

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 3419 of 2022

Alhaj Mohammad Musa Sawdagar

..... petitioner

-Versus-

Mohammad Muminul Hoque and others

..... opposite parties

Mr. Binod Kumar Agarwal, Advocate

..... for the petitioner

Mr. Sk. Zulfiqur Bulbul Chowdhury, Advocate

..... for the opposite parties

Judgment on 28.05.2024

Bhishmadev Chakrabortty, J:

This rule at the instance of one of the defendant was issued calling upon opposite party 1 to show cause as to why the judgment and order of the Additional District Judge, Court No. 6, Chattogram passed on 08.05.2022 in Miscellaneous Appeal No. 211 of 2021 dismissing the appeal affirming the judgment and order of the Joint District Judge, Court No. 1, Chattogram passed on 07.09.2021 in Other Class Suit No. 261 of 2020 allowing the application for temporary injunction should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the rule operation of the appellate judgment and order by affirming those of the trial Court was stayed with an *interim* order directing the parties to maintain *status quo* in respect of possession in the suit land.

The material facts for disposal of the rule, in brief, are that opposite party 1 as plaintiff instituted the suit in the Court of Joint District Judge, Court No. 1, Chattogram for specific performance of contract in respect of suit land measuring .73 acres as described in the schedule to the plaint. There he contended that defendant 3, constituted attorney of defendants 1 and 2, entered into an agreement with him on 13. 06. 2019 (registered on 30.06.2019) to sell the suit land at a consideration of Taka 2.19 crore. Defendant 3 received total Taka 2.00 crore on several occasions through receipts. It was stipulated in the *bainapatra* that defendant 3 will receive the balance amount of consideration money and execute and register the *kabala* within one year. Defendant 3 further received Taka 15.00 lac on 05.05.2020 but on repeated requests did not execute and register the *kabala*. Finally, he refused to register the *kabala* on 28.08.2020, hence the suit for specific performance of contract.

Defendants 1 and 2 appeared in the suit and filed written statement denying the material averments made in the plaint. In the written statement they further stated that for physical incapability defendant 1 decided to appoint defendant 3 his attorney to look after the suit land along with other lands. Accordingly defendant 3 prepared a power of attorney on 30.05.2019 but fraudulently he inserted .73 acres of land instead of .50 acres in connivance with the plaintiff and made an agreement with him. Subsequently, they sent a notice to

defendant 3 under section 4(3) of the Power of Attorney Ain, 2012 and cancelled the power and as such he has no authority to act on their behalf. The suit, therefore, would be dismissed.

In the said suit, the plaintiff filed an application under order 39 Rules 1 and 2 of the Code of Civil Procedure (the Code) praying for temporary injunction restraining the defendants from creating any disturbance in enjoyment of the suit land and transferring the same to any one and changing the nature of character of it. In the application the plaintiffs alleged that the defendants are trying to sell the suit land to a third party and if they succeeds in doing so, the plaintiff would suffer irreparable loss and injury. Defendants 1 and 2 resisted the said application by filing written objection denying statements made therein. In the written objection they stated more or less similar facts as of the written statement. Mainly they contended that the plaintiff and defendant 3 have no right, title and possession over the suit land. The *bainapatra* in question is collusive and has been prepared at the instance of the plaintiff only to grab the property of the defendants. The plaintiff has no *prima facie* arguable case and as such application for temporary injunction would be rejected.

However, the Joint District Judge after hearing allowed the application for temporary injunction and restrained the defendants as prayed for. Against it, the defendants preferred miscellaneous appeal before the District Judge, Chattogram. The appeal was heard on

transfer by the Additional District Judge, Court No. 6, Chattogram who dismissed appeal and affirmed the judgment and order passed by the Joint District Judge. Hence this revision upon which the rule was issued and *interim* order was passed.

Opposite party 1 appeared in this rule and filed an application on 07.05.2024 for vacating the *interim* order passed by this Court. I kept it with the record on 15.05.2024 and fixed the rule for hearing and dispose of on merit.

