

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 2547 of 2019

Sawdagor Ahmed

.....petitioner

-Versus-

Mayor, Sylhet City Corporation and others

..... Opposite parties

Mr. Sudipta Arjun with

Mrs. Nazma Rahman, Advocate

..... For the petitioner

Mr. Choudhury Murshed Kamal Tipu with

Mr. A.K. Khan Uzzal with

Mr. Shah Navila Kashphi, Advocates

..... For the Opposite Parties

Heard on: 31.07.2023, 09.10.2023,
15.10.2023 and

Judgment on 17.10. 2023

Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and decree dated 25.08.2019 passed by the Joint District Judge, 1st Court, Sylhet in Title Appeal No. 150 of 2008 dismissing the appeal affirming the judgment and decree dated 28.06.2018 passed by the Assistant Judge, Fenchuganj, Sylhet in Title Suit No. 36 of 2007 dismissing the suit should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant petitioner as plaintiff instituted Title Suit No. 178 of 2016 before the court of Senior Assistant Judge, Sadar, Sylhet praying for declaration that the notice dated 13.04.2016

issued under the signature of defendant No. 5 in the suit is illegal, collusive, without jurisdiction and void etc. impleading the opposite party as defendant in the suit. The trial court upon hearing the parties, adducing evidences, taking deposition and framing issues etc. dismissed the suit by its judgment and decree dated 28.06.2018. Being aggrieved by the judgment and decree of the trial court the plaintiff appellant petitioner in the suit filed Title Appeal No. 150 of 2018 which was heard by the learned Joint District Judge, First Court, Sylhet. Upon hearing the appeal the Appellate Court dismissed the appeal by its judgment and decree dated 25.08.2019 (decree signed on 02.09.2019) and thereby affirmed the judgment of the trial court passed earlier.

Being aggrieved by the judgment and decree of the appellate court, the plaintiff in the suit being appellant in the appeal as petitioner filed the instant civil revisional application which is presently before this court for disposal.

The plaintiff's case inter alia is that the suit land of S.A. Plot No. 732 originally belonged to Abdur Rahim who died leaving behind 3 sons namely Abdus Shahid, Mortuz Ali, Belal Uddin, 2 daughters namely Sirajunnessa, Azizunnessa and a wife Nureza Bibi. During settlement survey operation, the suit plot was recorded in the name of said three sons, but mistakenly the names of 2 daughters and wife of Abdur Rahim were not inserted although all of his heirs were in possession of their respective

shares. Abdus Shahid died leaving the rest without having any children. Later on Sirajunnessa, Azizunnessa and Nureza Bibi transferred their portion of shares to Bilal Uddin. While said Mortuj Alia and Bilal Uddin were in possession of their respective shares, Mortuj Ali transferred more than his shares in the suit plot and Bilal Uddin remained in possession of 0.15 acres of land after transferring his remaining shares. While said Bilal Uddin had been possessing 0.15 acres of land including the suit land by constructing homestead and kaccha pucca shops, he died leaving behind two wives Golai Begum, Saytunnessa, 3 sons Sawdagor Ahmed, Mijan Uddin, Maruf Uddin and 3 daughters Sabina Begum, Jumera Begum and Gulshan Begum as heirs. That while the plaintiff has been in possession of the suit land along with his other co-sharers, he applied to the Sylhet City Corporation along with the map of the proposed shops for constructing half pucca shop house thereon, that the city corporation after investigation and on receipt of Tk. 2000/- gave permission on 18.02.2015. With the said permission, the plaintiff then constructed half pucca shop thereon in April, 2015 and rented the shop since May, 2015 and has been in possession of the same through tenant. That the plaintiff received the impugned notice dated 06.04.2016 cancelling the earlier permission of construction of shop house and which also ordered the plaintiff to remove the pucca shop house constructed by the plaintiff. The notice mentioned that the permission has been cancelled under

Section 9 of the Building Construction Act, 1952 for concealing material facts. That Partition Suit No. 55 of 2004 as mentioned in the notice have been disposed of on 03.02.2006, which was a partition suit and therefore the cause of cancellation of permission, is baseless and the said notice is thus illegal. The plaintiff has fulfilled all the conditions required before obtaining the permission. The impugned notice has been sent to the plaintiff on basis of false allegation brought by one Kabir Ahmed. The plaintiff after receiving the notice on 13.04.2016, sent the defendants a legal notice for reconsidering the matter but the defendants did not respond and hence the suit.

