

Present:

Mr. Justice Sheikh Abdul Awal

Civil Revision No. 1728 of 2018

Kazi Enayet Hossain being dead his legal heirs Kazi Mizanur Shanto and others

.....Plaintiff-petitioners.

Versus

Mayor, Madaripur Poursava and others.

... Defendant-opposite parties.

Mr. Md. Humayun Kabir Bulbul, Advocate.

.....For the Plaintiff-petitioners.

Mr. Md. Alauddin, A.A.G.

..For the Pro-forma Defendant-opposite party No.4

Heard 22.08.2024, 01.09.2024 and

Judgment on 01.09.2024.

This Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and order dated 17.04.2017 passed by the learned Additional District Judge, Madaripur in Miscellaneous Appeal No. 27 of 2014 disallowing the appeal and affirming the order dated 10.08.2014 passed by the learned Senior Assistant Judge, Sadar, Madaripur in title Suit No. 153 of 2014 rejecting the application for temporary injunction 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 of the case, briefly, are that the petitioner as plaintiff filed Title Suit No. 153 of 2014 in the Court of the learned Senior Assistant Judge, Sadar, Madaripur impleading the opposite parties as defendants praying the following reliefs:

(ক) ১-৩ নং বিবাদীগন লোভের বশবর্তী হইয়া কলমি নকসায় অংকিত ক-খ-গ-ঘ-ঙ-চ-ক চিহ্নিত নালিশী ভূমিতে ৪/৫ নং বিবাদীর সহায়তায় জোর জবরানে অনুপ্রবেশ করিয়া বাদীকে বেদখল করিতে না পারে, গাছপালা কাটিয়া নিতে না পারে, ভূমিহীন মুক্তিযোদ্ধা ও হত দরিদ্রদের স্থানান্তর পুনর্বাসন ও পৌর আশ্রয়ন প্রকল্প এর জন্য কোন নির্মান কাজ করিতে না পারে বা অন্য লোক লোককে বেআইনীভাবে বন্দোবস্ত প্রদান করিতে না পারে বা অন্য কোনভাবে তপশীল বর্ণিত ভূমির নেচার পরিবর্তন করিতে না পারে সেই মর্মে এক চিরস্থায়ী নিষেধাজ্ঞার ডিক্রি দিতে;

(খ) মোকদ্দমার যাবতীয় খরচা বিবাদী অনুকূলে ডিক্রী দিতে;

(গ) আইন ও ইকুইটি মতে বাদীপক্ষ আর যে যে প্রতিকার ও উপকার পাইতে পারে তার ডিক্রী দিয়া সুবিচার করিতে আজ্ঞা হয়।

After institution of the suit, the plaintiff-petitioner filed an application under Order XXXIX, Rule 1 read with section 151 of the Code of Civil Procedure for temporary injunction.

Defendants resisted the said application by filing written objection contending, inter-alia, that the plaintiff has/had no right, title and possession in the suit land, the plaintiff filed the case on false averments and as such, the application for temporary injunction should be rejected.

The learned Senior Assistant Judge, Sadar, Madaripur after hearing the parties by his order dated 10.08.2014 rejected the application holding that the plaintiff has no prima-facie arguable case, balance of convenience and inconvenience is not in his favour.

Against which the plaintiff-petitioner preferred Miscellaneous Appeal No. 27 of 2014 before the learned District Judge, Madaripur which was subsequently transmitted to the Court of learned Additional District Judge, Madaripur for disposal, who by the impugned judgment and order dated

17.04.2017 dismissed the appeal and affirmed the order of the trial Court dated 10.08.2014 on the finding that: সার্বিক পর্যালোচনায় দেখা যায় যে, নালিশী জমি আর, এস জরীপে মাদারীপুর পৌরসভার নামে রেকর্ড হয়। এস, এ জরীপেও অনুরূপ। মাদারীপুর পৌরসভা নালিশী ভূমির দখলে থেকে উন্নয়ন কার্যক্রমে পরিচালনা করছে। নালিশী জমি সরকারী খাস জমি হিসাবে অন্তর্ভুক্তি করার কোন কাগজপত্র বাদীপক্ষ আদালতে দাখিল করতে পারেন নাই এবং বন্দোবস্ত গ্রহণের সকল কাগজপত্র আদালতে দাখিল করেন নাই।

Being aggrieved by the aforesaid judgment and order dated 17.04.2017 passed by the learned Additional District Judge, Madaripur the plaintiff-petitioner moved before this Court and obtained the present Rule.

