert that any disruption in the plaintiffs' collection of rent from the *Schedule 1* building would cause irreparable harm to the plaintiffs, which cannot be compensated monetarily. However, they claim that the plaintiffs' current claims and application for a temporary injunction lack merit and should be rejected in the interest of justice

Upon hearing both parties and upon careful perusal of the petition for a temporary injunction, the written objections, and all documents submitted by the parties, it appears that this is a partition suit filed by the plaintiff, who claims joint ownership and possession over the properties described in Schedules 1 to 12 of the plaint. However, the relief sought in the suit is limited to partitioning 37.50 decimals of land described specifically in Schedules 1 to 3. The defendants No. 1 to 6, through a separate application, have sought a temporary injunction concerning the properties described in Schedules 1 and 2, particularly focusing on the rental income derived from the shops situated on these lands.

Both parties admit that the original owner of the properties described in Schedules 1 and 2 was one Ahmed Hossain, who passed away in January 2024. It is further admitted by both sides that the properties in Schedule 1 (11 decimals) and Schedule 2 (14.50 decimals) are jointly owned and inherited by the plaintiff and defendants No. 1 to 6 as co-owners.

It is undisputed that, during his lifetime, Ahmed Hossain executed a deed of gift in 2012, transferring 2 decimals of land from Schedule 1, along with the semi-pucca house standing thereon, to Plaintiff No. 1. Additionally, Ahmed Hossain also dedicated 1.33 decimals of land to a waqf. Upon examining the said deed of gift, it appears that the donor, Ahmed Hossain, gifted the said 2 decimals of land (part of BS Dag Nos. 14567 and 14564) to his wife, Plaintiff No. 1, and that the semi-pucca house located on the gifted land forms part of the transfer. It is also undisputed that the plaintiffs currently reside in the semi-pucca house on the fourth floor of the building.

Furthermore, it is an admitted fact that the remaining portions of the building consist of a community hospital occupying the second and third floors and eight commercial shops located on the ground floor. The rental

income derived from these shops is currently being collected by the plaintiffs. The plaintiffs assert that this rental income is solely their entitlement, as per an agreement made during Ahmed Hossain's lifetime, which allegedly authorized Plaintiff No. 1 to collect the rents after his demise. The defendants, however, dispute this claim, asserting that, as co-heirs, they are entitled to a share of the rental income.

Based on the above admitted facts, it is clear that the properties described in Schedules 1 and 2, excluding the portions gifted and dedicated as waqf (3.33 decimals), are co-owned by the plaintiffs and defendants No. 1 to 6. As such, the remaining portions of the properties, including the building and shops located thereon, are subject to inheritance under Muslim Sharia laws, making all co-heirs entitled to their respective shares.

Although the plaintiffs rely on an agreement purportedly executed by Ahmed Hossain authorizing Plaintiff No. 1 to collect the rents exclusively, this court finds that such an unregistered document lacks legal validity and cannot confer any exclusive ownership or entitlement to the plaintiffs over the rental income. Moreover, the deed of gift does not extend to any part of the building other than the semi-pucca house on the fourth floor, which means that the other portions of the building, including the shops and hospital, remain part of the joint property. Therefore, the rental income derived therefrom must also be regarded as a joint asset to be shared among the co-owners.

It appears that while the plaintiffs are currently collecting the rental income to support their livelihood and maintain the waqf property, the defendants, as co-owners, have a prima facie right to a share of the rental income. The defendants have been deprived of their share, resulting in irreparable harm. Furthermore, until a final determination of the parties' respective shares through partition, it is essential to preserve the *status quo* of the suit properties to prevent any alteration or transfer of their character.

Given the contentious nature of the dispute and the potential for irreparable damage to either party's rights, it is imperative to maintain peace and order between the parties until the final resolution of the suit. Protecting the integrity and character of the suit properties, including the

rental income derived from them, is crucial to ensuring an equitable outcome.

Considering the facts and circumstances, this court is of the opinion that the application for a temporary injunction filed by Defendants No. 1 to 6 is well founded and deserves to be allowed.

