

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

Civil Revision No. 1951 of 2020

Zafar Ahmed Talukder and others

..... petitioners

-Versus-

The Principal, Khagrachari Government College,  
Khagrachari and others.

.....opposite parties

Mr. Md. Anowarul Islam Shaheen with

Mr. Syed Md. Tazrul Hossain, Advocates

.....for the petitioners

Mr. Mohammad Salim Miah, Advocate

..... for the opposite parties.

Judgment on 18.02.2024

Bhishmadev Chakrabortty, J:

In this Rule the opposite parties were called upon to show cause as to why the judgment and order of the District Judge, Khagrachari passed on 26.02.2020 in Miscellaneous Appeal No.16 of 2019 dismissing the appeal and affirming the judgment and order of the Joint District Judge, Khagrachari passed on 24.03.2019 in Title Suit No.129 of 2017 rejecting the application for an order to prepare a fresh survey report in compliance with the order dated 21.03.2018 and rejecting the application for temporary injunction should not be set aside and /or such other or further order or orders passed to this Court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the plaintiffs brought the suit praying for declaration of title and permanent injunction in respect of .10 acres out of 1.08 acres of land of Khatian No. 48 plot 1993 (part) corresponding to CS plot 2329 (part) detailed in the schedule to the plaint. In the suit the plaintiffs prayed for temporary

injunction restraining defendant 1 from entering into the schedule suit land by force and from erecting any boundary wall over the suit land and also from changing the nature of character of the land and to submit a fresh survey report. The said application was objected by defendant 1 in writing. However, the Joint District Judge after considering the materials on record rejected the application for temporary injunction and the objection against inspection report. The plaintiffs preferred appeal before the District Judge, Khagrachari against the aforesaid judgment and order. After hearing, the District Judge dismissed the appeal and affirmed the judgment and order passed by the Joint District Judge. Being aggrieved by the plaintiffs approached this Court and obtained this Rule.

Mr. Md. Anowarul Islam Shaheen, learned Advocate for the petitioners taking us through the materials on record submits that in the plaint the plaintiffs have made out a specific case in support of their title and possession in respect of .10 acres of land as detailed in the schedule to the plaint. Moreover, the report submitted by the Assistant Commissioner (Land) proves that there are excess land except acquisitioned land. Therefore, both the Courts below committed an error of law resulting in an error in such orders occasioning failure of justice in not granting temporary injunction against the defendants and rejecting the objection against the inspection report. Therefore, the judgment and orders passed by the Courts below should be set aside and the defendant-opposite parties be restrained by and order of temporary injunction from changing the nature of the suit land as detailed in the schedule to the plaint.

Mr. Mohammad Salim Miah, learned Advocate for defendant-opposite party 1 opposes the rule and submits that out of 1.08 acres of land 0.25 acres was acquired for the Roads and Highway Department and 0.46 acres for the Khagrachari Government College (defendant No.1). The remaining 0.37 acres of land are being possessed by the plaintiffs. There is no dispute regarding the possession and ownership of the land and as such, the plaintiff cannot get any order of injunction for want of cause of action. The Courts below on correct assessment of facts and law rejected the application which may not be interfered with by this Court.

We have considered the submissions of both the sides, perused the rule petition and the documents appended thereto. It transpires that the plaintiffs brought the suit for declaration of title and permanent injunction in respect of .10 acres of land of CS khatian 48, plot 1993 (part) corresponding to CS plot 2329 (part) as detailed in the schedule to the plaint. The plaintiffs described the boundary of the suit land as at the north acquired land of LA Case No. 02 of 2000. It is found that out of 1.08 acres of land of that khatian total .71 [(.25+.46)] acres has been acquired by the government for the Roads and Highways Department and Khagrachari Government College. From the report of surveyor annexure-C to the revision it is found that the plaintiffs have been enjoying and possessing .37 acres of land which is out of the acquisition.

To get an order of temporary injunction the plaintiffs are to prove that there is a *prima facie* arguable case in their favour; that balance of the convenience and inconvenience is in their favour and they would

suffer irreparable loss and injury if temporary injunction is not granted. But by making statement in the application and documents submitted before the Court the plaintiffs hopelessly failed to make out a *prima facie* case for getting an order of injunction. The trial Court correctly rejected the application for temporary injunction and the objection against the survey report which was affirmed by the lower appellate Court. We find no error in the impugned judgment and orders which occasioned failure of justice and consequently we find no merit in this rule.

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

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 without giving any adjournment to either party.

Communicate the judgment and order to the concerned Court.

Md. Akhtaruzzaman, J.

I agree.