

Present :

Mr. Justice Mamnoon Rahman

And

Mr. Justice Ashish Ranjan Das

Civil Revision No. 959 of 2018.

In the matter of:

Mojir Uddin Ahmed and others

.....Petitioners

-Versus-

Most. Kutubunnessa @ Kutubun Nahar and others.

.....Opposite parties.

None appears

....For the petitioners.

Mr. M.A.Jabbar, Advocate

.....For the opposite party No.1-5

Heard and Judgment on : 04.07.2019

Ashish Ranjan Das, J:

Rule under section 115(1) of the Code of Civil Procedure (for short CPC) was issued at the instance of the plaintiff-petitioners calling in question the propriety of the order dated 14.03.2018 passed in Title Suit No.144 of 2017 by the learned Joint District Judge, 3rd. Court, Sylhet rejecting the application filed by the plaintiffs for direction upon the defendants to produce relevant deeds and documents which were mentioned in an application filed under Order 7 Rule 11 (d) of the Code of Civil Procedure.

Short facts relevant for the purpose that could be gathered from

the file is that the suit land originally belonged to Kali Proshanno Datta Chowdhury and others. During S.A. operation it was correctly recorded in the name of the original owners. One Safat Ullah by registered 2(two) deeds Nos.5708 dated 30.08.1956 and 5198 dated 03.09.1956 respectively purchased 0.72 acres of land from S.A. Plot No.2268 from the recoded owner. Aforesaid Safat Ullah thereafter on 25.06.1957 and 15.08.1957 respectively by two registered deeds transferred the same in favour of Montaz Ali. Montaz Ali in his turn transferred the aforesaid purchased land i.e.0.72 acres along with other land in total 1.02 acres' land in favour of his son's wife Musammath Kutubun Nesa as defendant no.1. Kutubun Nesa mutated her name in the record of right by Mutation Case No.1587/1998-99 and till 1424 B.S. She paid rent to the government. In the recent settlement operation, the same land has also been recorded in the name of defendant and she has been owning and possessing the same as her homestead and adjoining land.

The petitioners filed an application for direction upon the defendants to produce an attested copy of the said deeds. The learned Joint District Judge, 3rd Court Sylhet after hearing rejected the aforementioned application dated 14.03.2018 and fixed the case on 21.03.2018 for hearing the petition under Order 7 Rule 11 of the Code and filing written objection.

None appeared to press the rule although the matter has been

occurring in the daily cause list over the period with the name of the advocate. Mr. M.A.Jabbar the learned advocate appeared on behalf of the opposite parties filed a counter affidavit.

Mr. M.A.Jabbar the learned advocate for the opposite parties submits that the plaintiffs earlier tried to obtain an order of temporary injunction from the trial court and being unsuccessful only to harass and creating obstruction on the way to disposal of the application filed by the defendants. Next contention of the learned advocate is that the learned Joint District Judge, 3rd Court, Sylhet rightly resolved the issue and rejected the same.

Next as the learned Advocate submits that the defendant opposite party No.1 Kutubun Nesa after getting the suit land along with other land by registered deed dated 20.6.1966 from her father in law Montaz Ali mutated her name in the record of right by Mutation Case No.1587 of 1998-1999 and upto 1424 B.S paid rent to the government and they have been possessing the suit land as their homestead. The plaintiffs with the aid of some baseless documents are claiming title of the suit land only to delay the disposal of the application filed by the defendants for rejection of the plaint and the learned Appellate Court seems to have rightly resolved the issue and rejected the application filed by the plaintiffs and we find ex-facie legality in the order of the lower appellate court.

Mr. Jabbar finally submits that though the order of the court

below is not elaborate one or speaking one but for that, the same is not liable to be set aside if on consideration of the materials on record it is seen that the order so passed is sustainable and in this connection he referred to decisions *reported in 57 DLR(AD) page-289 and 18 BLD(AD) page-121.*

We have gone through the materials annexed to the file and heard the learned advocate for the opposite parties and perused the revisional application and counter affidavit filed by the defendant opposite parties.

It appears that the learned Joint District Judge, 3rd Court, Sylhet has rejected the application of the plaintiffs dated 14.03.2018 because the settled principle of law is that the plaintiff is to prove his own case and in the instant suit the plaintiffs are not entitled to compel the defendants to file some documents on the basis of which they are claiming their title over the suit land and by the order dated 14.03.2018 learned Joint District Judge 3rd Court, Sylhet has not committed any error of law which has occasioned any failure of justice. I find no illegality in the order of the learned Joint District Judge, 3rd Court, Sylhet and finding nothing to interfere with the order dated 14.03.2018.

As a result, the Rule is discharged and the order passed by the learned Joint District Judge, 3rd Court, Sylhet in Title Suit No.144 of 2017 is hereby upheld.

However, there is no order as to cost.

The interim order of stay and status-quo passed at the time of issuance of the rule is hereby vacated.

The office is directed to communicate this judgment and order to the courts below, at once.

I agree

Justice Mamnoon Rahman

Bashar, B.O.