

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 2348 of 2021

Jamal Uddin and others petitioners

-Versus-

Liyakat Ali Kha and others opposite parties

Mr. Md. Abdullah Al Mamun, Advocate

..... for the petitioner

Mr. Shishir Kanti Mazumder, Advocate

..... for the opposite parties

Judgment on 01.07.2025

In this Rule the defendant opposite parties were called upon to show cause as to why the judgment and order of the District Judge, Netrakona passed on 02.11.2021 in Miscellaneous Appeal 30 of 2021 allowing the appeal reversing the judgment and order of the Senior Assistant Judge, Sadar, Netrakona passed on 04.04.2021 in Other Class Suit 48 of 2021 allowing the application for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure (the Code) 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 this Rule, operation of the appellate judgment and order was stayed for a limited period which was subsequently extended till disposal of the Rule.

Facts relevant for disposal of this Rule, in brief, are that the plaintiffs instituted the suit praying for declaration of his tenancy right in the suit land measuring .47 acres as detailed in the schedule to the

plaint. Defendants 1-4 have been contesting the suit by filing written statement denying the material allegations made in the plaint.

During pending of the suit the plaintiffs filed an application under Order 39 Rules 1 and 2 of the Code praying for temporary injunction restraining the defendants from entering into the suit land forcibly or changing its nature of character. The defendants filed written objection against it. However, the Assistant Judge after hearing both the parties by the judgment and order dated 04.04.2021 allowed the application for temporary injunction challenging which the defendant approached before the District Judge in miscellaneous appeal. Learned District Judge heard the said appeal and by the judgment and order dated 02.10.2021 allowed the appeal. In this juncture, the plaintiffs approached this Court and obtained this Rule with an *interim* order of stay.

Mr. Md. Abdullah Al Mamun, learned Advocate for the petitioners taking me through the judgment and order passed by the Courts below submits that this petitioner on 04.04.2021 obtained an order of temporary injunction from the learned Assistant Judge which was set aside by the District Judge in appeal on 02.11.2021. Against which the petitioners approached this Court and obtained this Rule 05.12.2021 and the operation of the appellate judgment and order was stayed which still subsists. He submits that since the petitioners have been enjoying the order of injunction passed by the Assistant Judge for long years, therefore, the Rule may be disposed of directing the

trial Court to dispose of the suit expeditiously maintaining the order of the temporary injunction.

Mr. Shishir Kanti Mazumder, learned Advocate for defendant-opposite parties 1-4 on the other hand opposes the Rule and supports the judgment and order of the appellate Court. He submits that the defendants have been claiming the suit land by way of inheritance from his predecessor. Defendant 1 mutated his name, paid rent to the government and BRS khatian has been prepared in his name. Therefore, the balance of convenience and inconvenience is in favour of the defendants. In such a suit the plaintiffs are not entitled get any sort of injunction order. The appellate Court correctly assessed the facts and materials on record and allowed appeal by setting aside the judgment and order of temporary injunction passed by the Assistant Judge. Therefore, the Rule would be discharged.

We have considered the submissions of both the sides, gone through the Rule petition, the judgment and orders of the Courts below and documents appended thereto.

The plaintiff instituted the suit for declaration of title simpliciter. They claimed title in the suit land by way of purchase from the heirs of original owner. On the other hand the defendants claimed the suit land by way of inheritance from their father. The defendants claimed that defendant 1 has mutated his name in respect of suit land and he paid rent to the concerned. Moreover, the recent

record of right (BRS khatian) has been prepared in his name. In such a case granting of injunction appears against the settled principle of law. However, the appellate Court set aside the order of injunction on 02.11.2021 passed by the Assistant Judge. But the order passed by the appellate Court has been stayed by this Division on 05.12.2021. The opposite parties did neither file any application in this Court for vacating the aforesaid order nor did he move to the appellate division challenging it. The order of injunction passed by the Assistant Judge remained in force for last four years.

In the premises above, I am of the view that justice would be best served, if I direct the Assistant Judge to dispose of the suit expeditiously maintaining the order of injunction passed by him in modified form.

Therefore, the trial Court is directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this order. In the meantime, the order of injunction granted by the Assistant Judge shall operate in the modified form i.e., the parties will maintain *status quo* in respect of possession in the suit land.

With the aforesaid observation, modification and direction this Rule disposed of. No order as to the costs.

Communicate this judgment and order to the Court concern.