

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

Civil Revision No. 1351 of 2017

IN THE MATTER OF

Md. Abdus Sattar

.....Plaintiff-Respondent-petitioner

-Versus-

Md. Arshad Ali Gazi and others

.....Defendants-Appellants-Opposite Parties

Mr. Md. Earul Islam, Advocate

.....For the petitioner

Mr. Md. Abdur Rouf, Advocate

.....For the opposite parties

**Heard on 09.02.23, 19.02.23, 23.02.23, 13.03.23,
30.03.23 and judgment passed on 06.04.2023**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure,
1908, was issued in the following term:

*“Records need not be called for. Let a Rule be issued
calling upon the opposite parties to show cause as to why the
judgment and order dated 29.03.2017 passed by the learned Joint
District Judge, 2nd Court, Satkhira in Miscellaneous Appeal No.
29 of 2014 allowing the appeal and thereby reversing the*

judgment and order dated 03.07.2014 passed by the learned Assistant Judge, Kalaroa Court, Satkhira in Title Suit No. 21 of 2013 allowing the temporary injunction should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this Court stayed the operation of the impugned judgment and order dated 29.03.2017 for 3(three) months from the date which was lastly, extended on 15.01.2020 till disposal of the Rule.

The present petitioner as the plaintiff instituted Title Suit No. 21 of 2013 in the Court of learned Assistant Judge, Kalaroa, Satkhira against the present opposite parties as the defendants praying for a decree of declaration of title over the suit land alleging, inter alia, that the plaintiff purchased the suit land by Kabala deeds dated 28.12.2006, 14.06.1994, and 20.11.1994 from Azmad Hossain and others who purchased the land from Nazim Uddin and others. The plaintiff owns the suit land as usual. But on 03.02.2013, the defendants threatened the plaintiff to dispossess him from the suit land and hence the suit.

After filing the suit the plaintiff filed an application for a temporary injunction under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure, 1908, and after hearing the same the

learned Assistant Judge, Kalaroa, Satkhira by his judgment and order dated 03.07.2014 allowed the application for a temporary injunction on the contest against defendant Nos. 1-4 without cost, and restrained the defendants from entering into the suit land till disposal of the suit.

Being aggrieved by the said judgment and order dated 03.07.2014 the defendants as the appellants preferred an appeal before the learned District Judge, Satkhira, and the same was numbered Miscellaneous Appeal No. 29 of 2014. Thereafter, the appeal was transferred before the learned Joint District Judge, 2nd Court, Satkhira who after hearing the same by his judgment and order dated 29.03.2017 allowed the appeal by setting aside those of the Trial Court on the contest against the plaintiff-respondent without cost, and rejected the application for a temporary injunction on the contest.

Being aggrieved by and dissatisfied with the said impugned judgment and order dated 29.03.2017 the plaintiff as the petitioner had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

Anyway, Mr. Md. Earul Islam, the learned Advocate appearing for the plaintiff-petitioner submits that the learned Trial Judge considering the facts and circumstances of the case and that of the materials on record rightly granted the temporary injunction as the plaintiff submitted

all the deeds in support of his ownership but the defendants could not produce any such document regarding the suit land. The plaintiff also submitted tax receipts in support of his possession of the suit land. He lastly submits that the learned Appellate Court Judge has reversed the Trial Court's order treating the suit land as an ejmali property, though the suit land has lost its nature of being ejmali as it was sold out to outsiders and the plaintiff-petitioner purchased the land from them, and without being sure about the possession, and thus the learned Appellate Court Judge committed an error of law resulting in an error in the decision occasioning failure of justice.

On the other hand, Mr. Md. Abdur Rouf, the learned Advocate appearing for the defendants' opposite parties submits that there is no sketch map of the land in question in the application for a temporary injunction, there is no separate possession of the plaintiff over the suit land, rather; both the parties are possessing the suit land jointly and in that view of the matter the learned Judge of the Appellate Court below rightly passed the impugned judgment and order by setting aside those of the Trial Court, and rejected the application for temporary injunction and thereby committed no illegality.

Heard the learned Advocates of the contending parties and perused the materials on record. It appears that the plaintiff filed the suit

for declaration of title over the suit land and then filed an application for a temporary injunction under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 which was allowed by the learned Trial Judge, against which the defendants preferred Miscellaneous Appeal No. 29 of 2014 and after hearing the same the learned Joint District Judge, 2nd Court, Satkhira by impugned judgment and order dated 29.03.2017 allowed the appeal and rightly rejected the application for a temporary injunction by setting aside the judgment and order so passed by the learned Judge of the Trial Court on the grounds that there is no separate possession of the plaintiff in the suit land and on the other hand, the suit land is not specified in which portion of the suit plot the suit land is situated and thereby committed no illegality occasioning failure of justice. In the premises, there is no reason to interfere with the impugned judgment and order.

In view of the above, I do not find any substance in the submissions made by the learned Advocate for the petitioner, rather; I find substance in the submissions so made by the learned Advocate for the opposite parties. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay vacated.

The impugned judgment and order dated 29.03.2017 passed by the learned Joint District Judge, 2nd Court, Satkhira in Miscellaneous Appeal No. 29 of 2014 allowing the appeal by vacating the order of temporary injunction dated 03.07.2014 passed by the learned Assistant Judge, Kalaroa, Satkhira in Title Suit No. 21 of 2013, and rejecting the application for temporary injunction is hereby affirmed.

Send a copy of this judgment to the Court concerned at once.

(TUHIN BO)