

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.2677 of 2022

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Zohara Begum and others

... Petitioners

-Versus –

Md. Hashem

... Opposite Party

Mr. Abdul Momen Chowdhury, Advocate

.... For the petitioner

Mr. Samir Kumar Chowdhury, Advocate

...For the Opposite Party

Heard on 17.01.2024, 18.01.2024
and Judgment on 24.01.2024

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioners, under section 115(1) of the Code of Civil Procedure, leave was granted and this Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and order No.30 dated 22.02.2022 passed by the learned Additional District Judge, 3rd Court, Chattogram in Civil Revision No.182 of 2015 allowing the said civil revision 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 stayed the operation of the impugned judgment and order dated 22.02.2022 for a period of 06(six) months from date.

Facts necessary for disposal of the Rule, in short, are that the scheduled land belonged to the defendant No.1 who sold the scheduled land to the plaintiff at a price of 27,00,000/-. The defendant No.1 has no other room to stay, so he wanted to stay at the disputed land until he makes provision elsewhere. They considered his prayer and granted to stay at the suit land with permissive possession. Eventually the defendant No.1 on different pretext declined to handover possession to the plaintiff-opposite party. The plaintiff-opposite party revoked the permission of possession and issued lawyer's notice for handover the schedule land, but the notice was sent back to the plaintiff with a remark that the notice could not be served due to the absence of the defendant No.1. In this situation the opposite party had no other alternative, but to file the suit claiming the recovery of possession.

Eventually the news of filing of Other Suit No.186 of 2009 came to the petitioner knowledge and on inspection of the record of the case the petitioner was confirmed about the filing of the suit. Under the circumstances the petitioner filed a petition under order 1 Rule 10 of the Code of Civil Procedure to add them in place of the defendant No.1. The petitioner contending inter-alia stated that the defendant No.1 is an insane and mentally unsound. He was admitted to Pabna Mental Hospital and after recovery he came back to his home on the scheduled land. The defendant No.1 again became mentally sick and left the house and did not return

home till the filing of the petition under Order 1 Rule 10(2) of the Code of Civil Procedure. The defendant No.1 was an insane person and he has not executed any document of sale of the schedule land to the plaintiff opposite party. The document of sale is a forged and fabricated document. In the absence of the defendant No.1, the petitioners are needed to contest the suit in place of defendant No.1 otherwise the petitioners will be seriously prejudiced.

After hearing the parties, the learned Senior Assistant Judge, 1st Court, Chattogram allowed the petition by his judgment and order No.37 dated 04.10.2015 in Other Suit No.186 of 2009.

Being aggrieved by and dissatisfied with the judgment and order No.37 dated 04.10.2015 passed by the learned Senior Assistant Judge, 1st Court, Chattogram in Other Suit No.186 of 2009 allowing the application filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure the plaintiff-opposite party filed Civil Revision No.182 of 2015 before the learned District Judge, Chattogram. Thereafter, the same is transferred to the Court of learned Additional District Judge, 3rd Court, Chattogram for disposal.

After hearing both the parties and upon considering the evidence on record, the learned Additional District Judge, 3rd Court, Chattogram allowed the Civil Revision No.182 of 2015 by setting aside judgment and order No.37 dated 04.10.2015 passed by the learned Senior Assistant Judge, 1st Court, Sadar, Chattogram by his judgment and order No.30 dated 22.02.2022.

Being aggrieved by and dissatisfied with the judgment and order No.30 dated 22.02.2022 passed by the learned Additional District Judge, 3rd Court, Chattogram allowing the Civil Revision No.182 of 2015, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Abdul Momen Chowdhury, the learned Advocate appearing on behalf of the petitioners submits that without controverting the logical finding of the learned Senior Assistant Judge, 1st Court, Sadar, Chattogram, the learned Additional District Judge, 3rd Court, Chattogram most illegally and arbitrarily set-aside the judgment and order of the learned Senior Assistant Judge, 1st Court, Sadar, Chattogram, which demonstrates the non application of judicial mind rendering the impugned judgment not sustainable and is liable to be set-aside.

He further submits that the learned Additional District Judge, 3rd Court, Chattogram failed to realize the purposes of Order 1 Rule 10(2) of the Code of Civil Procedure while disposing of the order passed by the learned Senior Assistant Judge, 1st Court, Sadar, Chattogram and came to erroneous finding resulting a total failure of justice.

