

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)**

Present:

**Mr. Justice Md. Emdadul Huq**

**Civil Revision No. 793 of 2013.**

Md. Shahadat Hossain

.....Petitioners.

-Versus-

Mahajebun Akter & others.

.....Opposite parties.

Mr. Khair Ejaj Masud, Advocate.

..... Fort the petitioners.

Mr. Muhammad Jamiruddin Sircar with  
Mr. Md. Abdul Mannan and Mr. Md.  
Zahirul Islam, Advocatels.

For the petitioner

Mr. Abdur Rahman (Zibal), Advocate..

..... For the Opposite parties.

**Heard on :** The 23<sup>rd</sup> October, 11<sup>th</sup>, 19<sup>th</sup> and  
20<sup>th</sup> November, 2014.

**Judgment on:** The 3<sup>rd</sup> December, 2014.

The Rule issued in this Civil Revision is about sustainability of the judgment and decree dated 05-03-2013 by which the learned Additional District Judge, 5<sup>th</sup> Court, Dhaka dismissed Title Appeal No. 24 of 2012 and thereby affirmed those dated 13-11-2011 passed by the learned Assistant Judge, 3<sup>rd</sup> Court, Dhaka dismissing Title Suit No. 190 of 2011 instituted by the plaintiff-petitioner for a decree of permanent injunction.

**Plaintiff's Case**

The plaintiff (petitioner) instituted the above noted suit for a decree of permanent injunction for restraining the defendants from

dispossessing the plaintiff (petitioner) from a godown. Plaintiff took lease of the godown from the defendants by virtue of a written agreement dated 01-09-2006 for 5(five) years. He paid Tk. 3 lac as security. He regularly paid the monthly rent of Tk. 21,500/-. During continuance of the lease he paid an additional amount of Tk. 4,10,000/- as advance on the verbal assurance of the defendants that the lease would be renewed after expiry of the lease on 31-8-2011. But the defendants, on 05-8-2011, demanded Tk. 18,00,000/- as security and Tk. 35,000/- as monthly rent. Such demand was in violation of clauses-4 and 13 of the Agreement which require that the agreement is to be renewed. But instead on renewing the Agreement, the defendants threatened plaintiff's possession. Hence the suit.

#### **Defendants Case**

In their written statement, the defendants have admitted that there was a lease agreement with the plaintiff for five years and that the security money of Tk. 3 lac and monthly rent of Tk. 21,000/- were paid by the plaintiff. But they have denied other material allegations of the plaintiff about their receipt of any money as advance or as consideration for future agreement or any verbal assurance or demand of Tk. 18,00,000 as security or a higher monthly rent of Tk. 35,000/-.

The defendants have however admitted receipt of some money from the plaintiff as the cost of for construction of a toilet during the lease period.

The defendants claim that they need the godown and the land for construction of their own house. So they are not willing to renew the agreement. Accordingly they requested the plaintiff to vacate the godown.

#### **Decision of the courts below:**

During pendency of the suit, plaintiff filed any application for temporary injunction. After hearing both sides on that application, the learned Assistant Judge dismissed the suit upon recording a finding that the suit for permanent injunction was not

maintainable as the plaintiff has filed two other cases being Rent case No. 74 of 2011 in the Court of Rent Controller with regard to the same property and a separate suit for a mandatory injunction being No. 231 of 2011 and that in those cases the plaintiff might get the relief prayed for in the instant suit.

Against that order the plaintiff preferred an Appeal. After hearing both sides the learned Additional District Judge dismissed the Appeal and concurred with the findings and decision of the trial Court.

**Deliberation in Revision:**

At the hearing of this Revision, Mr. Mohammad Jamiruddin Sircar, the learned advocate for the petitioner-plaintiff, submits that the plaint and written statement show that there are specific issues on which the parties have made different claims, particularly with regard to renewal of the agreement and that clauses 4 and 5 of the agreement require the defendant to renew the agreement and therefore formal issues should have been framed and trial should have commenced in the usual course of the suit for faking evidence so as to arrive at a proper decision.

Mr. Sircar, the learned advocate next submits that the subject matter and the issues involved in the other two proceedings namely the Rent Case No. 74 of 2011 and the Title Suit No. 231 of 2011, as referred to by the courts below, are totally different from those of the present suit and therefore pendency of those cases is not a legal ground for dismissal of the present suit instituted before those cases.

Mr. Sircar, the learned advocate next submits that plaintiff is admittedly in possession and continuing it by way of holding over and the defendants have filed a separate suit being S. C. C Suit No. 02 of 2014 for eviction of the plaintiff from the godown and therefore plaintiff can not be evicted without the due process of law.

In reply Mr. Abdur Rahman (Zibal), the learned advocate for the defendant opposite parties, submits that the courts below

did not commit any error of law, in that, lease of five years has admittedly expired, but not renewed and therefore plaintiff has no prime facie case nor has he any right to continue in unlawful possession, and he can not get the protection of law in the instant suit for permanent injunction.

In support of his submission Mr. Rahman, the learned advocate, refers to the case of Dewan Shamsul Abedin-Vs-Government of Bangladesh, represented by the Deputy Commissioner, Sunamgonj, reported in 13 M.L.R. (AD), page-163.

**Findings and decision in Revision:**

From the pleadings of the parties, it appears that the fact of lease for five years and its expiry are admitted. But there is dispute in view of plaintiff's claim that he has paid some money in advance with the expectation of renewal of the lease and that according to Clause-4 and 13 of the Agreement the defendants are under an obligation to extend the lease. The defendants however in their written statement have denied the said claims.

The other aspect of the difference between the parties is about the alleged threat from the defendant to plaintiff's possession which the defendants deny.

In view of such claim and counter claim I hold that the trial Court should have proceeded to frame issues and to record evidence as in a regular trial.

The courts below failed to consider that the issue raised in the Rent Case and the Title Suit for a mandatory injunction, both instituted by the plaintiff, are different to those raised in the present suit for permanent injunction. Because the remedy, even if allowed in the Rent case will at best be an opportunity for the plaintiff to deposit the monthly rent because of refusal of the defendant to accept the same. Again the remedy even if allowed to the plaintiff in the second suit will at best be a direction to the defendant with regard to extension of the lease.

It appears from Annexure-B that the said Title suit No. 231 of 2011 renumbered as Title Suit No. 368 of 2014 has been already been dismissal after trial and it is not clear whether an appeal has been preferred or not.

Those cases involve the same property as in the present suit, but the issues involved therein are different. The remedies sought for in the three proceedings are also different in nature. The remedies even if allowed in those two cases cannot protect plaintiff's possession from the alleged threat of the defendants.

However it appears that the defendants have instituted another suit being S.C.C. Suit No. 02 of 2014 for eviction of the plaintiff. Though the issues involved in the S.C.C suit are different from those of the present suit for permanent injunction instituted by the plaintiff, the result of the two suits are linked with each other. If the defendants succeed in the S.C.C Suit, plaintiff is liable to be evicted even if the plaintiff gets a decree of permanent injunction in the present suit. Such a decree of permanent injunction would be valid at best upto the execution of the decree of an S.C.C Suit.

But mere filing of the S.C.C Suit does not necessarily mean that the plaintiff is liable to be evicted by the defendants without due course of law nor does the filing of the S.C.C suit preclude plaintiff from pursuing his own suit for permanent injunction.

It is noted that the principle laid down by Appellate Division in the case of Dewan Shamsul Abedin-Vs- Government of Bangladesh, (13 M.L.R) (AD) (2008), page-163 is not applicable to the present case. Because plaintiff is admittedly in possession and he claims certain facts that are subject to proof by evidence.

Accordingly I hold that the courts below committed an error law resulting in an erroneous decision occasioning failure of Justice.

It appears that the subject matter of the instant suit for permanent injunction and that of the S.C.C. suit are substantially

the same being the godown possessed by the plaintiff. Both the suits are pending before the same judge, who holds two different capacities namely as a civil court in relation to the suit for permanent injunction and as the Judge of the Small Cause Court in relation to the S. C.C. Suit.

So I hold that the ends of justice will be met if the trial of the two suits are held simultaneously. This will ensure expeditious disposal of the two suits and will help the parties to get the dispute adjudicated.

In view of the above, I hold that the decisions of the courts below with regard to dismissal of the Title Suit No. 190 of 2011 are not sustainable and hence liable to be set aside.

In the result, the Rule is made absolute. The judgment and decree dated 05-3-2013 passed by the learned Additional District Judge, 5<sup>th</sup> court, Dhaka in Title Appeal NO. 324 of 2012 and also the order dated 13-11-2011 passed by the learned Assistant Judge, 3<sup>rd</sup> Court, Dhaka in Title Suit No. 190 of 2011 are set aside.

The learned Assistant Judge is directed to proceed with the Title Suit No. 190 of 2011 and to dispose of the same in accordance with law. In doing so he shall hold simultaneous trial of the S.C.C. Suit No. 02 of 2014 and dispose of the same in accordance with law.

The said Court shall ensure that the both the suits are disposed of expeditiously, preferably within six months from the date of receipt of the copy of this Judgment and for that purpose unnecessary adjournments must not be allowed.

No order as to costs

Send a copy of this Judgment to the Courts below.

Habib/B.0