

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.5937of 2022

Abdul Kader Molla and others.

.....Petitioners.

-Versus-

Raza Mia Madbor and others.

.....Opposite parties.

Mrs. Anjuman Ara, advocate

.....For the petitioners.

Mr. Abdul Awal, Advocate with

Mr. Md. Shaheb Ali, Advocate

.....For the Opposite parties.

Heard and Judgment on 20.03.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the Opposite Parties to show cause as to why the judgment and order No. 11 dated 02.10.2022 passed by the District Judge, Madaripur in Miscellaneous Appeal No. 11 of 2022 reversing the judgment and order no. 13 dated 24.03.2022 passed by the Senior Assistant Judge, Shibchar, Madaripur in Title Suit No. 598 of 2021 (Civil Suit No. 598 of 2021) granting status-quo should not be set aside.

During BRS operation, BRS khatian No. 1162, petitioner's name was wrongly recorded only on 65 decimals of land instead of 86 decimals of land and remaining 21.06 decimals of land was wrongly recorded in the name of the defendant, plaintiff instituted Title Suit No. 598 of 2021 against the defendant before the Court of Assistant Judge, Shibchar, Madaripur for declaration of title.

During pendency of the suit, defendant claimed that defendants who having no ownership or possession over the schedule property forcibly tried to construct building and other infrastructure denying the rightful claim by the petitioner. Plaintiff filed the application for temporary injunction. The learned trial court after hearing the parties and considering the papers passed an order no. 13 dated 24.03.2022 directing both the parties to maintain status-quo over .19 decimals of disputed land.

Challenging the said order defendant nos. 42-44 preferred Miscellaneous Appeal No. 11 of 2022 before the Court of District Judge, Madaripur, who by the impugned judgment and order no. 11 dated 02.10.2022 set aside the order passed by the trial court and after allowing the appeal rejected the order of status-quo passed by the trial court.

Being aggrieved there against plaintiff-petitioner obtained the instant rule.

Mrs. Anjuman Ara, the learned advocate appearing for the petitioner drawing my attention to the judgment and order of the court below submits that learned Assistant Judge considering the paper and prevailing circumstances of the suit land passed an order to maintain status-quo to both the parties on .19 decimals of land, which was an innocent order but in appeal there against the Appellate Court most illegally set aside the said order passed by the trial court upon considering an un-accepted report of the Advocate Commissioner and held that defendant making a half done construction on the suit premises, if they are been restrained by an order of status-quo, the materials placed thereon would be damaged but he totally failed to appreciate that by the order of refusing to maintain status-quo, the Appellate Court practically frustrated the cause of action of the suit. Accordingly the impugned judgment and order is not sustainable in law, which is liable to be set aside.

On the other hand Mr. Abdul Awal along with Mr. Md. Shaheb Ali, the learned advocate appearing for the opposite party

submits that Appellate Court upon correct assessment of the physical possession of the parties in the suit land has rejected the application for injunction considering the report of the Advocate Commissioner rightly. The impugned judgment since contains no illegality, rule contain no merit, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment and documents annexed to the application.

In the suit for declaration of title, when plaintiff claimed that they are in possession into the suit land and that defendants illegally by entering the suit premises, making constructions thereon illegally and they need to be restrained by way of injunction, otherwise the plaintiff suit would be frustrated and plaintiff will suffer irreparable loss and injury, Trial Court passed an order of status-quo but it was reversed by the Appellate Court, which is under challenged in the instant rule.

Suit is for simple declaration of title. Primarily it can be presumed that plaintiffs are in possession into suit premises, when

the defendants tried to make constructions over the suit premises, the injunction was sought for.

In a matter to decide an application for injunction, the mood question to be looked into, who is in possession into the suit premises as well as balance of convenience and inconvenience is in whose favour. Trial Court upon considering the balance of convenience and inconvenience has rightly passed an innocent order of granting status-quo to be maintained by both the parties but the Appellate Court totally failed to appreciate the above requirements of law in deciding the application for injunction and set aside the order passed by the trial court. If the defendant is allowed to complete the constructions into the suit premises, the nature and character of the suit premises obviously would change and it will create a multiplicity of the suit, which is not desirable and being asked to stop by a number of cases fixed up by the Apex Court.

Regard being had to the above law, facts and circumstances of the case, I am of the opinion that Appellate Court committed illegality in setting aside the order of status-quo granting by the

trial court by the impugned judgment and order. I thus find merit in this rule.

Accordingly the rule is made absolute and the judgment and order passed by the Appellate Court is hereby set aside and the judgment of the trial court is hereby upheld and trial court is hereby directed to decide the matter expeditiously as early as possible.

Let the order of status-quo granted earlier by this court is hereby recalled and vacated.

Communicate the judgment to the court below at once.