Hence

It is

Ordered

that the application for a temporary injunction filed by Defendants No. 1 to 6 on **19/01/2025** is hereby allowed **without cost**.

Both the plaintiffs and Defendants No. 1 to 6 are directed to maintain the **status quo** regarding the suit properties as they currently exist until the final disposal of the suit.

Neither party shall alter, transfer, or change the character of the suit properties described in Schedules 1 and 2, nor shall any party collect rental income from the shops situated on the suit properties until further orders.

Both parties are further instructed to maintain peace and refrain from taking any actions that may disturb the character or structure of the suit properties.

This it is disposed of.

Now the record is taken for hearing of petition of appointment of receiver in presence of both parties.

The application for the appointment of a receiver was filed by the defendants No.1-6 in accordance with Order 40 Rule 1 of the Civil Procedure Code, and Section 151 thereof. The applicants seek the appointment of a receiver to manage and maintain the disputed properties as per the schedule attached to the application, particularly the joint property described as Building and shops, along with the monthly rents derived from various shops situated in said buildings.

The petitioners claim that the properties in question, as per the schedule attached, are joint properties owned by both the plaintiff and defendants No1-6. The monthly rental income derived from various shops located on the ground, first, second, and third floors of the buildings in dispute amounts to a total of approximately 1,00,900/- taka. This rental income includes the rents from 8 shops on the ground floor, amounting to 20,400/- taka, and the rent from the Chittagong Community Hospital located on the second and third floors, amounting to 40,000/- taka. Additionally, two shops on the Schedule 2 of the land bring in a monthly rent of 12,500/- taka and 12,000/- taka, respectively.

The plaintiffs have raised an objection against the appointment of a receiver, vehemently opposing the request. They have denied the amount of rent claimed by the defendants but have not disputed the fact that, since the death of the predecessor Mohammad Hossain on 04/01/2024, the plaintiffs have been collecting the rents from the aforementioned properties.

Upon reviewing the arguments of both parties, it is evident that, although the parties are in dispute over the rental amounts and ownership of the properties, the rental income from the disputed properties is a common asset of the joint property owned by both parties. Since both parties are entitled to a share of this income, it is important to ensure that the management and maintenance of these properties, as well as the proper distribution of the rental income, is carried out in a fair and equitable manner until the final disposal of the matter.

Given that both parties have an interest in the maintenance and management of the disputed properties, and the need to protect the rental income for the parties' benefit, I am of the opinion that the appointment of a receiver is necessary. A receiver will be appointed to manage the disputed properties, ensure their proper maintenance, and oversee the distribution of the rental income between the parties in accordance with their respective shares.

In light of the above considerations, the application dated 19/01/2025 seeking the appointment of a receiver is hereby allowed.

Let **Mr. Rajon Datta, Learned Advocate of Patiya Bar Association** be appointed as the receiver for the properties mentioned in the schedule attached to the application.

The appointed Receiver is hereby authorized and empowered to:

- 1) Collect all rents and income generated from the building and shops property in dispute.
- 2) Take necessary steps to manage and maintain the property in question, including ensuring the upkeep of the building, payment of any outstanding utility bills, and taking any legal actions that may be required to protect the interests of the property until the disposal of the suit.
- 3) Deposit all rents and profits collected into a designated bank account, which shall be opened by the Receiver in the name of the Receiver for the purposes of this suit.
- 4) Maintain accurate accounts of all transactions relating to the property, including income, expenses, and disbursements.
- 5) The Receiver shall submit a report to this Court every months detailing the income, expenses, and condition of the property until further orders of the Court.
- 6) The Receiver shall furnish a bond of [TK.300] to the satisfaction of this Court as a security for the due performance of their duties.
- 7) All costs related to the maintenance, repair, and management of the property, including any fees incurred by the Receiver in carrying out his duties, shall be borne by the parties in the manner determined by the Court.
- 8) The receiver shall receive TK 6000/- as remuneration in every month from the income of rents of disputed building and shops on the scheduled land.

This order shall remain in force until the disposal of the suit or until further orders of this Court.

To-----for S R and W/S.