

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 434 of 2019

IN THE MATTER OF

Phoenix Finance and Investment Limited is
represented by its Managing Director S.M. Intekhab
Alam

.....Plaintiff-Petitioner

-Versus-

Mercantile Bank Limited and others

.....Defendants-Opposite parties

Mr. Shahjada Al Amin Kabir, Advocate

.....For the petitioner

Mr. Kazi Md. Nurul Amin, Advocate

.....For opposite party No.1

Heard on 09.02.23, 07.03.23, 10.05.23, 18.05.23 and judgment passed on
22.05.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(4) of the Code of Civil
Procedure, 1908, was issued in the following term-

*“Let the leave be granted. Records be called for. Let a
Rule be issued calling upon the opposite parties to show
cause as to why the impugned judgment and order dated
26.10.2018 passed by the learned Additional District Judge,*

1st Court, Dhaka in Civil Revision No. 192 of 2017 reversing the Order dated 30.07.2017 passed by the learned Senior Assistant Judge, 4th Court, Dhaka in Title Suit No. 375 of 2016 and allowing the application filed by opposite party No. 1 under Order VII, rule 11(a)(d) of the Code of Civil Procedure, 1908 and thereby rejecting the plaint of Title Suit No. 375 of 2016 for permanent injunction should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this Court stayed the operation of the impugned judgment and order dated 26.10.2018 for 06(six) months from the date and lastly, it was extended on 31.08.2022 for 06 months from the date.

The present petitioner as the plaintiff filed Title Suit No. 375 of 2016 for a permanent injunction against the present opposite parties as the defendants in respect of 9,436.52 square feet in the 9th floor out of 28,309.56 square feet of the 7th to 9th floors of the 10-storied building “Globe Shopping Centre” along with proportionate land measuring 0.0230 acres out of 0.0691 acres at Dhanmondi.

The case of the plaintiff, in short, is that the plaintiff is the actual owner and possessor of the scheduled floor measuring 9,436.52 square feet in the 9th floor out of 28,309.56 square feet of 7th to 9th floors of the 10-storied building, "Globe Shopping Centre" along with proportionate land measuring 0.0230 acres out of 0.0691 acres situated at Police Station-Dhanmondi, Mouza-Dhanmondi, Khatian Nos. CS 73, SA 1077, RS 2032 and 387, City Jorip Khatian No. 10506 and Dag Nos. CS 626, SA 2276 & 2498, and RS 5112 and 5109, City Jorip Nos. 10515, 10516 & 10517, Mutation Khatian No. 2032/11, Jote No. 10745 and holding Nos. 24/1 (new) and 24 (old), Mirpur Road, Dhaka. The plaintiff's predecessors 1) Alhaj Md. Johirul Haque, 2) Mrs. Shamima Haque, 3) Alhaj Hasib Johir, 4) Alhaj Most. Hamim Johir, and 5) Alhaj Most. Hafiza Johir became the owner of the scheduled land measuring 0.2504 acres by dint of different Saf Kabala Deed Nos. 2704, 2705, 2706, 2707, 2708 dated 23.08.1978 and Saf Kabala Deed Nos. 2783, 2784, 2785 dated 29.08.1978 and Saf Kabala Deed Nos. 2833, 2834, 2836, 2837, 2846 and 2847 dated 31.08.1978. They mutated their names, paid the ground rent duly, and possessed the scheduled land without any interference from any quarter. Subsequently, the aforesaid owners executed a registered Irrevocable General Power

of Attorney (IGPA) vide No. 2086 dated 14.06.1999 in favor of the plaintiff, opposite party No. 2. Being empowered by the said IGPA, opposite party No. 2, developed a 10-storied building in the entire scheduled land. Thereafter, opposite party No. 2 sold out the scheduled floor measuring 9,436.52 square feet along with 2 (two) other floors in total 28,309.56 square feet with the proportionate land in favor of the plaintiff by dint of Saf Kabala Deed No. 7858 dated 22.12.2004. Opposite party No. 2 also sold out the scheduled 6th floor measuring 9,436.52 square feet along with proportionate land in favor of the plaintiff by dint of another Saf Kabala Deed No. 11256 dated 13.12.2006. After purchase the plaintiff mutated the scheduled land in its name vide Mutation and Separation Case No. 1444/07 dated 15.05.2007, and a separate "Jote" was created in the plaintiff's name being No. 10745. The plaintiff has been paying ground rent accordingly. Thereafter, upon an application of the plaintiff, the Dhaka City Corporation issued a new holding No. 24/1 in favor of the plaintiff. The plaintiff has possessed the scheduled property peacefully without any interference from any quarter since 13.12.2006. Having owned and possessed the scheduled property along with other properties peacefully for a long time, the plaintiff sold out the 6th, 7th & 8th

floors of the scheduled 10-storied building in favor of Sundarban Scientific Culture Ltd. and handed over the possession of those floors measuring 28,309.56 square feet along with proportionate land. The plaintiff lodged a General Diary on 27.08.2007 with the New Market Police Station stating its general apprehension that anyone may claim the scheduled property owned by the plaintiff through any false deed or anything else. But all of a sudden on 02.10.2016, opposite party No. 1 along with some miscreants went to the scheduled property and claimed the land and threatened the caretaker of the plaintiff to oust from the scheduled property stating that they owned the property by dint of some unregistered mortgages. But they didn't show any documents so far. Opposite party No. 1 continued to treat the plaintiff to dispossess from the scheduled land and property. In the premises, the plaintiff tried to lodge a General Diary on 02.10.2016 stating the plaintiff's apprehension of an actual threat of dispossession, but the concerned Duty Officer denied accepting the G.D.

Defendant-Opposite party No. 1-Mercantile Bank Limited filed an application under Order VII rule 11(a) and (d) of the Code of Civil Procedure, 1908 for rejection of the plaint stating, inter alia, that opposite party No. 2-Globe Construction Ltd. and its subsidiary

organizations, namely, Jonokontho Ltd. and Globe Insecticide Ltd. are the defaulter-borrowers of opposite party No. 1-Bank. Opposite party No. 2 executed an equitable mortgage and memorandum of deposit of title deeds in favor of the Bank. But later on, opposite party No. 2 defaulted to pay the loans and opposite party No. 1 filed Artho Rin Suit No. 141 of 2007 against opposite party No. 2, and Artho Rin Suit No. 140 of 2007 against Jonokontho Ltd., and Artho Rin Suit No. 142 of 2007 against Globe Insecticide Ltd., which were decreed on 20.06.2010 and 24.05.2010 respectively. Pursuant thereto, opposite party No. 1 filed Artho Jari Case No. 353 of 2010 against opposite party No. 2 and Arthor Jari Case Nos. 359 of 2010 and 352 of 2010 against Jonokontho Ltd. and Globe Insecticide Ltd. respectively. Thereafter, opposite party No. 1 obtained a possession and enjoyment certificate for the scheduled land under section 33(5) of the Artharin Adalat Ain, 2003 (in short, the Ain, 2003) against opposite party No. 2 and 2 others, and the Court issued a civil warrant against the judgment-debtors in Artho Jari Case Nos. 353 of 2010 and 359 of 2010. Against which the plaintiff filed a written objection praying for rejection of the application. The learned Senior Assistant Judge, 4th Court, Dhaka after hearing

the said application by judgment and order dated 30.07.2017 rejected the application for rejection of the plaint.

Being aggrieved by the said impugned judgment and order dated 30.07.2017 defendant No. 1 preferred a civil revision before the learned District Judge, Dhaka, and the same was numbered Civil Revision No. 192 of 2017. On transfer, the learned Additional District Judge, 1st Court, Dhaka after hearing the parties by judgment and order dated 26.10.2018 allowed the civil revision, set aside the judgment and order of the Trial Court, and allowed the application for rejection of the plaint filed under Order VII rule 11(a) (d) of the Code of Civil Procedure and rejected the plaint of Title Suit No. 375 of 2016.

Being aggrieved by and dissatisfied with the said impugned judgment and order dated 26.10.2018 the plaintiff as the petitioner had preferred the instant civil revision before this Court and obtained the present Rule which is before us for consideration.

Anyway, Mr. Shahjada Al Amin Kabir, the learned Advocate appearing for the plaintiff-petitioner submits that section 20 of the Artharin Adalat Ain, 2003 does not apply in the instant suit as the suit is not filed by the plaintiff challenging any order, proceeding, judgment and decree of the Artharin Adalat, rather; the plaintiff

filed the instant suit praying for refraining the defendants permanently from entering into the scheduled property and for refraining them from disturbing peaceful possession of the plaintiff over the said property, and section 32 of the Ain, 2003 does not debar the applicability of the provisions of the Code of Civil Procedure.

He further submits that the learned Judge of the Lower Revisional Court mechanically observed that the instant suit is barred by section 20 of the Ain, 2003 though the petitioner did not challenge any proceeding, order, or judgment and decree passed by the Artharin Adalat. It also mechanically observed that the petitioner had an alternative remedy under section 32 of the Ain, 2003.

He lastly submits that the learned lower Revisional Court committed a serious error of an important question of law by not considering the fact that the instant petitioner purchased the scheduled land from opposite party No. 2 by dint of Saf Kabala deed No. 7858 dated 22.02.2004 and mutated its name and paid ground rent and possessed the land by opening separate holding number which is well before the filing of the Artho Rin Suits by opposite party No. 1 against opposite party No.2 and such failure of

the learned Judge of the Revisional Court below occasioned a failure of justice, hence, the impugned judgment and decree are liable to be set aside.

Conversely, Mr. Kazi Md. Nurul Amin, the learned Advocate appearing for opposite party No.1-Bank submits that the scheduled property of Artha Jari Case No. 353 of 2010 and 359 of 2010 has been stricken out and the same property has been included in the schedule of Artha Jari Case No. 352 of 2010, and Artha Rin Adalat No. 2, Dhaka has issued a certificate under section 33(5) of the Ain, 2003 and opposite party No. 1-Bank sold out the property through auction. Since the said scheduled property of the Jari case and the scheduled property of the instant suit are the same and as such, no case is maintainable under the provision of any other law. He further submits that the learned Judge of the Revisional Court below rightly rejected the plaint of Title Suit No. 375 of 2016 filed for a permanent injunction because of the provision of section 20 of the Ain, 2003 and thereby committed no illegality occasioning failure of justice.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the scheduled property of Artha Execution Case Nos. 353 of 2010 and 359 of 2010

have been stricken out and have been included in the schedule of Artha Execution Case No. 352 of 2010. But it appears that the same scheduled property of Artha Execution Case No.352 of 2010 has been included in the schedule of the instant suit for permanent injunction, and as per the provision of section 20 of the Ain, 2003 there is a bar in filing any suit against any scheduled property of any artharin case. The said section of Artharin Adalat Ain, 2003 is quoted below for ready reference-

“২০। অর্থ ঋণ আদালতের আদেশের চূড়ান্ততা।-এই আইনের বিধান ব্যতিরেকে, কোন আদালত বা কর্তৃপক্ষের নিকট অর্থ ঋণ আদালতে বিচারাধীন কোন কার্যধারা বা উহার কোন আদেশ, রায় বা ডিক্রীর কোন প্রশ্ন উত্থাপন করা যাইবে না, এবং এই আইনের বিধানকে উপেক্ষা করিয়া কোন আদালত বা কর্তৃপক্ষের নিকট আবেদন করিয়া কোন প্রকার দাবী বা প্রার্থনা করা হইলে, ঐরূপ আবেদন কোন আদালত বা কর্তৃপক্ষ গ্রাহ্য করিবে না।”

Given the above, it appears that the learned Judge of the Revisional Court below considering the facts and circumstances of the case and the materials on record rightly passed the impugned judgment and order rejecting the plaint of the instant suit for permanent injunction and thereby committed no error of an important question of law resulting in erroneous decision occasioning failure of justice.

Because of the above, I do not find any substance in the submissions made by the learned Advocate for the petitioner; rather I find substance in the submissions made by the learned Advocate for opposite party No. 1-Bank. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

The impugned judgment and order dated 26.10.2018 passed by the learned Additional District Judge, 1st Court, Dhaka in Civil Revision No. 192 of 2017 reversing the order dated 30.07.2017 passed by the learned Senior Assistant Judge, 4th Court, Dhaka in Title Suit No. 375 of 2016 and allowing the application filed by opposite party No. 1 under Order VII, rule 11(a)(d) of the Code of Civil Procedure, 1908 and thereby rejecting the plaint of Title Suit No. 375 of 2016 is hereby upheld.

Stay, if any, vacated.

Send a copy of this judgment along with the Lower Court Records to the Court below at once.