

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

Civil Revision No. 1686 of 2020

Md. Shahjahan and another petitioners

-Versus-

Md. Shamsul Huda Khan and others

.....opposite parties

Mr. Humayun Kabir, Advocate

..... for the petitioners

Mr. Shamsul Hoque Bhuiyan with Mr.

Muhammad Mahadi Hasan, Advocates

..... for the opposite parties

Judgment on 04.02.2024

Bhishmadev Chakrabortty, J.

In this Rule plaintiff-opposite parties 1 and 2 were called upon to show cause as to why order dated 17.09.2020 passed by the Joint District Judge, Additional Court, Gazipur in Title Suit No.195 of 2012 allowing the application for mandatory injunction should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

At the time of issuing the Rule, operation of the impugned judgment and order was stayed for a limited period which was subsequently extended till disposal of the Rule.

Facts relevant for disposal of the Rule, in brief, are that the above opposite parties 1 and 2 as plaintiffs instituted the suit claiming *saham* to the extent of 1.25 acres out of 2.55 acres of land appertaining to CS *Khatian 27*, SA *Khatian 77*, CS and SA plot 197

measuring 2.26 acres and CS and SA plot 209 measuring .17 acres as detailed to the schedule of the plaint.

During pending of the suit, the plaintiffs filed an application under Order 39 Rule 1 of the Code of Civil Procedure (the Code) praying for temporary injunction restraining the defendants from cutting down trees of the suit land with further prayer from changing the nature and character of it and restraining the defendants from erecting any house thereon. The Joint District Judge by its order dated 25.01.2011 allowed the said application and granted an *ex parte* order of temporary injunction as prayed for. Subsequently, the plaintiffs filed an application before the selfsame Court under Order 39 Rule 1 read with section 151 of the Code praying for mandatory injunction against defendants 1(Ka)-1(Yea) and 2, 3 and 4 stating facts that while the aforesaid order of temporary injunction was in force, the defendants on 04.06.2019, 09.06.2019 and 10.06.2019 erected 3(three) *tin shed* houses over the suit land and thus violated the Court's order. The plaintiff prayed for an order of direction upon the defendants to remove the *tin shed* houses so erected. The contesting defendants filed two separate sets of written objections against the aforesaid application for mandatory injunction. In the written objection they denied the facts stated in the application. They further contended that the parties were in joint possession in the suit land and they did not erect any *tin shed* house over the suit land. The plaintiffs' claimed land is unspecified. In the plaint as well as in the application

for temporary injunction they did not tell from which plots they had been possessing their claimed 1.25 acres of land. The claimed land is not well bounded and as such the application for mandatory injunction would be rejected. The learned Joint District Judge heard both the parties and found that the defendants erected *tin shed* houses in the suit premise and as such allowed the application directing the defendants to remove the erected houses from the suit land.

Against the aforesaid judgment and order passed by the Joint District Judge defendants 3 and 4 approached this Court and obtained this Rule with *an interim* order of stay.

Mr. Humayun Kabir, learned Advocate for the petitioners takes us through the plaint, applications for temporary and mandatory injunction and the impugned order and submits that the suit land is unspecified. The plaintiffs did not state RS *Khatian* number that attracts the suit land. They did not even mention wherefrom they possessed their claimed land of 1.25 acres. In the application for injunction the schedule is also vague. The plaintiffs did not mention the boundary of the suit land. In the premises above they are not entitled to get an order of injunction. Therefore, the impugned order of mandatory injunction passed by the Joint District Judge cannot be sustained in law. He refers to the provisions of Order 7 Rule 3 of the Code and submits that to get any sort of injunction the suit land is to be described by metes and bounds but in this suit it is vague. The

learned Joint District Judge without considering the aforesaid facts and law allowed the application for temporary mandatory injunction and thereby committed error of law and as such the impugned order is to be interfered with by this Court.

Mr. Shamsul Haoqe Bhuiyan, learned Advocate for opposite parties 1 and 2 on the other hand opposes the Rule and submits that the plaintiffs application under Order 39 Rule 1 read with section 151 of the Code for mandatory injunction was allowed by the Joint District Judge. The order is appealable under Order 43 Rule 1(r) of the Code. The instant revisional application is, therefore, not maintainable. He refers to the cases of Ministry of Communication, Railway Division, People's Republic of Bangladesh and others Vs. Md. Ferozur Rahman and others, 45 DLR 762; the National Bank of India Ltd. Narayanganj Vs. Yakub Mia of Yakub Stores, 7 DLR 606 and Golam Mostafa Vs. Hazi Motiur Rahman, 5 BCR 133 and relied on the *ratio* laid therein. In reply to the submission of the petitioner about unspecified land, he refers to the case of Abul Kalam Vs. Md. Abu Taher and others, 8 BLC (AD) 149 and submits that it is well settled position of law that in a dispute between the area and the boundary the boundary shall prevail. In the application for mandatory injunction the plaintiffs bounded the land at the bottom of schedule, “যাহা সাবেক ১৯৭ দাগের চালা জমি, যাহার উত্তরে ছালাম নং, দক্ষিণে জয়নাল গং, পূর্বে তাইজ উদ্দিন গং, পশ্চিমে বাদীর নিজ জোত।” The Joint District Judge on correct appreciation of fact and law allowed the application for mandatory

injunction and directed the petitioners to remove the houses erected on the suit land which may not be interfered with by this Court in revision.

