

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

First Misc Appeal No. 209 of 2020

With

Civil Rule No.142(FM) of 2020

Mahamuda Akhter Smrity and others

..... appellants

-Versus-

Md. Altaf Hossain

..... respondent

Mr. Md. Moshiur Rahman for

Mr. Md. Monirul Islam, Advocate

..... for the appellants

Mr. Md. Mainul Islam, Advocate

..... for respondent 1

Judgment on 03.12.2023

Bhishmadev Chakrabortty, J.

Since the parties to the appeal and the Rule are same and common question of fact and law are involved in both these have been heard together and are being disposed of by this judgment.

This appeal, at the instance of the plaintiffs, is directed against the judgment and order dated 06.01.2020 passed by the Joint District Judge, Court No.2, Dhaka in Title Suit No.224 of 2012 rejecting the application under Or.39 r.1 and 2 of the Code of Civil Procedure (the Code) for temporary injunction.

At the time of admission of the appeal, the appellants filed an application praying for temporary injunction restraining the respondent 1 from transferring the suit land and also from trespassing into it. Upon the said application the aforesaid Rule was issued and the parties were directed

to maintain *status quo* in the suit property for a limited period which was subsequently extended and still subsists.

Facts relevant for disposal of the appeal as well as the Rule, in brief, are that the plaintiffs instituted the suit for specific performance of contract for .0297 acres of land as detailed to the schedule of the plaint. Defendant 1 has been contesting the said suit by filing written statement denying the averments made in the plaint. During pending of the suit, the plaintiffs filed an application therein under Or.39 r. 1 and 2 of the Code praying for temporary injunction restraining defendant 1 from transferring the suit land and also from dispossessing the plaintiffs therefrom stating grounds therein. Defendant 1 contested the said application by filing written objection. However, the learned Judge after hearing both the parties by its judgment and order under challenge rejected the said application for temporary injunction.

Mr. Md. Moshir Rahman, learned Advocate for the appellants submits that the learned Joint District Judge on misconception of fact and law rejected the application for temporary injunction. The learned Judge ought to have allowed the application for temporary injunction passing order as prayed for because if the suit land is transferred during pendency of the suit the appellants would suffer irreparable loss and injury. The impugned order suffers from patent illegality which is required to be interfered with by this Court. The appeal, therefore, should be allowed and the Rule be made absolute.

Mr. Mainul Islam, learned Advocate for respondent 1 as well as opposite party 1 to the Rule, on the other hand opposes the appeal and the Rule. He submits that this is a suit for specific performance of contract. In the suit it is to be decided whether the plaintiffs are entitled to get a decree as prayed for. The trial Court entered into the every four corners of the case and rejected the application for temporary injunction finding that the balance of convenience and inconvenience is not in favour of the plaintiffs and that the plaintiffs will not suffer irreparably loss, if injunction is not granted. The impugned judgment and order, therefore, has been passed on correct appreciation of fact and law. The present appeal, therefore, would be dismissed and the Rule be discharged.

We have considered the submissions of both the sides and gone through the materials on record. It transpires that at the time of admission of the appeal this Division issued Rule upon the opposite parties to show cause as to why the injunction as prayed for shall not be granted. At the same time directed the parties to maintain *status quo* in respect of transfer of the suit property for a limited period which was subsequently extended and still subsists. It transpires that respondent 1 as well as opposite party 1 to the Rule did neither challenge the said order of *status quo* passed by this Division to the higher forum nor filed any application in this Division for vacating the said order. The said order has been in force for last 03 (three) years and 9(nine) months. We, therefore, hold that justice will be best served, if we direct the trial Court to dispose of the suit expeditiously keeping the order of *status quo* passed by this Court intact.

We, therefore, direct the Joint District Judge Court No.2, Dhaka to dispose of Title Suit No.224 of 2012 expeditiously, preferably within 06(six) months from the date of receipt of this judgment and order. Pending disposal of the suit, the order of *status quo* passed by this Court shall operate. In dealing with the case, the trial Court shall not allow either party any adjournment without dire necessity.

With the above finding and directions the appeal as well as the Rule are disposed of. However, there will be no order as to costs.

Communicate the judgment and order to the concerned Court.

Md. Akhtaruzzaman, J.

I agree.