

Supreme Court of Bangladesh
High Court Division, Dhaka.

V.C. F. M. A. No. 16 (Annex-35) of 2020

Most. Nurunnahar Begum *Vs. The Government of Bangladesh represented by the Deputy Commissioner, Pabna and others*

(District- Pabna)

Present:

Mr. Justice Md. Mozibur Rahman Miah

22.06.2020

Mr. Md. Alamgir Mostafizur Rahman, Advocate

....For the Appellant

Mr. Md. Jahangir Alam, DAG

...For the Government

This appeal is directed against the judgment and order dated 09.03.2020 passed by the learned Joint District Judge, 2nd Court, Pabna in Other Class Suit No. 366 of 2018 rejecting the application filed by the plaintiff-appellant under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 for temporary injunction.

Mr. Md. Alamgir Mostafizur Rahman, the learned counsel appearing of the appellant upon taking me to the impugned order as well as other documents annexed with the application for temporary injunction chiefly contends that, since the plaintiff has been in possession over the suit property so she was entitled to have an order of injunction from the trial court, but without considering the said aspect the learned Joint District Judge has erroneously rejected the said application which cannot be sustained.

The learned counsel further contends that, though there has been no assertion in the plaint as regards to the manner of possession held by the plaintiff but subsequently a local inspection was made through which it has been found that there has been some establishment in the said property that denotes, the defendants have put-up some establishment over the suit property.

The learned counsel lastly contends that, since by this time out of the total suit plots, 6(six) plots have been deleted from the schedule of the plaint finding those not to included in the 'ka' list and a writ petition has been pending before this court, so to protect the interest of the plaintiff, she may be allowed to enjoy the possession by granting temporary injunction.

On the contrary, Mr. Md. Jahangir Alam, the learned Deputy Attorney-General appearing for the government very candidly opposes the contention of the learned counsel for the appellant and contends that, it is in the impugned order that, over the self-same property, the full-brother of the appellant had earlier filed Other Class Suit No. 102 of

1990 which was dismissed and then an appeal being Other Class Appeal No. 193 of 1994 was preferred which was also dismissed and ultimately a Civil Revision No. 666 of 2008 was filed and the rule issued was ultimately discharged, so the appellant in an afterthought manner filed the suit which cannot be maintained.

The learned Deputy Attorney-General further avers that since S.A and R.S record has been prepared in the name of the Government, so there has been no material substance of the 'Dakhila' shown by the learned counsel for the appellant as a basis of claim of acquiring title.

The learned Deputy Attorney-General wrapped up his submission contending that, since there has been no assertion neither in the plaint nor in the application for temporary injunction about the manner of holding possession by the petitioner in the suit property, it clearly lacks any *prima facie* case so the present appeal is liable to be dismissed and the appellant is not entitled to any interim order as prayed for.

Anyway, I have considered the submissions so placed by the learned counsel for the appellant and that of the learned Deputy Attorney-General for the Government-respondents.

There has been no gainsaying of facts that, the plaintiff filed the suit challenging the preparation of two consecutive records i.e. S.A and R.S records and the suit is still pending. It is also not denied by the learned counsel for the appellant, that over the self-same property the full-brother of the present appellant Mr. Rezaur Rahman had earlier filed a suit and that very suit was ultimately dismissed by this court. At this, when I ask the learned counsel for the appellant to show me how the cause of action in filing the application for temporary injunction arose, the learned counsel then refers me to paragraph no. 3 of the application for temporary injunction (which is annexed as Annexure-'C' to the application for temporary injunction). But ongoing though the said paragraph, I don't find any description of threat or that of attempt of putting up establishment in the suit land on the part of the defendants or to cut away any trees as submitted by the learned counsel for the petitioner. On top of that, the plaintiff-petitioner has utterly failed to prove her *prima facie* case as well as possession in the suit property so in such circumstances the instant appeal let alone the application for temporary injunction cannot be entertained.

I have also examined the impugned order and find that the learned Joint District Judge, 2nd Court, Pabna has elaborately discussed all these points and very perfectly rejected the application vide impugned order which calls for no interference.

Accordingly, this appeal is dismissed summarily.

Let a copy of this order be sent to the court concern at once.

Sd/-


Md. Mozibur Rahman Miah

Copy for kind information & necessary action to:

01. Mr. Faysal Hasan Arif, Advocate -For the appellants.

Attested
H
24.06.20
Md. Omar Hayder
Assistant Registrar (Budget)
Bangladesh Supreme Court.
High Court Division, Dhaka.

By order of the Court


24.06.2020
(Md. Abdul Kuddus)
Bench Officer
courtannex35@gmail.com

মোঃ আবদুল কুদ্দুছ
বেঞ্চ অফিসার
বাংলাদেশ সুপ্রীম কোর্ট
হাইকোর্ট বিভাগ, ঢাকা।