

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.4953 of 2022

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Md. Shah Alam Hang and others
... Defendant-Petitioners

-Versus –

A. Sobhan Khan and others
... Plaintiff-Opposite Parties

Mr. Mohammad Eunos, Advocate
.... For the petitioners

Mr. Md. Ikram Hossain, Advocate
...For the Opposite Parties

**Heard on 24.11.2023 and
Judgment on 12.12.2023**

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 13.10.2022 passed by the learned Senior District Judge, Patuakhali in Miscellaneous Appeal No.51 of 2021, allowing the Appeal and thereby reversing the judgment and order dated 04.10.2021 passed by the learned Joint District, 1st Court, Patuakhali in Title Suit No.258 of 2021 rejecting the application

for temporary injunction 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 judgment and order dated 13.10.2022 passed by the learned Senior District Judge, Patuakhali in Miscellaneous Appeal No.51 of 2021 for a period of 06(six) months and directed the parties to maintain status-quo in respect of possession and position of the suit land.

Facts necessary for disposal of the Rule, in short, are that the opposite parties as plaintiffs instituted Title Suit No.258 of 2021 in the Court of the learned Joint District Judge, 1st Court, Patuakhali for declaring the judgment and decree for the 'ka' and 'Kha' schedule property are illegal, malafide and for setting-aside the same on the point of view that they are the owner of the property by way of settlements from the Government being Settlement Case No.201K/2004-05 and 56K/2005-06. At the same time they also filed an application under Order 39 Rule 1 and 2 and read with section 151 of the Code of Civil Procedure for temporary injunction against the defendants No.1-10 for not to disturb them from their peaceful possession of the suit property.

The defendants-petitioners appeared and contest the suit and also contest the application for injunction by filing a written statement and written objection against the said injunction petition and they also clearly stated in their written statement about the ownership by way of deed of kabalas from the recorded owner namely Abdul Khalek and Abdul Motleb since long ago and as such the subsequently B.S. record already been published in the name of the present defendants and they also owning and

possessing the same by erecting homestead and cultivating agricultural land. The defendants also paid the rents to the Government regularly and they prayed for rejection of the application for temporary injunction which was filed by the plaintiffs, thereafter, the learned trial Court after hearing and perusal of the records and also considering the submission of the learned Advocate of the parties and rejected the application for temporary injunction by the judgment and order dated 04.10.2021.

Being aggrieved by and dissatisfied with the judgment and order dated 04.10.2021 passed by the learned Joint District Judge, 1st Court, Patuakhali in Title Suit No.258 of 2021 the opposite parties filed Miscellaneous Appeal No.51 of 2021 before the Court of learned Senior District Judge, Patuakhali. After hearing both the parties and considering all material on record the learned Senior District Judge, Patuakhali allowed the said Appeal and thereby reversing the judgment and order dated 04.10.2021 passed by the learned Joint District, 1st Court, Patuakhali in Title Suit No.258 of 2021 rejecting the application for temporary injunction by his judgment and order dated 13.10.2022.

Being aggrieved by and dissatisfied with the judgment and order dated 13.10.2022 passed by the learned Senior District Judge, Patuakhali in Miscellaneous Appeal No.51 of 2021 allowing the appeal and thereby Senior District Judge, Patuakhali, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay and status-quo.

Mr. Mohammad Eunos, the learned Advocate appearing for the petitioners submits that during existence the judgment and decree for

permanent injunction about the disputed plot since in the year of 1996 the present plaintiffs are totally barred by law for filing an application for injunction by claiming the possession against the defendants and the learned trial Court clearly stated in his judgment that the present plaintiffs were not get any relief by the settlement Case No.24K/2004-05 and 39K/2004-05 i.e. the long after delay government or the plaintiffs fraudulently obtained the same and as such the balance of convenience and inconvenience in favour of the defendants and the learned trial Court rightly rejected the application for injunction, but the Court of appeal below should have consider the same, but he did not consider and as such the Court of appeal below are liable to be set-aside.

He further submits that the present petitioners are owner and possessor of the suit property form the S.A. plot No.5613 and 5614 by the Settlement Case No.211K/1959-60, 356K/1966-67 and 351K/1966-67, so, it is crystal clear that the defendants are prevail against the plaintiffs i.e. the defendants got the property from the government in the year of 1959 and the present plaintiffs claimed the property by the settlement from the government in the year of 2006 from the same plot so the Court of appeal below should have consider the same, but he did not consider.

He next submits that the learned Court of appeal below without giving any reasonable findings for allowed the appeal and without discussed about the findings of the learned trial Court and most illegally allowed the appeal, which is totally bad in law and liable to be set-aside. Further, the defendants are the owner of the disputed property by the two

kabalas from the recorded owner and they also possessed the same and he mutated his name and paid the rent to the government.

The learned Advocate lastly submits that the strong prima-facie and good arguable case and the balance of convenience and inconvenience in favour of the defendants against the plaintiffs, hence the Court of appeal below should have rejected the application for injunction, but he did not consider the same, so it is liable to be set-aside, thus committed an error of law resulting in an error in the decision occasioning the failure of justice. Accordingly, he prays for making the Rule absolute.

