

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.2346 of 2022

IN THE MATTER OF:

An application under Section 115 (1) of the Code of Civil Procedure

- AND -

IN THE MATTER OF:

Mohammad Ismail

... Petitioner

-Versus –

Abul Hashem and others

... Opposite Parties

Mr. Abdus Salam Mamun, Senior Advocate with

Mr. Mohammad Abdul Mannan, Advocate

.... For the petitioner

Mr. Mohammad Musa, Advocate with

Mr. Mohammad Kaiser Uddin, Advocate

...For the Opposite Parties

**Heard on 29.01.2024 and
Judgment on 29.02.2024**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioners, under section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 19.04.2022 passed by the learned Additional District Judge, 2nd Court, Chattogram in Miscellaneous Appeal No.69 of 2020, dismissing the Appeal and thereby

affirming the judgment and order dated 22.07.2020 passed by the learned Assistant Judge, Satkania Chowki, Lohagara, Chattogram in Other Suit No.34 of 2020 allowing the application for temporary injunction and restraining the defendant petitioner from entering into the suit land or changing nature of it, should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court directed the parties to maintain status-quo in respect of possession and position of the suit land and also directed not to transfer the suit property by either of the party for a period of 06(six) months from date.

Facts necessary for disposal of the Rule, in short, are that the opposite parties No.1 and 2 being plaintiffs instituted Other Suit No.34 of 2020 in the Court of the learned Assistant Judge, Satkania Chowki, Lohagara, Chattogram on 17.02.2020 praying for a decree for permanent injunction stating that the plaintiff have inherited the suit land and while in possession got shares of their sisters by Heba Deed No.2247 dated 11.02.2019 and on 15.10.2019 the defendant Nos.3-8 threatened them of dispossession and the plaintiffs tried to fill in the suit land for construction of dwelling house, but the defendants resisted them for which the plaintiffs made a General Diary being No.1216 dated 27.10.2019 with the Lohagara Police Station on which a non-FIR case was started and the defendants are now trying to dispossess them by force.

On 25.02.2020 the plaintiffs filed an application against the defendants under Order 39 Rule1 and 2 and read with section 151 of the Code of Civil Procedure praying for temporary injunction.

The defendant No.3-petitioner filed a written objection to the application for temporary injunction on 12.03.2020 stating amongst other that the suit B.S. Plot No.5911 is recorded in the name of Nazir Ahmad, his father, where he was living for about 40 years by erecting dwelling house and on 05.09.2018 transferred it to his three sons including this petitioner by registered Heba Deed No.2198 with delivery of possession and the petitioner along with his brothers are in enjoyment of right, title and possession of the suit land having dwelling house and on part of the suit land a 03(three) storied community centre has been constructed by Md. Idris, son of defendant Azmat Ullah, his cousin and the defendant-petitioner has got B.S. mutation khatian No.3471 in mutation Case No.1261 of 2019 dated 12.06.2019 and the plaintiffs had never been in possession in the suit land recorded in B.S. plot No.5911.

After hearing both the parties and considering the facts and materials on record, the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram allowed the application for temporary injunction and restrained the defendants from entering into the suit land and from making any kind of construction or changing its nature or transfer by his judgment and order dated 22.07.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 22.07.2020 passed by the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram in Other Suit No.34 of 2020 the petitioner filed Miscellaneous Appeal No.69 of 2020 before the Court of learned District Judge, Chattogram. Thereafter, the said Miscellaneous Appeal was transferred to the learned Additional District Judge, 2nd Court, Chattogram

for disposal. After hearing both the parties and considering all material on record the learned Additional District Judge, 2nd Court, Chattogram dismissed the said Appeal by his judgment and order dated 19.04.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 19.04.2022 passed by the learned Additional District Judge, 2nd Court, Chattogram in Miscellaneous Appeal No.69 of 2020 dismissing the appeal and thereby affirming the judgment and order dated 22.07.2020 passed by the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram in Other Suit No.34 of 2020 allowing the application for temporary injunction and restrained the defendants from entering into the suit land and from making any kind of construction or changing its nature or transfer, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of status-quo.

Mr. Abdus Salam Mamun, the learned Advocate appearing for the petitioner submits that the suit B.S. Plot No.5911 is recorded in the name of Nazir Ahmad, his father, where he was living for about 40 years by erecting dwelling house and on 05.09.2018 transferred it to his three sons including this petitioner by registered Heba Deed No.2198 with delivery of possession and the petitioner along with his brothers are in enjoyment of right, title and possession of the suit land having dwelling house and on part of the suit land a 03(three) storied community centre has been constructed by Md. Idris, son of defendant Azmat Ullah, his cousin and the defendant-petitioner has got B.S. mutation khatian No.3471 in mutation

Case No.1261 of 2019 dated 12.06.2019 and the plaintiffs had never been in possession in the suit land recorded in B.S. plot No.5911.

He further submits that the Courts below ought to have seen that the Mutation Khatian No.3471 stands recorded in the name of the petitioner and his brothers and the petitioner paid land Development tax for .10 acre for dwelling house out of his mutated land of .40 decimal. There is a Community Centre owned by the defendants and is in use for business. The investigating officer found a prima facie case against the opposite party under section 143 of the Penal Code amongst other sections and the temporary injunction has been granted in violation of section 53 of the Specific Relief Act, 1877.

The learned Advocate lastly submits that both the Courts below have erred in law resulting in an error in the decision occasioning failure of justice in not holding that there are dwelling house of the petitioner in the suit plot and the petitioner has no other alternative, but to use the dwelling house situated on the suit B.S. Plot No.5911. Accordingly, he prays for making the Rule absolute.

Mr. Mohammad Musa, the learned Advocate appearing on behalf of the opposite parties submits that the opposite parties No.1 and 2 being plaintiffs instituted Other Suit No.34 of 2020 in the Court of the learned Assistant Judge, Satkania Chowki, Lohagara, Chattogram on 17.02.2020 praying for a decree for permanent injunction stating that the plaintiffs have inherited the suit land and while in possession got shares of their sisters by Heba Deed No.2247 dated 11.02.2019 and on 15.10.2019 the defendant Nos.3-8 threatened them of dispossession and the plaintiffs tried

to fill in the suit land for construction of dwelling house, but the defendants resisted them for which the plaintiffs made a General Diary being No.1216 dated 27.10.2019 with the Lohagara Police Station on which a non-FIR case was started and the defendants are now trying to dispossess them by force. On 25.02.2020 the plaintiffs filed an application against the defendants under Order 39 Rule 1 and 2 and read with section 151 of the Code of Civil Procedure praying for temporary injunction. After hearing both the parties and considering the facts and materials on record, the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram allowed the application for temporary injunction and restrained the defendants from entering into the suit land and from making any kind of construction or changing its nature or transfer by his judgment and order dated 22.07.2022. Being aggrieved by and dissatisfied with the judgment and order dated 22.07.2020 passed by the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram in Other Suit No.34 of 2020 the petitioner filed Miscellaneous Appeal No.69 of 2020 before the Court of learned District Judge, Chattogram. Thereafter, the said Miscellaneous Appeal was transferred to the learned Additional District Judge, 2nd Court, Chattogram for disposal. After hearing both the parties and considering all material on record the learned Additional District Judge, 2nd Court, Chattogram dismissed the said Appeal by his judgment and order dated 19.04.2022 rightly. Therefore, he prays for discharging the Rule.

I have heard the submissions of the learned Advocates for the parties, perused the revisional application, the impugned judgment and

order of the Courts' below, the papers and documents as available on the record.

It appears from the record that the opposite parties No.1 and 2 being plaintiffs instituted Other Suit No.34 of 2020 in the Court of the learned Assistant Judge, Satkania Chowki, Lohagara, Chattogram on 17.02.2020 praying for a decree for permanent injunction stating that the plaintiffs have inherited the suit land and while in possession got shares of their sisters by Heba Deed No.2247 dated 11.02.2019 and on 15.10.2019 the defendant Nos.3-8 threatened them of dispossession and the plaintiffs tried to fill in the suit land for construction of dwelling house, but the defendants resisted them for which the plaintiffs made a General Diary being No.1216 dated 27.10.2019 with the Lohagara Police Station on which a non-FIR case was started and the defendants are now trying to dispossess them by force. On 25.02.2020 the plaintiffs filed an application against the defendants under Order 39 Rule1 and 2 and read with section 151 of the Code of Civil Procedure praying for temporary injunction. After hearing both the parties and considering the facts and materials on record, the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram allowed the application for temporary injunction and restrained the defendants from entering into the suit land and from making any kind of construction or changing its nature or transfer by his judgment and order dated 22.07.2022. Being aggrieved by and dissatisfied with the judgment and order dated 22.07.2020 passed by the learned Senior Assistant Judge (In-Charge), Lohagara, Chattogram in Other Suit No.34 of 2020 the petitioner filed Miscellaneous AppealNo.69 of 2020 before the Court of learned District

Judge, Chattogram. Thereafter, the said Miscellaneous Appeal was transferred to the learned Additional District Judge, 2nd Court, Chattogram for disposal. After hearing both the parties and considering all material on record the learned Additional District Judge, 2nd Court, Chattogram dismissed the said Appeal by his judgment and order dated 19.04.2022.

It is found that both the parties now moving with order of temporary injunction and the original suit is pending before trial Court without any progress.

So, considering the above facts and circumstances and materials on record, I think that justice will be best serve, if I give the direction both the parties to maintain status-quo in respect of possession and position the suit land and the concerned lower Court is directed to disposed of the Other Suit No.34 of 2020 upon considering the evidence and materials on record within 01(one) year.

In the Result, the Rule is disposed of with direction.

The judgment and order dated 19.04.2022 passed by the learned Additional District Judge, 2nd Court, Chattogram in Miscellaneous Appeal No.69 of 2020 dismissing the appeal and thereby affirming the judgment and order dated 22.07.2020 passed by the learned Senior Assistant Judge, Lohagara Assistant Judge Court, Lohagara, Chattogram in Other Suit No.34 of 2020 allowing the application for temporary injunction and restraining the defendant-petitioner from entering into the suit land or changing nature of it is hereby set-aside.

The learned Assistant Judge, Satkania Chowki, Lohagara, Chattogram is hereby directed to disposed of the Other Suit No.34 of 2020 within 01(one) years from the date of receipt of this judgment and order.

Further, all the parties of the original Suit are hereby directed to maintain status-quo in respect of possession and position of the suit land (B.S. Dag No.5911) till disposal of the Other Suit No.34 of 2020.

The order of status-quo granted at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment and order be communicated to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer