

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 3832 of 2003

Md. Shahar Ali and others

...Petitioners

-Versus-

Sree Sailesh Chandra Sen and others

...Opposite Parties

Ms. Nahid Yeasmin, Advocate

...for the petitioners

Mr. Mohammad Abdullah, Advocate

í for opposite party Nos.1-2

Judgment on 7.3.2012

This Rule at the instance of the defendant-petitioners was issued calling in question the legality of judgment and order dated 25.3.2003 passed by the Additional District Judge, Sherpur in Miscellaneous Appeal No.33 of 2002 dismissing the same on affirmation of order dated 1.9.2002 passed by the Senior Assistant Judge, Sadar, Sherpur in Other Suit No.176 of 2002. The Assistant Judge, by the said order, granted temporary injunction against the defendants on an application filed by the plaintiffs.

Opposite Party Nos.1 and 2 instituted Other Class Suit No.176 of 2002 before the Senior Assistant Judge, Sadar, Sherpur for perpetual injunction restraining the defendant-petitioners from entering into the suit land and from disturbing their peaceful possession therein. Their case, in brief, is that the suit land originally belonged to Sree Ganga Charan Mitra and Sree Jannabi Charan

Mitra. C. S. Khatian No.2325 in respect of the suit land was duly prepared in their names. One Ram Joy Sarker took settlement of the suit land and possessed the same for more than twelve years. Thereafter, the said Ram Joy Sarker transferred the suit land to Hiran Chandra and Suresh Chandra, predecessors-in-interest to the plaintiffs. Earlier they had instituted Other Class Suit No.38 of 1988 in the Court of Subordinate Judge, Sherpur for declaration of title in the suit land and subsequently got a decree on contest against the Government. The defendants along with some hired goons threatened to dispossess them from the suit land on 2.7.2002, thus the cause of action for filing the suit arose.

On the same averments, the plaintiffs filed an application on 10.7.2002 under Order XXXIX rules 1 and 2 of the Code for temporary injunction restraining defendant Nos.1-6 from dispossessing them from the suit land.

Defendant-petitioners opposed the application denying the plaintiffs' title and possession over the suit land and contending *inter alia*, that Ganga Charan Mitra and Jannabi Charan Mitra were the original owners of the suit land with some other lands in equal share. Defendant No.1 Md. Shahar Ali and one Mafizuddin Sheikh took *pattan* of 1.16 acres of land appertaining to C. S. Khatian No.2325, Plot No.2719 on depositing rent for the land. While in peaceful possession and enjoyment of the same, R.O.R (S.A) Khatian No.3044 was duly published in their names in respect 58 decimals of land against Plot No.2363 and the remaining 58 decimals against Plot No.3758. By an amicable partition, each of them got 58 decimals of land. Thereafter, Mafizuddin Sheikh transferred his entire share to Mst. Genda Bibi, wife of defendant No.1 by

registered sale deed No.6460 dated 29.3.1966 and handed over the possession thereof in her favour. During B.R.S operation, the land was recorded in their names against B.R.S. Khatian No.3887, Plot Nos.6266 and 6167. Thereafter, Genda Bibi died leaving behind defendant Nos.1-6 as her legal heirs and successors, who inherited her left out properties. Plaintiff being an employee of Sherpur Judge's Court fraudulently obtained a decree in Other Class Suit No.38 of 1988 without making them parties. The suit land in B.R.S Plot No.6266 does not attract C. S. Plot No.2719 or R.O.R Plot Nos.2363 and 3758. The suit land is not specified and properly described, upon which the plaintiffs can get an order of temporary injunction.

Learned Subordinate Judge heard the application and allowed the same by his order dated 1.9.2002. Being aggrieved by the said order of temporary injunction, the defendants preferred Miscellaneous Appeal No.33 of 2002 before the District Judge, Sherpur. The Additional District Judge, Sherpur ultimately heard the appeal and dismissed the same by his judgment and order dated 25.3.2002, which is impugned herein.

Ms. Nahid Yesmin, learned Advocate appearing for the petitioners submits that the contesting defendants have been possessing 1.16 acres of land appertaining to B. R. S. Khatian No.3887, Plot Nos.6266 and 6267, which does not fall within the description of the suit land. The suit land is also not specified and properly described in the schedule, upon which an order of temporary injunction can be granted. The defendants never made any attempt to dispossess the plaintiffs from anywhere. The plaintiffs rather were disturbing

them and trying to dispossess them from their lawful property taking advantage of the order of temporary injunction.

On the other hand Mr. Mohammad Abdullah, learned Advocate for plaintiff-opposite party Nos.1-2, submits that both the Courts below on careful consideration of the pleadings and documents filed by the parties concurrently found the plaintiffs' prima facie case and granted temporary injunction in their favour. There is no illegality to interfere with the judgment and order. He further submits that if the description of the suit land does not attract the petitioners' land, they have no reason to be aggrieved by the order of temporary injunction. The Rule should be discharged on that count as well, he concludes.

I have gone through the record and examined the impugned orders. The trial Court passed the order of temporary injunction on the reason that the plaintiffs' predecessors obtained decree in Other Class Suit No.38 of 1988 which was still in force and that the 1.16 acres of land as claimed by the defendants in B.R.S Plot Nos.6266 and 6267, and the suit land were not same. The appellate Court with reference to the documents of the plaintiffs' found prima facie case and possession in their favour. The appellate Court also observed that the land claimed by the defendant-appellant (herein petitioners) and that of the plaintiffs as described in the schedule of the plaint and application were not same.

It appears from the application for temporary injunction (annex-A) that the plaintiffs have specifically mentioned the C.S, S.A and B.R.S Khatian and Plot numbers, area of land with boundary, so there is no reason to say that the

suit land is not specified or not properly described in the schedule. In the written objection, the defendant-petitioners though denied the plaintiffs' right, title and possession over the suit land, did not claim their title and possession over the same. They claimed 1.16 acres of land in B.R. S. Plot Nos.6266 and 6267, which is not described the schedule of application. So, there is no reason for them to be aggrieved by the order of temporary injunction. They can, however, file a separate suit for injunction against the plaintiffs, if they are really threatened and disturbed in keeping possession on their land in the said B.R.S. plot numbers.

In any view of the matter, I do not find that the learned Additional District Judge committed any error of law in affirming the order of temporary injunction. The Rule thus merits no consideration.

Accordingly the Rule is discharged. The ad-interim order of statusquo passed earlier at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment.