

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 1367 OF 2018.

Serajul Islam and others

...Petitioners.

-Versus-

Md. Sujan Bhuiyan and others

....Opposite parties.

None appears

... For the petitioner.

Mr. Md. Shahidul Islam, Advocate

... For the opposite parties.

Heard On: 02.06.2024.

Judgment on: 04.06.2024,

Md. Badruzzaman,J

This matter has been sent by the Hon'ble Chief Justice for disposal and the matter has placed in the daily cause list for hearing on 26.05.2024 for hearing and thereafter, the matter was taken up for hearing on 27.05.2024 and 28.05.2024 but none appeared to press the Rule. Today also none appears for the petitioner when the matter is taken up for hearing. However, considering the facts and circumstances of the case and relevant provisions of law we are of the view that this Rule should be disposed of in absence of the petitioners because only law points are involved in this matter.

The Rule was issued calling upon opposite party Nos. 1-5 to show cause as to why judgment and order dated 21.01.2018 passed by learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 41 of 2006 rejecting an application filed by defendant-petitioner under Order 39 rule 1 and 2 of the Code of Civil Procedure should not be set aside.

Facts relevant, for the purpose of disposal of this Rule, are that opposite party Nos. 1-5 instituted Title Suit No. 41 of 2006 against the petitioner and others for a decree of declaration that judgment and decree dated 03.11.1996 (decree signed on 27.11.1996) passed in Title Suit No. 238 of 1992 by learned Joint District Judge, 3rd Court, Dhaka was collusive and not binding upon the plaintiffs along with another decree of declaration of title of the plaintiffs to Ga schedule suit land and further decree of declaration of title in respect Gha schedule land in favour of plaintiff No. 5.

During pendency of the suit defendant Nos. 18 (Kha)-18 (Chh)a filed an application under Order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure read with section 55 of the Specific Relief Act praying for restraining defendant Nos. 6-7 from making any construction or changing the nature and character of Gha schedule suit land and the trial Court, upon hearing the parties, vide impugned order dated 21.01.2018 rejected the application.

Opposite party Nos. 1-5 entered appearance by filing Voklatnama.

We have gone through the revisional application along with other documents as annexed with the application, impugned order and the grounds taken in the revision. It has been contended that the trial Court without considering the case of the petitioners illegally rejected the application.

On the other hand Mr. Md. Shahidul Islam, learned Advocate appearing for opposite party Nos. 1-5 submits that the trial Court being found no *prima-facie* title to and possession in the suit land in favour of the petitioners rightly rejected the application. Learned Advocate further submits that an application under section 55 of the Specific

Relief Act is not maintainable in a pending suit and as such the trial Court came to the conclusion that the petitioners were not entitled to any order upon the application filed by them.

We have heard the learned Advocate for the opposite parties as well as considered the grounds taken in the revisional application. In the application filed by defendant Nos. 18 (Kha)-18 (Chha) they stated that defendant Nos. 6 and 7 by illegal force trying to make construction in the suit land but in the application for injunction the defendants could not make out a *prima-facie* case of their title to and possession in the suit land and did not state anything that they would be prejudiced if injunction is not granted. Moreover, an application under section 55 of the Specific Relief Act is not maintainable in a pending suit restraining the other party.

Accordingly, we are of the view that the trial Court committed no illegality in passing the impugned order.

In that view of the matter we find no merit in this Rule.

In the result, the Rule is discharged however, without any order as to costs.

The trial Court is directed to proceed with the suit in accordance with law.

Communicate a copy of this judgment to the Courts below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)