

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Miscellaneous Appeal No.213 of 2018

Md. Mahabubul Alam Pathan and others

..... appellants

-Versus-

Md. Jalal Uddin and others respondents

Mr. Abdul Baten, Advocate

..... for the appellants

No one appears for the respondents

Judgment on 23.04.2025.

Bhishmadev Chakrabortty, J:

The plaintiffs have preferred this appeal against the judgment and order of the Joint District Judge, Additional Court, Dhaka passed on 18.02.2018 in Title Suit No.891 of 2017 rejecting the application filed under Order XXXIX Rule I and II of the Code of Civil Procedure (the Code) praying for temporary injunction.

The appeal was admitted for hearing on 12.04.2018. At the time of admitting the appeal the appellants had filed an application praying for restraining the respondents from changing the nature and character of the suit property. Upon which this Court passed order on the same day directing the respondents not to transfer the suit property and not to change the nature and character of 3(three) flats as mentioned in the schedule to the plaint.

Mr. Abdul Baten, learned Advocate for the appellants taking us through the plaint, written statement and application for temporary injunction submits that the suit is for declaration of title

and recovery of Khas possession of the property as described to the schedule to the plaint with further declaration that the judgment and decree passed in Title Suit No. 368 of 2013 is illegal, collusive and not binding upon the plaintiffs. In the application for temporary injunction the plaintiffs stated that if the nature and character of the suit land is changed, the plaintiffs would suffer irreparable loss and injury and, therefore, an order of restraintment from changing the nature and character of the suit land was required to be passed. The trial Court without applying the judicial mind rejected the application for temporary injunction which is required to be interfered by this Court in this appeal. The impugned judgment and order, therefore, would be set aside and the defendants be restrained by an order of temporary injunction as prayed for.

No one appears for respondents No.1-14, although the matter has been appearing in the cause list with the name of the learned advocate for the respondents.

We have considered the submissions of the learned Advocate for the appellant and other materials on record. It is found that the instant suit is for declaration of title and recovery of possession in respect of the suit property described in the schedule to the plaint. On perusal of the plaint it is found that the suit properties are 3(three) flats described in schedule “Ka”, “Kha” and “Ga” to the plaint. In the original application for temporary injunction the plaintiff prayed for a restraintment order against the defendants from

changing the nature and character of the suit property. Although the trial court rejected the application for temporary injunction but it has been challenged in this appeal. This Court admitted the appeal for hearing and at the time of its admission passed order restraining the respondents from transferring the suit land and changing the nature and character of the schedule flats mentioned in the schedule to the plaint. This Division passed restraintment order as above on 12.04.2018. Respondents 1-14 appeared in the appeal on 31.07.2018 but they did neither take any steps for vacating the aforesaid order of restraintment by filling an application in this Division nor did they challenge it in the Appellate Division. The aforesaid order is in force for last 7 years. We find no interest of the respondents in conducting the appeal. In the premises above, we find that the justice would best served, if we direct the trial Court to dispose of the suit expeditiously maintaining the order of restraintment passed by this Court.

In the aforesaid premises, the appeal is disposed of.

The concerned Court is directed to dispose of the Title Suit No.891 of 2017 expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and order. In dealing with the suit, the learned Judge shall not allow either party any adjournment without dire necessity. In the meantime, the restraintment order passed by this Court shall operate.

Communicate this judgment and order to the concerned Court.

A.K.M. Zahirul Huq, J:

I agree.

Mosharof/ B.O