Mr. Md. Humayun Kabir Bulbul, the learned Advocate appearing for the plaintiff-petitioner submits that the suit property as khas land of the Government leased out in favour of the plaintiff petitioner through Settlement Case No. $\frac{XII-M-46/86-87}{XII-MC-106/85-86}$ and lease deed No. 1118 dated 28.02.1987 and also handed over the possession of the suit land in favour of the plaintiff. The learned Advocate further submits that proposed khatian issued in favour of the plaintiff and the plaintiff petitioner paid rent to the Government which has been filed before the trial Court below. He further submits that the suit lan was recorded in BS khatian No. 358 in the name of the plaintiff-petitioner and all these material documents indicate that the plaintiff has/had good arguable case in his favour and balance of convenience and inconvenience is well in favour of the plaintiff-petitioner.

Mr. Md. Alauddin, the learned Assistant Attorney General appearing for the Government pro-forma defendant-opposite

party No. 4 submits that the Government is a pro-forma respondent in the case, the record shows that the Government leased out the suit property in favour of the plaintiff-petitioner. He, however, did not add any further submission.

I have considered the submissions of the learned Advocate for the plaintiff-petitioner and the learned Assistant Attorney General and having gone through the materials on record, the only question that calls for my consideration in this Rule is whether the Courts below committed any error in finding that the plaintiff petitioner has no prima-facie arguable case, balance of convenience and inconvenience is not in his favour.

On perusal of the record, it appears that the plaintiff-petitioner filed Title Suit No. 153 of 2014 for permanent injunction in the Court of the learned Senior Assistant Judge, Sadar, Madaripur and soon thereafter he filed an application under Order XXXIX, Rule 1 read with section 151 of the Code of Civil Procedure for temporary injunction and both the Courts below rejected the said application on the ground that the plaintiff has/had no prima-facie arguable case in his favour, all the record of right prepared in the name of paurashava. It further appears that in this case the property in question was leased out in favour of plaintiff on 28.02.1987 through Settlement Case No. $\frac{XII-M-46/86-87}{XII-MC-10/85-86}$ and thereafter, the Government also handed over the possession in favour of the plaintiff-petitioner, who paid rent to the Government and he also filed all the documents to strengthen his right, title and possession in the suit land. All these documents show that the plaintiff-petitioner has/had good prima-facie arguable case in his favour and balance

of convenience and inconvenience is well in favour of the plaintiff-petitioner. Therefore, the reasons given by the courts below for passing the rejection order are not sustainable either in law or on facts.

It is found that at the time of issuance of this Rule a single Bench of this Court by the Rule issuing order dated 28.05.2018 granted temporary injunction in the following language that:

“Pending disposal of the Rule, let the opposite parties be restrained by an order of injunction from dispossessing the petitioners, from cutting trees and from erecting houses on the suit land for a period of 6 (six) months.” and the said order of injunction was extended time to time and finally, it was extended till disposal of the Rule on 25.11.2019.

Considering all the aspects of the case particularly in a case of this nature, I am of the view that ends of justice will sufficiently be met if the ad-interim order of injunction is extended till disposal of the Title Suit No. 153 of 2014.

The Rule is, therefore, made absolute without any order as to costs, impugned judgment and order dated 17.04.2017 passed by the learned Additional District Judge, Madaripur in Miscellaneous Appeal No. 27 of 2014 affirming the order dated 10.08.2014 passed by the learned Senior Assistant Judge, Madaripur Sadar, Madaripur in Title Suit No. 153 of 2014 is set-aside. Application of the plaintiff-petitioner for ad-interim injunction filed before the Senior Assistant Judge, Sadar, Madaripur (Annexure-B) is allowed and that the order of

injunction dated 28.05.2018 passed by this Court is hereby extended till disposal of the Title Suit No. 153 of 2014.

Since the suit is an old one of 2014, the trial Court below is directed to dispose of the suit expeditiously as early as possible preferably within 1 year from the date of receipt of this judgment.

Let a copy of the judgment be sent down at once.