

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K. M. Zahirul Huq

Civil Revision No.4332 of 2003

Md. Noor Hossain being death his legal heirs:

Md. Mizanur Rahman and others petitioners

-Versus-

Md. Ziauddin Khan and others

..... opposite parties

with

Civil Rule No.95(R) of 2012

Md. Ziauddin Khan

..... petitioners

-Versus-

Md. Mizanur Rahman and others

..... opposite parties

Mr. Md. Sumon Ali, Advocate for

Mr. Probir Neogi, Senior Advocate

..... for the petitioners

(In the CR and opposite parties in the civil Rule)

Mr. Minal Hossain, Advocate

..... for opposite party 1

(In the Revision and petitioner to the Rule)

Judgment on 07.05.2025

Bhishmadev Chakrabortty, J:

Since the civil Rule has arisen out of the aforesaid civil revision, these have been heard together and are being disposed of by this judgment.

At the instance of the defendants Rule in the civil revision was issued calling upon opposite parties 1 and 2 to show cause as to why the judgment and order of the Joint District Judge, Court 2, Dhaka passed on 17.06.2003 in Title Suit 92 of 1991 allowing the application under Order I Rule 10 of the Code of Civil Procedure (the Code) 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 Rule all further proceedings of the aforesaid suit was stayed for a limited period which still subsists.

During pending of the aforesaid Rule issued in the civil revision, opposite party 1 plaintiff filed an application for injunction restraining the petitioners from entering into any contract with developer company for making any construction work in the suit land. Upon which the aforesaid civil Rule was issued and an *interim* order directing the parties to maintain *status quo* in respect of the possession and position of the suit land for a period of 3(three) months from date was passed which was subsequently extended till disposal of the Rule.

Facts relevant for disposal of the Rules, in brief, are that opposite party 1 of the civil revision instituted Title Suit 92 of 1991 in the aforesaid Court for specific performance of contract with further prayer that the registered *kabalas* described in schedule-‘Kha’ to the plaint are void, fraudulent, collusive and without any consideration. Defendant 2 has been contesting the suit by filing written statement denying the material statements made in the plaint. During pending of the suit opposite party 2 herein filed an application under Order I Rule 10 of the Code to add him as defendant in the suit stating the facts that his father Sujit Chandra Roy had purchased the suit property in auction in Certificate Case No.124/C of 1959 and therefore he is a necessary party to the suit having title and interest in the suit property. The Joint District Judge allowed the said application against which

defendants approached this Court and obtained the Rule in the civil revision with an *interim* order of stay.

Mr. Md. Sumon Ali, learned Advocate appearing for learned Senior Advocate Mr. Probir Neogi, for the petitioners submits that the suit is for specific performance of contract and also for declaration that two deeds as described in the schedule to the plaint are not binding upon the plaintiffs. In a suit like nature parties to the contract are necessary parties. Even in the *kabalas* which have been challenged in the suit the added defendant is not a party. The point is to be decided in the suit whether there was a genuine contract between parties. There is no scope of deciding title or interest of a 3rd party who is not a party to the alleged contract. Therefore, opposite party 2 is neither necessary nor a proper party in the suit. In the aforesaid premises the Court below committed an error of law resulting in an error in such decision occasioning failure of justice by adding opposite party 2 as defendant. The Rule, therefore, would be made absolute.

Mr. Minal Hossain, learned Advocate for plaintiff-opposite party 1 on the other hand do not oppose the Rule as he is the plaintiff in the suit. But he submits that during pending of the Rule in this Court, the petitioners took steps to handover the property to a developer company for constructing a multistoried building therein and then he filed an application for temporary injunction and the

aforesaid Rule in civil Rule was issued with an order directing the parties to maintain *status quo* which still subsists. He prays that the order of *status quo* passed by this Court is to be maintained till disposal of the suit otherwise the plaintiff would suffer irreparable loss and injury.

We have considered the submissions of both the sides and gone through the materials on record. It appears that the original suit is for specific performance of contract with further prayer that the *kabalas* as described in the schedule to the plaint is void, collusive, fraudulent and without any consideration. In a suit for specific performance of contract it is to be decided whether there was a valid contract between the parties. The question of title should not be decided in a suit like nature. But in the application for addition of party the petitioner brought disputed question of title in the suit land. Opposite party 2, added defendant is not a party to the contract. He is not a party the *kabalas* challenged in the suit. Therefore, we hold that the proposed third party is neither a necessary nor a proper party in the suit. Moreover, if he is impleaded in the suit it will create complicity in disposing the same. In the premises above, we find merit in the Rule issued in Civil Revision No.4332 of 2003.

In Civil Rule No.95(R) of 2012 it is found that the plaintiff-opposite party 1 brought allegation against the opposite parties to the civil revision they are trying to handover the suit land to a developer

company. The plaintiff filed application for temporary injunction restraining them from transferring the suit land to developer company for making any construction work over the same. Accordingly, the Rule was issued and an order directing the parties to maintain *status quo* was passed. Since we are disposing the Rule issued in Civil Revision No.4332 of 2003, therefore, the Rule issued in Civil Rule No.95(R) of 2012 certainly would become infructuous and is to be disposed of.

Accordingly, the Rule issued in the aforesaid civil revision is made absolute. The judgment and order dated 17.06.2003 passed by the Joint District Judge, Court No.3, Dhaka adding opposite party 2 as defendant in the original suit is hereby set aside. Consequently, the Rule issued in Civil Rule No.95(R) of 2012 is disposed of.

However, the trial Court is directed to dispose of the suit expeditiously preferably within 06(six) months from the date of receipt of this judgment and order.

The plaintiff will be at liberty to file application in the trial Court praying for injunction, if so advised.

Communicate the judgment and order to the concerned Court.

A.K. M. Zahirul Huq, J.

I agree.