

Present:
 Mr. Justice Faruque Ahmed
 and
 Mr. Justice Md. Ruhul Quddus

F.M.A. No. 24 of 2010
 with
Civil Rule No. 68 (F.M.) of 2010

Abdus Sattar Bhuiyan being dead his heirs Monir Hossain
 and others

... Appellants

-Versus-

Abdur Razzaque and another

...Respondents

Mr. Md. Serajul Islam Bhuiyan, Advocate

... for the appellants

No one appears for the respondents

Judgment on 24.10.2011

Md. Ruhul Quddus, J:

This First Miscellaneous Appeal at the instance of the substituted plaintiffs is directed against order dated 4.11.2009 passed by the Joint District Judge, fourth Court, Dhaka in Title Suit No.183 of 2006 rejecting an application for temporary injunction filed by the plaintiff under Order XXXIX, rule 1 of the Code of Civil Procedure.

Facts relevant for disposal of the Appeal as well as the connected Rule, in brief, are that the plaintiffs' father Abdus Sattar Bhuiyan since deceased instituted Title Suit No.183 of 2006 before the fourth Court of Joint District Judge, Dhaka for declaration of title over the suit land as described in the schedule of the plaint. The plaintiff also filed an application under Order XXXIX, rule 1 of the Code for

temporary injunction restraining the defendants from entering into the suit land and disturbing him in his possession thereon. On the said application for temporary injunction, the trial Court issued notice upon the defendants. As they failed to appear, the learned Judge by order dated 24.7.2008 allowed the application *ex parte* and thereby restrained the defendants from dispossessing the plaintiff from the suit land. After passing the said order, the defendant Abdur Razzaque and another entered into appearance and filed a written objection on 23.9.2008 claiming title and possession over the suit property in favour of Sonargaon Housing Agriculture Fishing and Farming Ltd., of which he (defendant No.1 Abdur Razzaque) was the Managing Director. They claimed title over the same on strength of a sale deed being No.5731 dated 11.3.1982 executed by one Iman Ali. It is pointed out that the plaintiff Abdus Sattar Bhuiyan also claimed his title to have been derived from the said Iman Ali by way of another sale deed being No.1209 dated 1.3.1993.

The learned Joint District Judge, however, after filing of the said written objection, took up the application for temporary injunction, heard the parties on merit and rejected the same by his order dated 4.11.2009. Against the said order of rejection, the plaintiff-appellants moved in this Court with the instant First Miscellaneous Appeal and obtained an order of ad-interim injunction in the connected Civil Rule.

Mr. Md. Serajul Islam Bhuiyan, learned Advocate appearing for the appellants has submitted that after disposing of the application for temporary injunction by order dated 24.7.2008, the Court became *functus officio* and lost its authority to sit over the same application. It could only vacate the order of temporary injunction passed earlier, on a subsequent application under Order

XXXIX rule 4 of the Code. There is *ex-facie* illegality in the impugned order and as such it is liable to be set aside.

Mr. Bhuiyan has further submitted that the appellants' claim of title and possession is supported by registered sale deed, mutation khatian, duplicate carbon receipt and rent receipt in name of their father Abdus Sattar Bhuiyan. They have a good arguable case and have proved *prima-facie* possession over the suit land. In the event of the defendants' threat for their eviction from the suit property, they were entitled to an order of temporary injunction.

This First Miscellaneous Appeal along with the Civil Rule have been appearing in the cause list for several days. Yesterday these were taken up for hearing, but no one appeared for the respondents. Any counter affidavit against the application for injunction was also not filed.

We have gone through the impugned judgment and perused the plaint, application for temporary injunction, *ex parte* order of temporary injunction, written objection and the documents of possession annexed with the supplementary affidavit filed by the appellant-petitioners in the Civil Rule. We have also consulted the relevant law of temporary injunction especially Order XXXIX rule 5A (3) of the Code, in view of which we do not find any illegality in hearing the application for temporary injunction by the trial Court and disposing of the same on merit.

It appears that the learned Joint District Judge rejected the application for temporary injunction only on the ground that the plaintiffs failed to submit any S. A. Khatian of the suit land, though in schedule, the land has been identified with its S.A. Khatian and Plot numbers. This view of the Court below does not appear to be

correct. When the schedule of the suit land is not denied by the defendants and both the parties claimed their respective title from one Iman Ali, the R.S. recorded tenant, production of S.A. Khatian was not that much necessary. The trial Court in rejecting the application for temporary injunction did not discuss the documents of possession namely, the mutation khatian, duplicate carbon receipt and rent receipt in name the plaintiff Abdus Sattar Bhuiyan. In this regard we find substance in the second limb of the argument of Mr. Bhuiyan.

For the reasons stated above, we are of the view that the learned Joint District Judge committed wrong in rejecting the application for temporary injunction. The plaintiffs have an arguable case and they have proved their prima-facie possession over the suit land, and as such they are entitled to an order of temporary injunction.

In the result, the appeal is allowed. The impugned order dated 4.11.2009 passed by the Joint District Judge, fourth Court, Dhaka in Title Suit No.183 of 2006 is hereby set aside. The defendant-respondents are restrained by an order of temporary injunction from entering into the suit land or disturbing the plaintiffs' possession over the same in any manner till disposal of the suit. The connected Civil Rule is accordingly disposed of.

The trial Court is directed to dispose of the suit as expeditious as possible.

Faruque Ahmed, J:

I agree.