

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

In the matter of:

An appeal under Order 43 Rule 1(r) of the Code of Civil Procedure.

In the matter of:

First Miscellaneous Appeal No.48 of 2000

Abdul Matin Chowdhury being dead his legal heirs 1.(a) Md. Hushain Ali Chowdhury and others

...Plaintiff-appellants

-versus-

People's Republic of Bangladesh represented by the Deputy Commissioner, Barisal and others
...Defendant-respondents

No one appears

....Plaintiff-appellants.

Mr. Md. Yousuf Ali, D.A.G.

...Defendant-respondents

Heard on: 27.02.2025

Judgment on: 02.03.2025.

Md. Mansur Alam, J:

The brief facts of this First Miscellaneous Appeal are that this appeal being aggrieved and dissatisfied is preferred by the plaintiff appellant against the order dated 29.08.1999 passed by the learned Subordinate Judge, 2nd Court, Barisal in Title Suit No. 37 of 1999 rejecting the application under order 39 Rule 1/2 read with section 151 of the Code of Civil Procedure.

The plaintiff appellant brought Title Suit No.37 of 1999 for declaration of right, title and possession over the suit land and filed a separate petition under order 39 rule 1/2 read with section 151 of Civil Procedure Code. The case in short of the plaintiff appellant is that the suit

land was originally belonged to Golam Qader Chowdhury and Golam Mohammed Chowdhury and record of right was prepared by their name accordingly. The plaintiff appellants being their heirs have been possessing the suit land by paying rent regularly. The Arial Khan river flows through the western side of the suit land and some of their land have been submerged in the river in 1972. The suit land was submerged for 6-7 years and thereafter restored in its original nature in 1978-1979. Surveyor of the government illegally and arbitratorly recorded the suit land in khatian No. 1 in the name of the Government. And there is note in diara khatian that on the head of the suit plot Arial Khan river is for boating but no year or date is specified to believe that note. These plaintiff appellants became aware that the defendants No. 5-7 are preparing to get the land on lease. These defendants would incurred irreparable loss if the suit land would lease to the other as the plaintiff dug a null on the suit land by expensing money amounting more than one lac. Therefore the plaintiff appellant filed this petition for temporary injunction till disposal of the original suit.

Defendant respondent entered in the suit filing written objection denying all materials allegations made in the petition under order 39 rule 1/2 read with 151 of Civil Procedure Code contending inter alia that the suit land is a land of khash khatian and recorded in khatian No. 1 as river sikasti in diara survey. The suit land was submerged in Arial Khan river after S.A. operation and the same was in submerged condition till 1980-81 and hence in diara survey the suit land was recorded in khas khatian under

P.O order No. 135 of 1972. Now the boats are plying over the suit land for public use. The government defendant leased out the suit land to the different people including the defendant Nos. 5-7 and they have been issued dakhila on 05.08.1999. The plaintiff appellants have no right, title and possession over the suit land. Hence the aforesaid injunction petition is liable to be rejected.

The learned subordinate judge upon considering the petition under order 39 rule 1/2 and written objection framed the following point for determination:

1. Whether the petition for temporary injunction is entertainable or not?
2. Whether the plaintiff is entitled to get the order of temporary injunction or not?
3. What more reliefs the plaintiffs are entitled to get?

At the time of hearing of this appeal no one is appeared for the plaintiff appellant. In the petitioner of the First Miscellaneous Appeal the plaintiff appellant contended that learned Subordinate Judge misconceived the fact of the case and erred in law rejected the petition. Learned Subordinate Judge was wrong in holding the view that the plaintiff appellants did not get the suit land by way of inheritance from their predecessor and the record of right was rightly prepared in the name of the government defendant.

On the other hand the learned Deputy Attorney General for the respondent defendant contented that the present petition under order 39 rule 1/2 is not at all maintainable, the plaintiff appellants have no right,

title and possession over the suit land. The suit land is recorded in khas khatian by the name of the defendant government. The suit land is leased out to the defendant Akbar Ali and others on 05.08.1999 issuing DCR. They have been possessing the suit land.

On meticulous and close perusal of the impugned order and materials on record it is admitted that the suit land was partly submerged (sikasti) in western side in Arial Khan river. Also it is admitted that the suit land is recorded in khas khatian. But the plaintiff appellant did not specify the quantum how much land is submerged in the river and how much is restored in its original nature. Though there is a dispute in respect of time of transforming the suit land into Sikasti and thereafter into Poyesti and the duration of the condition of Sikasti but the plaintiff appellant did not specify these matters. Learned subordinate Judge rightly observed that without adducing any evidence oral and documentary in trial, these matters cannot be determined. The plaintiff appellants claim that Sikasti and Poyesti cannot be determined since no pen made drawing is submitted to the court. The defendant respondent vehemently opposed the existence of rent receipts submitted by the plaintiff appellants. So the genuineness of these rent receipt can be determined only adducing by evidence on trial. Learned trial judge on appreciating these aspects rightly observed that the balance of convenience and inconvenience is not in favour of the plaintiff appellant. Therefore, we are constrained to hold that the impugned order of the learned trial court does not deserve to be interfered.

In view of our discussion made in above by now it is clear that the instant miscellaneous appeal must failed.

In the result, the appeal is dismissed.

The impugned order dated 29.08.1999 passed by the learned Subordinate Judge, 2nd Court, Barisal in Title Suit No. 37 of 1999 rejecting the prayer of temporary injunction is upheld.

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

Sheikh Abdul Awal, J:

I agree.