

District- Dhaka

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

Civil Revision No. 4910 of 2022

Hazi Din Mohammad @ Dil
Mohammad

...plaintiff appellant petitioner

- versus-

Afroza Akter Ranu and another

...defendants respondents opposite parties

Mr. Md. Golam Rossul, Advocate

....for the plaintiff appellant petitioner

Mr. Md. Zakir Hossain, Advocate

... for the defendants respondents opposite parties

**Heard on : 18.01.2024, 04.03.2024 and
14.03.2024**

Judgment on: 20.03.2024

This Rule was issued upon an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite parties to show cause as to why the impugned judgment and order dated 30.08.2022 passed by the learned District Judge, Dhaka in Miscellaneous Appeal No 149 of 2022 rejecting the appeal summarily and thereby affirming the order No 09 dated 25.04.2022 passed by the court of Joint District Judge, 4th Court, Dhaka in Civil Suit No 95 of 2022 should not be set aside and/or passed such other or further order(s) as to this court may seem fit and proper.

During issuance of the Rule an order was passed directing the parties to maintain status-quo in respect of possession of the suit land.

The short facts for the purpose of disposal of the Rule are that the present petitioner as plaintiff instituted a suit being Civil Suit No 95 of 2022 in the Court of Joint District Judge, 4th Court, Dhaka impleading the opposite parties seeking a decree for cancellation of deed being deed No 4021 stating *inter alia* that the plaintiff-petitioner by way of heba-bil-awaj being owner and possessor of 00.0336 acres of land described in the Ka schedule to the plaint gifted 00.0165 acres of land to his sister defendant-opposite party No1 namely Afroza Akhter Ranu. But in the deed described in the Kha schedule defendant No 1 with the help of her husband and connivance with the deed writer entire 00.0336 acres land has been shown and fraudulently obtained his signature thereto. Though the alleged deed was executed and registered but the plaintiff-petitioner still is enjoying and possessing the suit land peacefully. On 10.01.2022 the husband of the defendant No 1 tried to dispossess the plaintiff from the suit land and after searching in the Sub-Registry Office on 10.02.2022 he came to know about misdeed in the alleged heba bil-awaz deed. Hence, having instituted the suit an application praying for temporary injunction under Order XXXIX rules 1 & 2, read with section 151, of the Code of Civil Procedure was filed.

The defendant No 1 appeared in the court and filing written objection contested the temporary injunction application stating *inter*

alia that the plaintiff and the defendant No 1 being siblings used to love each other for which the plaintiff gifted the suit land verbally under Muslim Law. To avoid future complexity declaration of heba was registered on 01.09.2019 in Shampur Registry Office vide deed No 4021 and subsequently the suit land was mutated in her name in the land office. In 2022 she permitted her brother for staying in the suit land. Thereafter the plaintiff falsely instituted the suit and filed the application for temporary injunction with ulterior motive which was liable to be rejected.

Learned Joint District Judge upon hearing both the parties and considering the materials on record rejected the application for temporary injunction by his judgment and order dated 25.04.2022 against which the plaintiff-petitioner preferred an appeal being Miscellaneous Appeal No 149 of 2022 before the learned District Judge, Dhaka who summarily dismissed the same by his judgment and order dated 30.08.2022.

Being aggrieved by the aforesaid judgment and order dated 30.08.2022 the plaintiff-petitioner moved to this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and the order of maintaining status quo.

Mr Md Golam Rossul, the learned Advocate appearing on behalf of the plaintiff-appellant-petitioner has submitted that learned District Judge during admission hearing of the miscellaneous appeal having

believed the defence case of the defendant-respondent and disbelieved the plaintiff-appellant's case summarily dismissed the appeal instead of admission of the miscellaneous appeal committing an error of law resulting in an error in his decision occasioning failure of justice.

Mr Md Zakir Hossain, the learned Advocate appearing on behalf of the opposite party has opposes the Rule.

I have heard the submissions advanced by the learned Advocates and perused the application and record along with the impugned judgment and order and connected papers.

It appears that during admission hearing of the miscellaneous appeal filed by the present petitioner learned District Judge summarily dismissed the same by the impugned order dated 30.08.2022 with following observations:

“মেমো অব আপীল এবং তর্কিত আদেশ পর্যালোচনা করা হলো। পর্যালোচনায় দেখা যায় স্বীকৃত মতেই বাদী ও বিবাদী আপন ভাই। ১নং বিবাদীর প্রতি সম্মুখ হয়ে বাদী নালিশা ভূমি মৌখিকভাবে হেবা করে ১নং বিবাদীর বরাবরে চিরতরে দখল ছেড়ে দেন মর্মে উল্লেখ করেন এবং ভবিষ্যতের জটিলতা নিরসনকল্পে ডিক্লারেশন অব হেবা দলিল পাঠ করে ৩৩৬ অযুতাংশ ভূমি প্রতিপক্ষের বরাবরে হস্তান্তর করেন। ১নং বিবাদী নালিশা ভূমি প্রাপ্ত হলে ১১৭১ নং জমাভাগ কেইস। মূলে খারিজ করে ভোগ দখলকার নিয়ত আছেন। বাদীপক্ষ নালিশা ভূমিতে থাকার অনুমতির প্রার্থনা করলে বিবাদী পক্ষ থাকার জন্য অনুমতি প্রদান করেন। ফলে, বাদী-আপীলকারী একজন অনুমতি দখলকার। নালিশা

ভূমিতে অনুমতি দখলকারের কোন স্বত্ব না থাকায় এবং প্রতিপক্ষের অনুমতি দখলকার হওয়ায় বাদীপক্ষ প্রার্থিত মতে কোন প্রতিকার পেতে হকদার নহে মর্মে সিদ্ধান্তে এসে বিজ্ঞ বিচারিক। আদালত নিষেধাজ্ঞার দরখাস্তটি ১নং বিবাদীর বিরুদ্ধে দোতরফা সূত্রে নামজ্ঞর করে যে আদেশ প্রদান, করেছেন তাতে হস্তক্ষেপ করার কোন যৌক্তিক কারণ বিদ্যমান না থাকায় আপীলকারী-বাদীপক্ষের দায়েরী এ মিস আপীল মোকদ্দমাটি খারিজের সিদ্ধান্ত গৃহীত হলো।

অতএব,

আদেশ হয় যে,

এ আপীলটি রক্ষণীয় নহে মর্মে সরাসরি (Sumirily) খারিজ করা হলো।”

Having gone through the above observations I do not understand during admission hearing of the miscellaneous appeal how the learned District Judge without hearing both the parties and without examining any document totally disbelieved the plaintiff-appellant's case and believed entire defence case of the defendant-respondent and made above observations in passing the impugned order. Considering the facts and circumstances it appears that there was no bar to admit the miscellaneous appeal and, as such, he ought to have admitted the same and disposed of in due process of law. But in passing the impugned order learned District Judge committed an error of law resulting in an error in such decision occasioning failure of justice.

In view of the above facts and circumstances it appears that there is substance in the Rule and accordingly, it should be made absolute.

Resultantly, the Rule is made absolute without any order as to costs. Setting aside the impugned judgment and order passed by the learned District Judge he is directed to admit the miscellaneous appeal and dispose of the same in accordance with law and procedure.

Till admission of the miscellaneous appeal both the parties are directed to maintain status-quo in respect of possession of the suit land.

Let a copy of this judgment be transmitted at once.