Mr. Md. Ikram Hossain, the learned Advocate appearing on behalf of the opposite parties submits that the opposite parties as plaintiffs instituted Title Suit No.258 of 2021 in the Court of the learned Joint District Judge, 1st Court, Patuakhali for declaring the judgment and decree of the “Ka” and “Kha” schedule property are illegal, malafide and for setting-aside the same on the point of view that they are the owner of the property by way of settlements from the Government being Settlement Case No.201K/2004-05 and 56K/2005-06 and at the same time they also filed an application under Order 39 Rule 1 and 2 and read with section 151 of the Code of Civil Procedure for temporary injunction against the defendants No.1-10 for not to disturb them for their peaceful possession of the suit property. The defendants-petitioners appeared and contest the suit and also contest the application for injunction by filing a written statement and written objection against the said injunction petition and they also clearly stated in their written statement about the ownership by way of deed of kabalas from the recorded owner namely Abdul Khalek and Abdul Motleb

since long ago and as such the subsequently B.S. record already been published in the name of the present defendants and they also owning and possessing the same by erecting homestead and cultivating the same. The defendants also paid the rents to the Government regularly and they prayed for rejected the application for temporary injunction that was filed by the plaintiffs, thereafter, the learned trial Court after hearing and perusal of the records and also considering the submission of the learned Advocate of the parties and rejected the application for temporary injunction by the judgment and order dated 04.10.2021. Being aggrieved by and dissatisfied with the judgment and order dated 04.10.2021 passed by the learned Joint District Judge, 1st Court, Patuakhali in Title Suit No.258 of 2021 the opposite parties filed Miscellaneous Appeal No.51 of 2021 before the Court of learned Senior District Judge, Patuakhali. After hearing both the parties and considering all material on record the learned Senior District Judge, Patuakhali allowed the said Appeal and thereby reversing the judgment and order dated 04.10.2021 passed by the learned Joint District, 1st Court, Patuakhali in Title Suit No.258 of 2021 rejecting the application for temporary injunction by his judgment and order dated 13.10.2022 rightly, which is maintainable in the eye of law. 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 as plaintiffs instituted Title Suit No.258 of 2021 before the Court of the learned Joint District Judge, 1st Court, Patuakhali for declaring the judgment and decree of the “Ka” and “Kha” schedule property are illegal, malafide and for setting-aside the same on the point of view they are owner of the property by way of settlements from the Government being Settlement Case No.201K/2004-05 and 56K/2005-06 and they also filed an application under Order 39 Rule 1 and 2 and read with section 151 of the Code of Civil Procedure for temporary injunction against the defendants No.1-10 for not to disturb them from their peaceful possession of the suit property. The defendants-petitioners appeared and contest the suit and also contest the application for injunction by filing a written statement and written objection against the said injunction petition and they also clearly stated in their written statement about the ownership by way of deed of kabalas from the recorded owner namely Abdul Khalek and Abdul Motleb since long ago and as such the subsequently B.S. record already been published in the name of the present defendants and they also owning and possessing the same by erecting homestead and cultivating the same. The defendants also paid the rents to the Government regularly and they prayed for rejected the application for temporary injunction that was filed by the plaintiffs, thereafter, the learned trial Court after hearing and perusal of the records and also considering the submission of the learned Advocate of the parties and rejected the application for injunction by the judgment and order dated 04.10.2021. Being aggrieved by and dissatisfied with the judgment and order dated 04.10.2021 passed by the learned Joint District Judge, 1st Court,

Patuakhali in Title Suit No.258 of 2021 the opposite parties filed Miscellaneous Appeal No.51 of 2021 before the Court of learned Senior District Judge, Patuakhali. After hearing both the parties and considering all material on record the learned Senior District Judge, Patuakhali allowed the said Appeal and thereby reversing the judgment and order dated 04.10.2021 passed by the learned Joint District, 1st Court, Patuakhali in Title Suit No.258 of 2021 rejecting the application for temporary injunction by his judgment and order dated 13.10.2022.

From the above discussion it is found that there is a claim and counter claim about the possession of land by both the parties that plaintiff and as well as defendant are claiming that they are in possession the same. So it is not possible to find out that who is in actual possession in the suit land without taking evidence both oral of documentary.

Considering the above facts and circumstances and materials on record, I think that it will be best serve, if I give direction the concerned lower Court to disposed of the Title Suit No.258 of 2021 upon considering the evidence and materials on record within one year from the date of receipt of this judgment and order and give the direction to both the parties to maintain Status-quo in respect of their possession and position in the suit land till disposal of suit by the trial Court.

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

The judgment and order dated 13.10.2022 passed by the learned Senior District Judge, Patuakhali in Miscellaneous Appeal No.51 of 2021 allowing the appeal and the judgment and order dated 04.10.2021 passed by the learned Joint District Judge, 1st Court, Patuakhali in Title Suit

No.258 of 20210 rejecting the application for temporary injunction are hereby set-aside.

The learned Joint District Judge, 1st Court, Patuakhali is hereby directed to dispose of the Title Suit No.258 of 2021 within 01(one) years from the date of receipt of this judgment and order.

Further, the plaintiffs-opposite parties and defendant-petitioners are hereby directed to maintain status-quo in respect of possession and position of the suit land till disposal of the Title Suit No.258 of 2021.

The order of stay and 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