The learned Advocate lastly submits that the petitioners are necessary parties in the suit since their interest in the suit land will be jeopardized if they are not impleaded and heard. So, the learned Additional District Judge, 3rd Court, Chattogram passed the impugned judgment and order under surmise and conjecture making the impugned judgment and order not sustainable and liable to be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Samir Kumar Chowdhury, the learned Advocate appearing on behalf of the opposite party submits that the scheduled land belonged to the defendant No.1 who sold the scheduled land to the plaintiff at a price of 27,00,000/-. The defendant No.1 has no other room to stay, so he wanted to stay at the disputed land until he makes provision elsewhere. They considered his prayer and granted to stay at the suit land with permissive possession. Eventually the defendant No.1 on different pretext declined to handover possession to the plaintiff-opposite party. The plaintiff-opposite party revoked the permission of possession and issued lawyer's notice for handover the schedule land, but the notice was sent back to the plaintiff with a remark that the notice could not be served due to the absence of the defendant No.1. In this situation the opposite party finding no other alternative filed Other Suit No.186 of 2009. The petitioner has no right and title in the suit land and the petitioner is not entitled to become added party in the said suit. So, the judgment and order No.37 dated 04.10.2015 passed by the learned Senior Assistant Judge, 1st Court, Sadar, Chattogram wrongly, which is not maintainable in the eye of law. On the other hand, the learned Additional District Judge, 3rd Court, Chattogram passed the judgment and order No.30 dated 22.02.2022 in Civil Revision No.182 of 2015 rightly, which is sustainable in the eye of law. Therefore, he prays for discharging the Rule.

I have heard the submissions of the learned Advocates for both 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 plaintiff-opposite party claimed that the scheduled land belonged to the defendant No.1 who sold the scheduled land to the plaintiff at a price of 27,00,000/-. The defendant No.1 has no other room to stay, so he wanted to stay at the disputed land until he makes provision elsewhere. They considered his prayer and granted to stay at the suit land with permissive possession. Eventually the defendant No.1 on different pretext declined to handover possession to the plaintiff-opposite party. The plaintiff-opposite party revoked the permission of possession and issued lawyer's notice for handover the schedule land, but the notice was sent back to the plaintiff with a remark that the notice could not be served due to the absence of the defendant No.1. In this situation the opposite party finding no other alternative filed Other Suit No.185 of 2015. On the other hand, in the said suit the petitioners filed a petition under order 1 Rule 10(2) of the Code of Civil Procedure to add them in place of the defendant No.1. After hearing the parties, the learned Senior Assistant Judge, 1st Court, Chattogram allowed the petition by his judgment and order No.37 dated 04.10.2015 in Other Suit No.186 of 2009. Being aggrieved by and dissatisfied with the judgment and order No.37 dated 04.10.2015 passed by the learned Senior Assistant Judge, 1st Court, Chattogram in Other Suit No.186 of 2009 allowing the application filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure the plaintiff-opposite party filed Civil Revision No.182 of 2015 before the learned District Judge, Chattogram. Thereafter, the same is transferred to the Court of learned Additional District Judge, 3rd Court, Chattogram for disposal. After hearing both the parties and upon considering the evidence

on record, the learned Additional District Judge, 3rd Court, Chattogram allowed the Civil Revision No.182 of 2015 by setting aside judgment and order No.37 dated 04.10.2015 passed by the learned Senior Assistant Judge, 1st Court, Sadar, Chattogram by his judgment and order No.30 dated 22.02.2022.

On perusal the application filed by the petitioners under Order 1 Rule 10(2) of the Code of Civil Procedure I find that the petitioners claimed that the defendant No.1 is an insane and mentally unsound. He was admitted to Pabna Mental Hospital and after recovery he came back to his home on the scheduled land. The defendant No.1 again became mentally sick and left the house and he was disappeared till the filing of the petition under Order 1 Rule 10(2) of the Code of Civil Procedure. The defendant No.1 was an insane person and he has not executed any document of sale of the schedule land to the plaintiff opposite party. The document of sale is a forged and fabricated document. In the absence of the defendant No.1, the petitioners are needed to contest the suit in place of defendant No.1 otherwise the petitioners will be seriously prejudiced.

In the light of the above discussion and upon hearing both the parties, I think that in this case firstly it should be settled that whether the defendant No.1 is alive or not, or that he is a insane, unsound minded person or not and for this need a neutral inquiry by taking proper evidence both orally and documentary and if needed report may be call from the respective police station. So, this case should send back to the trial Court below for neutral inquiry, to give opportunity for submitting the additional evidence both oral and documentary and further hearing.

Considering the above facts and circumstances and materials on record, I think that it will be best serve for ends of justice, if I send back this case to the trial Court below for neutral inquiry by taking the additional evidence both oral and documentary and amending their respective pleadings and further hearing.

In the Result, the Rule is disposed of.

The judgment and order No.30 dated 22.02.2022 passed by the learned Additional District Judge, 3rd Court, Chattogram in Civil Revision No.182 of 2015 allowing the said Civil Revision and the judgment and order No.37 dated 04.10.2015 passed by the learned Senior Assistant Judge, 1st Court, Chattogram in Other Suit No.186 of 2009 allowing the application filed by the petitioners under Order 1 Rule 10(2) of the Code of Civil Procedure are hereby set-aside.

The learned Senior Assistant Judge, 1st Court, Chattogram is hereby directed to settle the matter firstly whether the defendant No.1 alive or not or he is a insane and unsound minded person or not by taking proper evidence both oral and documentary, if needed can take help of concerned police station and to dispose the Other Suit No.186 of 2009 upon hearing the parties and to give opportunity both the parties for submitting the additional evidence, within 01(one) year from the date of receipt of this judgment and order.

The order of stay granted earlier by this Court is hereby recalled and vacated.

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

Md. Anamul Hoque Parvej
Bench Officer