That the defendants Nos. 2, 5 and 6 contested the suit by filing written statement and contended inter alia that one person namely Kabir Ahmed filed an application in the office of the defendant mentioning that the plaintiff has been illegally establishing building on the suit land in which the applicant was entitled to and prayed for cancellation of permission. Accordingly the city corporation first issued notice to the plaintiff on 09.03.2015 to stop the construction work and a second notice thereafter given on 17.11.2015. While taking permission, the plaintiff concealed the information that Title Suit No. 55 of 2004 was pending before the Joint District Judge, First Court, Sylhet regarding the suit land. Thereafter the plaintiff was given a show cause notice as to why his plan would not be

cancelled. Finally on 13.04.2016 the plaintiff was delivered a notice cancelling the said permission and for removal of structures. Therefore the suit is liable to be dismissed with cost.

Learned Advocate Mr. Sudipta Arjun along with Mrs. Nazma Rahman appeared for the petitioner while learned advocates Mr. Choudhury Murshed Kamal Tipu with A.K. Khan Uzzal with Mr. Shah Navila Kashphi represented the opposite parties Nos. 1-6.

Learned Advocate for the petitioner submits that the courts below upon misappraisal of facts and misinterpretation of law and relevant rules unlawfully cancelled the permission granted earlier by the opposite parties concerned authorities and such cancellation being unjust and unlawful the judgment and order of the courts below ought to be set aside. He points out that the cancellation of the permission which was granted by the defendant opposite parties, however the authorities themselves cancelled the permission mainly on the ground of concealment of material facts. He argues that however the petitioner did not make any concealment of material facts.

There was a query from this bench regarding the defendant opposite party's contention of the pendency of a partition suit being Partition Suit No. 55 of 2004 pertaining to the suit land and such partition suit being pending between the plaintiff and some other person. To this contention, the learned advocate for

the petitioner argues that it is a principle of law that in a partition suit title is not the issue rather the partition suit is filed only to settle saham and respective shares between the parties. He submits that since the title of the plaintiff petitioner to the property and his co-sharers with whom he is in ejmaili possession is admitted therefore there is no evidence of concealment of material facts by the petitioner. He agitated that since the petitioner's title in the suit land is not under challenge in any suit anywhere therefore there has been no concealment of material facts by the petitioner. Upon another query from this bench the learned advocate for the petitioner reasserts that there is no compulsion for the petitioner to disclose the fact of the pendency of Partition Suit No. 55 of 2004 pending between the petitioner and some others since in partition suit title is not challenged. He submits that however the opposite parties did not take these facts into consideration. He points out that the relevant rules and statutory provisions do not contemplate any disclosure of any suit if the title of the plaintiff is not under challenge.

The petitioner next submits that the notice and the cancellation of the permission is inherently unlawful since the notice was sent not at the Sylhet City Corporation's own behest but at the initiative of Kabir Ahmed. He submits that Kabir Ahmed not being a proper party he has no locus standi to send such a notice. Upon a query from this bench the learned advocate for the petitioner concedes that there is a partition suit pending

between the plaintiff and said Kabir Ahmed by way of Partition Suit No. 55 of 2004. He however argues that Kabir Ahmed has no locus standi to make the application to cancel the petitioner's permission. He reiterates that therefore the courts below committed grave error in law and facts and therefore the judgments of the courts below are not sustainable and the Rule bears merits and ought to be made absolute for ends of justice.

On the other hand learned advocate for the opposite parties No. 1-6 vehemently opposes the Rule. He submits that both courts below gave their judgment correctly upon correct interpretation of law and the material facts and therefore those judgments ought not to be interfered with in civil revision. He submits that it is clear that since a partition suit was pending between the plaintiff and some other persons including Kabir Ahmed but nevertheless the plaintiff petitioner concealed such material facts from the opposite parties while making the application for permission for construction of building. He contends that therefore such concealment and non disclosure of material facts are violative of the provisions of Section 9 of the ইমারত নির্মান আইন, ১৯৫২ and also beyond the provisions of ইমারত নির্মান বিধিমালা-১৯৯৬ তফসিল-১ এর Section ৩(জ)। He next points out to the condition No. 2 of the permission document granted by the authorities. He submits that from condition No. 2 of the permission paper it is clear that condition No. 2 contemplate

disclosure of any necessary information in accordance with Section 9 of the Building Construction Act, 1952.

He next contends that under the provisions of Section 14 of the ইমারত নির্মান আইন, ১৯৫২ civil suit is barred. He submits that however Section 15 of the ইমারত নির্মান আইন, ১৯৫২ provides the forum of appeal within a period of 30 days of receiving such order. He points out that however the plaintiff petitioner did not avail the forum of appeal within the prescribed time, rather he filed a Civil Suit which is barred under Section 14 of the ইমারত নির্মান আইন, ১৯৫২। He concludes his submissions upon assertion that therefore both courts below upon proper appraisal of evidences of record and material facts and the relevant law and correct interpretation thereof came upon their decision and those need no interference and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates for both sides, also perused the application and materials. It is an admitted fact that the opposite parties the concerned authorities granted permission to the petitioner for construction of building for commercial purpose pursuant to an application by the instant petitioner. The petitioner claimed in his plaint and also subsequently asserted that his predecessor is the original owner of the suit land and that he is a co-sharer by way of valid title in ejmaili with other family members. However, in the instant suit issue of title is not before

us, therefore we are not in a position to make any observation on that.

