

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 3070 OF 2016.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Md. Jakir Hossain

...Defendant-Petitioner.

-Versus-

Alfaz Ali Biswash and others

.....opposite parties.

Mr. Qazi Zahid Iqbal, Advocate

.... for the petitioner.

Heard on: 26.05.2024 and

Judgment on: 29.05.2024.

On an application of the petitioner Md. Jakir Hossain under section 115(4) of the Code of Civil Procedure the leave was granted and the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order No.04 dated 20.01.2016 passed by the learned Senior District Judge, Jessore in Civil Revision No.18 of 2015 affirming the order No.72 dated 23.04.2015 passed by the Senior Assistant Judge, Monirampur, Jessore in Title Suit No.98 of 2006 rejecting an application under Order XXVI rule 9 read with Section 151 of the Code of Civil Procedure for Local Investigation should not be

set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the opposite party Nos.1 and 2 as plaintiffs instituted Title Suit No.98 of 2006 in the Court of senior Assistant Judge, Monirampur, Jessore for perpetual injunction.

The suit was contested by the defendant No.3 by filing written statements denying all the material assertions made in the plaint.

During the trial the defendant-petitioner filed an application under Order XXVI rule 9 read with section 151 of the Code of Civil Procedure for holding local Investigation.

The trial Court after hearing the parties and considering the facts and circumstances of the case rejected the said application by its order dated 23.04.2015.

Against the said order the defendant No.3 the present petitioner filed Civil Revision No.18 of 2015 under Section 115(2) of the Code of Civil Procedure before the learned District judge, Jessore. The learned District Judge after hearing the parties and considering the facts and circumstances of the case disallowing the said revisional application by its judgment and order dated 20.01.2016.

Being aggrieved by and dissatisfied with the impugned judgment of the Courts below the petitioner filed this revisional application under

Section 115(4) of the Code of Civil Procedure accordingly the leave was granted and a Rule was issued.

Mr. Qazi Zahid Iqbal, the learned Advocate appearing on behalf of the petitioner submits that both the Court committed error in law resulting in an error in the decision occasioning failure of justice in not considering that the petitioner as a landless people resided in the land as sought for Investigation and without ascertaining the said facts the suit cannot be properly decided. He further submits that since this is a suit for injunction and in such a case the local Investigation is required for elucidating the dispute among the parties otherwise the Court should not pass necessary order since several persons claimed that they are also in possession of some part of the aforesaid land and thus after holding local Investigation the dispute can be easily resolved. He prayed for making the Rule absolute.

I have heard the learned Advocate, perused the application. It appears that both the Court while rejecting the application of the petitioner took view that the petitioner has scope to file fresh application if requires after adducing evidence. Both the Court also took view that the petitioner can prove his case by adducing evidence.

It appears that the petitioner claimed that he is in possession of some portion of the land by erecting houses and used to live in the said house for a long period and in injunction case it is required to conduct a local investigation if the dispute could not be resolved by adducing

evidence by the parties. It appears that both the Court took view that the matter should be decided after taking evidence and if the parties adduce evidence oral and documentary than after examining the evidence of the witnesses the matter can be decided and if requires then the Court may allow the application of the parties file fresh. It is my view that which is not a harmful order.

However, since the plaintiff and the defendants claimed that as landless people they are in possession of the suit land and the plaintiff did not file any case for declaration of title but only for perpetual injunction. In such a case it is my view that after taking evidence if requires and any party file application for local investigation if so advice the Court may consider the same in accordance with law. With the above observation the Rule should be disposed of.

In the result, the Rule is disposed of.

The trial Court should consider the fresh application for local investigation if either party will file application after adducing evidence for proper consideration of the facts of the case and in accordance with law.

However, since this is a long pending case the trial Court is directed to dispose of the suit as early as possible preferably within 06 (six) months from the date of received of this order in accordance with law.

The order of stay granted earlier by this is hereby recalled and vacated.

Communicate the order at once.