

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1651 of 2017

Md. Shahjahan Fakir and others

.....Petitioners.

-Versus-

Md. Abul Kalam and another

.....Opposite parties.

Mr. Mohammad Eunos, Advocate

.....For the petitioners.

Mr. Chowdhury Nasima, Advocate

..... For the opposite parties.

Heard and judgment on 6th March, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 04.04.2017 passed by the Joint District Judge, 1st Court, Patuakhali in Title Appeal No. 112 of 2014 affirming those dated 16.07.2014 passed by the Assistant Judge, Golachipa, Patuakhali

in Title Suit No.74 of 2013 rejecting the plaint should not be set aside.

Petitioner as plaintiff filed Title Suit No. 74 of 2013 before the Court of Assistant Judge, Golachipa against the opposite party for redemption of 'Ka' schedule land of the plaint.

During pendency of the suit plaintiff filed an application under Order 39 Rule 1 read with section 151 of the Code of Civil Procedure for injunction against the defendant opposite parties.

By the order dated 16.07.2014 the Assistant Judge, Golachipa, Patuakhali rejected the application for temporary injunction and also rejected the plaint and which has become a decree.

Challenging the said judgment and decree, plaintiff preferred Title Appeal No. 112 of 2014 before the Court of District Judge, Patuakhali, which was heard on transfer by the Joint District Judge, Patuakhali, who by the impugned judgment and decree dismissed the appeal and affirmed the judgment of the trial court.

Being aggrieved thereby plaintiff petitioner obtained the instant rule.

Mr. Mohammad Eunos, the learned advocate appearing for the petitioner drawing my attention to the scenario of the case submits that plaintiff filed suit for redemption and the opposite party contested the suit, during pendency of the suit, plaintiff filed an application for temporary injunction and the date fixed for hearing of the application for injunction, the trial court rejected the application for injunction. Thereafter although the suit was not fixed for hearing the maintainability of the suit or no evidence was taken to prove their case or in any way the date was fixed for hearing of the suit or argument, the trial court upon misguided himself passed an order rejecting the application for injunction along with rejecting the plaint arbitrarily, without giving an opportunity to either parties to prays their respective cases or submits their arguments on the maintainability point of the suit. Accordingly the order passed by the trial court is not in accordance with law, but the appellate court also did not apply judicial mind and affirmed the judgment of the trial court most illegally. The judgment passed by the court below is not

sustainable in law, which are liable to be set aside and the petitioner may be given an opportunity to make the submissions on the point of maintainability as well as to prove his case for redemption.

Mrs. Chowdhury Nasima, the learned advocate appearing for the opposite party on the other hand although opposes the rule but found it difficult to support of the impugned judgment.

Heard the learned Advocate and perused the Lower Court Record together with the impugned judgment passed by the courts below.

This is a suit for redemption. Record speaks that on 16.07.2014, when the impugned order was passed, it was not fixed for hearing the suit on maintainability point. On that date, plaintiff's application for temporary injunction filed on 22.06.2016 was taken for hearing. After hearing the application for injunction it was objected by the opposite party and considering the merit of the application, the Assistant Judge rejected the application for injunction. Up to that extend it can be taken that the Assistant Judge was justified in rejecting the

application after hearing the application and considering the objection filed by the defendant opposite parties. But thereafter without giving an opportunity to either parties of the suit, trial court rejected the plaint arbitrarily. Although thereof no application was filed by the defendant for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure. Unless and until an opportunity is given to either parties to make the submission on the point of maintainability and the case is fixed for hearing of maintainability point, the order passed by the trial court dated 16.07.2014 is obviously passed illegally without applying his judicial mind. The appellate court being the last court of fact, also without considering the above aspect of this case, most arbitrarily affirmed the judgment of the trial court. Thereby judgment of the courts below are per se illegal and cannot be sustainable in law.

I thus find merit in this rule.

In the result, the rule is made absolute. The impugned judgment and decree passed by the court below is hereby set aside.

The Trial Court is hereby directed to hear the suit on its maintainability point if so desire after fixing a date of hearing accordingly, giving opportunity to either parties to press their respective cases on maintainability point and decide the matter afresh within a period of 6(six) months after receiving of this order.

The order of status-quo granted earlier is hereby recalled and vacated.

Send down the L.C.R along with the judgment to the courts below at once.