We have considered the submissions of both the sides, gone through the impugned order, annexures appended with the application and *ratio* of the cases cited. It transpires that the original suit was filed for partition claiming *saham* to the extent of 1.25 acres out of 2.55 acres as detailed to the schedule of the plaint. In the schedule of the plaint the land has been described as *mouja Beldia CS Khatian 27, SA Khatian 77, CS and SA plots 197* to the extent of 2.26 acres and CS and SA plot 209 measuring .17 acres. RS *Khatian No.156* in respect of the suit land has been described in the plaint as well as in the schedule of the application for temporary injunction in 8 different plots.

In the application for temporary injunction the plaintiffs prayed for an order restraining the defendants from changing the nature and character of the suit land and also restraining them from erecting any house over the schedule suit land. Initially the Joint District Judge issued a show cause notice upon the defendants but they did not appear. Then the plaintiffs filed an application on 25.01.2011 under section 151 of the Code for ad interim order and the learned Judge passed the order as under-

“Hd. order after perusing record (VOP) নথিটি দরখাস্ত
শুনানীর জন্য লওয়া হইল। Hd. Allowed as the O/P has not shown

any cause. Ex parte order of injunction be issued as prayed for (VOP).”

It is clear from the aforesaid order of temporary injunction that the learned Judge granted temporary injunction according to the prayer of the application. In the application the plaintiffs prayed for restraining the defendants from changing the nature and character of the suit land and from erecting any house over the suit land as detailed to the schedule of the application. As per the schedule of the application total 2.55 acres of land was shown as suit land out of which the plaintiffs claimed 1.25 acres. Although it is not specified from which plots they have been claiming the land but fact remains that the order of injunction was passed as prayed for by the plaintiffs. The defendants did not challenge the aforesaid order in the higher Court, so the order of injunction remained as it is. The allegation brought by the plaintiffs in the application for temporary mandatory injunction that during subsisting of the order of temporary injunction defendants entered into suit land on 04.06.2019, 09.06.2019 and 10.06.2019 and erected 3(three) *tin shed* houses thereon. The plaintiffs prayed for direction upon the defendants to remove the *tin shed* houses erected on the suit land. After receiving the said application the learned Joint District Judge appointed an Advocate Commissioner for holding local investigation. The Advocate Commissioner submitted a report on 23.09.2019 to the effect that he found 3(three) *tin shed* houses and a *tin shed* building erected over the suit land

recently. The Advocate Commissioner was examined and the report was marked as exhibit-X. He was cross-examined by the defendants.

It is found that the defendants admitted that they and the plaintiffs are in joint possession over the schedule suit land. In the written objection they stated that they did not erect any *tin shed* house over the land possessed by the plaintiffs. In fact they did not deny the fact of erecting houses over the suit land as detailed to the schedule of the plaint as well as the application for temporary injunction. The injunction order was passed as per the prayer which means that the defendants were restrained from erecting any house over the suit land measuring an area of 2.55 acres. The Advocate Commissioner was cross-examined by the defendants but nothing came out adverse to his report. It is found from the report that on the alleged dates the defendants erected three tin shed houses over disputed 2.55 acres of land and subsequently made another tin shed building over it. Since injunction order has been passed over 2.55 acres of land as detailed to the schedule of the plaint as well as the injunction application, therefore, the defendants had to obey the order. They cannot erect any house on any part of the suit land even in the part they are in possession as claimed. The learned Joint District Judge relying on the report of the Advocate commissioner correctly held that the defendants violated the Court's order of injunction and erected the aforesaid houses over the suit land and passed order to demolish those.

The submission of the learned Advocate for the petitioners about unspecified land relying the provision of Order 7 Rule 3 of the Code do not match this case. The instant revision is maintainable as well because the learned Judge applied his jurisdiction under section 151 of the Code and allowed the application for temporary mandatory injunction which is revisable. There could be no reason to the file appeal under Order 43 Rule1(r) of the Code.

Under the aforesaid discussion, we find no merit in this Rule.

Accordingly, the Rule is discharged without any order as to costs. The judgment and order passed by the trial Court is hereby affirmed.

However, the trial Court is directed to dispose of the suit expeditiously, preferably within 06(six) months from the date of receipt of this judgment and order.

Communicate the judgment to the concerned Court.

Md. Akhtaruzzaman, J.

I agree.