However the petitioner admitted that there is a Partition Suit being Partition Suit No. 55 of 2004 pending between the plaintiff petitioner here and one Kabir Ahmed and others. The defendant opposite parties alleged that the petitioner while making the application for permission from the opposite party for construction of building for commercial purposes on the suit land concealed the material fact that a partition suit is pending between the petitioner and some other persons. Relying on these issues the learned advocate for the opposite parties draws upon the condition No. 2 in the permission document granted by the opposite party. From the condition No. 2 it appears that it contemplates cancellation of any permission if any necessary information is concealed or not disclosed by the petitioner.

The learned advocate for the petitioner contended that since a partition suit is essentially a matter of saham and does not challenge any title therefore it is not necessary to disclose the facts about the suit to the authorities. I am not in agreement with this contention of the learned advocate for the petitioner. In my considered view while there is a pending suit between the petitioner and some other person, whether it is a partition suit or a suit of any other nature, but where such suit relates to the same land which is the subject matter of dispute, it was the petitioner's duty to disclose such material information to the opposite party.

Moreover, from condition No. 2 of the permission order also, it is clear that any concealment of material fact shall lead to the permission order being cancelled.

The petitioner's argument is that since his title has not been challenged in the partition suit therefore he did not conceal any material fact. My considered view is that the issues in the suit are not relevant. Where a suit is pending, it must be borne in mind that it entails that there is some dispute somewhere arising out of the property. It is admitted that the petitioner did not disclose the facts of the partition suit pending between the petitioner and one Kabir Ahmed to the authorities. I am inclined to hold that the petitioner was duty bound to disclose the fact of a pending suit arising out of the property.

I have also examined Section 9 of the Building Construction Act, 1952 read with the তফশীল-১ Section ৩(জ) ইমারত নির্মান বিধিমালা ১৯৯৬। Further I have also perused Section 14 and 15 of the ইমারত নির্মান আইন, ১৯৫২। Section 14 is reproduced below:

“দেওয়ানি আদালতের এখতিয়ারে
প্রতিবন্ধকতা:- ধারা ১৫ এর বিধান সাপেক্ষে, ধারা-৩
বা ৩ক ধারা বা ৩খ বা ৩গ বা ৩ঘ বা ৪ ধারা বা
৫ধারা বা ৬ ধারা বা ৯ এর আওতায় প্রদত্ত কোন
আদেশের বিরুদ্ধে, উক্ত আদেশের ৩০ (ত্রিশ) দিন
সময়সীমার মধ্যে নির্ধারিত কর্মকর্তা বা কর্তৃপক্ষ বরাবর
আপিল রুজু করা যাইবে এবং এইরূপ আপিল

গ্রহণকারী কর্মকর্তা বা কর্তৃপক্ষের সিদ্ধান্ত চূড়ান্ত মর্মে
পরিগণিত হইবে, এবং কোন দেওয়ানি আদালতে উক্ত
ব্যাপারে কোন প্রশ্ন উত্থাপিত হইবে না।”

It is clear from Section 14 that under any order passed by
this act no civil suit shall lie and the jurisdiction of the civil court
is expressly barred. Moreover Section 15 of the ইমারত নির্মাণ আইন,
১৯৫২ provides that:

“ধারা-৩ বা ৩ক ধারা বা ৩খ বা ৩গ বা ৩ঘ
বা ৪ বা ৫ বা ৬ বা ৯ এর আওতায় প্রদত্ত কোন
আদেশের ৩০ (ত্রিশ) দিবসের মধ্যে নির্ধারিত কর্মকর্তা
বা কর্তৃপক্ষ বরাবর আপিল রুজু করা যাইবে এবং
এইরূপ আপিল গ্রহণকারী কর্মকর্তা বা কর্তৃপক্ষের
সিদ্ধান্ত চূড়ান্ত বলিয়া পরিগণিত হইবে ও কোন
দেওয়ানি আদালতে তৎবিষয়ে কোন প্রশ্ন উত্থাপিত
হইবে না।”

It is clear that Section 15 provides for the forum of appeal
allowing 30 days time from the passing of any order against any
person by the concerned authorities. In the instant case evidently
however the petitioner did not take any such steps to file appeal.

Therefore from the foregoing discussions made above and
under the facts and circumstances and in the light of the
submissions made by the learned Advocates for both parties, I
am of the considered view that the judgment of the courts below
need not be interfered with. I find no merits in this Rule.

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

Order of status-quo granted earlier by this court is hereby recalled and vacated.

Send down the lower courts records at once.

Communicate the order at once.

Shokat (B.O)