Mr. Binod Kumar Agarwal, learned Advocate for the defendant 1-petitioner takes me through the materials on record and submits that the *bainapatra* with opposite party 1 is nothing but a product of fraud because it is found that defendant 3, the attorney received money from the plaintiff before his appointment as attorney. The agreements for sale of .73 acres of land at Taka 2.19 crore is shockingly low and is half of the government rate for sale at the material time. Therefore, the plaintiff is not entitled to get a decree in the suit under section 28(a) of Specific Relief Act, 1877. It is found in the plaint that defendant 3 entered into the agreement by committing fraud upon defendants 1 and 2 and since fraud is found to have been committed, the plaintiff cannot get an interim order of injunction in the suit. Although this is a judgment of affirmance but this Court can interfere with it, if it is found that the judgments of the Courts below suffer from non consideration of the materials on record and that loss, if any, can be

met up by money. The rule, therefore, would be made absolute. In support of the submissions Mr. Agarwal refers to a series of cases of both the Divisions of this Court and relied on the *ratio* laid therein.

Mr. Sk. Zulfiqur Bulbul Chowdhury, learned Advocate for opposite party 1 on the other hand supports the judgment and orders passed by Courts below. He submits that the plaintiff entered into an agreement with defendant 3 who is admittedly the attorney of defendants 1 and 2. All powers through the irrevocable general power of attorney have been given to him to act on their behalf. Defendants 1 and 2 did not deny that they have appointed defendant 3 as attorney. But they stated in the written statement as well as in the written objection that they appointed defendant 3 attorney to look after .50 acres of land but the attorney fraudulently inserted .73 acres therein. When it came to his knowledge that defendants are trying to dispose of the land by selling it to a third party then he filed the application for temporary injunction praying for an order of restraintment in doing so. If the defendants transfer the land to a third party or changes its nature and character, the plaintiff would suffer irreparable loss and injury which cannot be compensated by money. The Courts below correctly considered the facts of the case and allowed the application for temporary injunction restraining the defendants as prayed for. There is no error in the judgment and orders passed by the Courts below, and

as such this rule having no merit would be discharged. Mr. Chowdhury also refers a series of cases in support of his submissions.

I have considered the submissions of both the sides, gone through the materials on record and *ratio* of the cases cited by the parties.

The plaintiff instituted the suit for specific performance of contract for sale dated 30.06.2019 against the defendants. On the strength of a registered irrevocable general power of attorney of defendants 1 and 2 dated 30.05.2019 defendant 3 entered into the aforesaid contract with the plaintiff to sell the schedule property at consideration of Taka 2.19 crore. He received earnest money of Taka 2.00 crore out the contracted amount. In the written statement defendants 1 and 2 have admitted that they appointed defendant 3 their attorney through the registered power as aforesaid. But they alleged that defendant 3 fraudulently inserted land measuring .73 acres in place of .50 acres in connivance with the plaintiff and entered into an agreement with him to sell the land at a very shockingly low price. The *bainapatra* in question is registered one and it has not yet been cancelled. Even it is cancelled, the act done by the attorney when he was holding the power will be binding upon the principals (defendant 1 and 2). It is apparently found that the plaintiff entered into an agreement with defendant 3 to purchase the land described in the schedule to the plaint and he paid Taka 2.00 crore as earnest

money which was not specifically denied by defendants 1 and 2. It is further found that the land has been acquired by Chattogram Development Authority (CDA). The learned Advocate for opposite party 1 submits that the defendants are trying to withdraw the compensation money from the concerned authority and then he filed the application in this Court for vacating the *interim* order. Considering the materials on record, I find that if the defendants transfer the property to a third party or changes its nature and character or they withdraw the compensation money, the plaintiff would suffer irreparable loss and injury. The statements made in the plaint, written statement and in the application for temporary injunction prove that the plaintiff has *prima facie* arguable case and balance of convenience and inconvenience for granting injunction is in his favour. The point raised by the learned Advocate for the petitioner that a serious fraud has been committed by defendant 3 in registering the power of attorney and in the *bainapatra* or that the price of the land is shockingly low are to be decided in the trial of the suit. At this stage a good *prima facie* arguable case of the plaintiff is found and balance of convenience and inconvenience goes in his favour. The trial Court on correct assessment of fact and law granted the order of temporary injunction and restrained the defendants from transferring and changing the nature and character of the suit land which was affirmed by the lower appellate Court. I find no error in the

judgment and orders passed by the Courts below for which those can be interfered with. The cases as referred by both the parties are found not relevant in this particular case considering the facts and circumstances upon which the *ratio* of those cases have been laid down.

Therefore, I find no merit in this rule and accordingly it is discharged. However, there will be no as to costs. The order of stay and *status quo* passed by this Court stands vacated. The order of temporary injunction passed by the trial Court and affirmed by the Appellate Court is upheld.

Communicate this judgment to the concern Courts.