

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1758 OF 2023

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Abdur Rahim and others

... Petitioners

-Versus-

Amina Bewa and others

... Opposite parties

None appears

.... For the petitioners.

Mr. Md. Mizanur Rahman, Advocate

.... For the opposite party Nos.1-4.

Heard and Judgment on 21.11.2024.

This Rule was issued calling upon the opposite party Nos.1-8 to show cause as to why the impugned judgment and order dated 17.11.2022 passed by the learned Additional District Judge, Mymensingh in Civil Revision No.05 of 2021 reversing the judgment and order dated 06.01.2021 passed by the learned Senior Assistant Judge, Sadar Court, Mymensingh, in Other Class Suit No.276 of 2018 allowing the application under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for a decree of perpetual injunction for 0.1862 ajutangsho land claiming title by adverse possession.

In above suit 11 persons filed a joint petition under Order 1 Rule 10 of the Code of Civil Procedure for being added as defendants alleging that they are living in the dwelling house in above land for a long time claiming title against the true owners and their above possession has matured into valid title by adverse possession.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge allowed above petition.

Being aggrieved by above judgment and order of the trial Court above plaintiff as petitioner preferred Civil Revision No.5 of 2021 to the District Judge, Mymensingh which was heard by the learned Additional District Judge who allowed above revision, set aside the judgment and order of the trial and rejected the petition under Order 1 Rule 10 of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above opposite parties as petitioners moved to this Court and obtained this Rule.

No one appears on behalf of the petitioners when the Rule was taken up for hearing although this matter appeared in the list for hearing on several dates.

Mr. Md. Mizanur Rahman, learned Advocate for opposite party Nos.1-4 submits that the opposite party as plaintiff instituted above suit for a decree of perpetual injunction against the defendants who threatened the plaintiffs with forcible dispossession. The opposite parties as plaintiff filed a suit for specific performance of contract for the disputed land which was dismissed on contest and above judgment and decree was upheld by the Appellate Division. The opposite party as plaintiff filed another suit challenging the legality of enlistment of the disputed land as enemy property which was abetted. The petitioners do not have any rightful claim over the disputed property nor the plaintiff impleaded them as defendants since they did not threaten the opposite party with forcible dispossession. The petitioners were not necessary party in this suit for permanent injunction and the learned Additional District Judge rightly allowed the Civil Revision and set aside the flawed judgment and order of the trial Court and rejected above petition under Order 1 Rule 10 of the Code of Civil Procedure which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party Nos.1-4 and carefully examined all materials on record.

It is admitted that disputed land comprises a pucca dwelling house which belonged to Monmothonthath Guhu and for above dwelling house and land the opposite party as plaintiffs filed Title Suit Nos.112 of 1969 for specific performance of contract which was dismissed and

above judgment and decree was upheld by the Appellate Division. In above suit plaintiff claimed possession in above property pursuant to part performance of above contract.

The petitioners have filed above petition under Order 1 Rule 10 of the Code of Civil Procedure for addition as defendants in above suit claiming that they are in possession in the above house for a long time and there above possession has matured in to title by adverse possession. It turns out from plaint that the opposite parties has admitted possession of the petitioner in the above house. The opposite parties claims that the petitioners were their monthly tenants in above house without written tenancy agreement.

It is true that in a suit for permanent injunction only those persons are necessary parties who threatened the plaintiff with dispossession. But in this suit the opposite parties do not have any lawful title and the petitioners are possessors in above house and the petitioner do not recognize the opposite parties as owners.

Since the petitioners claimed to be in physical possession of the dwelling house and further claimed that their possession had matured into title by adverse possession the learned Judge of the trial Court rightly allowed their petition so that they could contest the claim of the plaintiff.

The learned Judge of the Court of Appeal below have failed to appreciate above aspect of the case and materials on record and most

illegally allowed the revision and set aside the lawful judgment and order of the trial Court and rejected above petition under Order 1 Rule 10 of the Code of Civil Procedure which is not tenable in law.

In above view of the materials on record I find substance in this revisional application under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order dated 17.11.2022 passed by the learned Additional District Judge, Mymensingh in Civil Revision No.05 of 2021 is set aside and the judgment and order dated 06.01.2021 passed by the learned Senior Assistant Judge, Sadar Court, Mymensingh, in Other Class Suit No.276 of 2018 is restored.

However, there is no order as to costs.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER