

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 2328 of 2023

In the matter of:

Md. Abdus Shahid.

...Petitioner.

-Vs-

Asiya Khatun and others.

....Opposite parties.

Present

Mr. Justice Mamnoon Rahman

Mr. Alal Uddin, Adv.

...For the petitioner.

Mr. Toufique Anowar Chowdhury, Adv.

...For the opposite party Nos. 1-3.

Heard on: **06.12.2023**

And

Judgment on: **The 7th December, 2024**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the impugned judgment and order dated 10.11.2022 passed by the learned District Judge, summarily rejecting the Miscellaneous Appeal No. 221 of 2022 arising out of order dated 19.07.2022 passed by the Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 792 of 2021 rejecting the application under Order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction in the suit land should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts relevant for the disposal of this rule, is that, the present petitioner as plaintiff instituted Title Suit No. 639 of 2009 in the court of Joint District Judge, Second Court, Dhaka for declaration of title

as well as certain further declaration including the partition of the suit property. The defendant-opposite party contesting the suit by filing written statement denying all the material allegations made in the plaint. However, it transpires that the petitioner plaintiff thereafter pressed an application under Order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 in the year 2022 and the defendant-opposite party contested the same by filing written objection. The trial court after hearing the parties and considering the facts and circumstances, vide the impugned judgment and order dated 19.7.2022 rejected the same. Against which the petitioner plaintiff as appellant preferred Misc. Appeal 221 of 2022 before the District Judge and the same was heard and disposed of by the District Judge who vide the impugned order dated 29.08.2022 dismissed the appeal and thereby affirmed the judgment and order passed by the trial court. Being aggrieved, the present petitioner moved before this court by way of revision and obtained the present rule.

The opposite party-defendant contested the rule by filing counter affidavit denying all the material allegations made in the revisional application.

Mr. Alal Uddin, the learned counsel appearing on behalf of the petitioner submits that both the courts below without applying their judicial mind and without considering the facts and circumstances most illegally and in an arbitrary manner passed the impugned judgment and order which requires interference by this court. He submits that admittedly the petitioner proved his possession and other aspects in the

suit property but the court below with misunderstanding and misinterpreting the scheduled of the suit property most illegally and arbitrary manner passed the impugned judgment and order. He further submits that admittedly the petitioner pressed an application for injunction but the same was rejected and the petitioner further pressed an application with different cause of action which required to be considered for ends of justice.

Mr. Toufique Anwar Chowdhury, the learned counsel appearing on behalf of the opposite party Nos. 1-3 vehemently opposes the rule. He submits that the court below on proper appreciation of the facts and circumstances, provisions of law, materials of record, rejected the prayer for injunction by concurrent findings of fact and law which requires no interference by this court. He submits that in the present suit in hand the petitioner prays for a decree of partition which is an urban property and as such in numerous decisions of this court as well as our apex court categorically stated that in a suit for partition regarding an urban area they should not get any order of injunction. The learned counsel also referred and placed the schedule stated that the suit property is not specified properly and as such there is no scope for granting injunction in an unspecified schedule.

I have heard the learned Advocates for the petitioner as well as the opposite party. Perused the impugned judgments and orders passed by both the courts below, revisional applications, grounds taken thereon,

counter-affidavit filed by the opposite party as well as papers and documents annexed herewith.

On perusal of the same, it transpires that the present petitioner as plaintiff instituted suit in the year 2009 for certain reliefs including partition. It transpires that the suit is pending and after substantial time the petitioner pressed an application for injunction before the trial court. The trial court after hearing the parties and considering the facts and circumstances, rejected the same on 21.03.2022. Thereafter, the petitioner also pressed an application for injunction before the trial court which was objected by the opposite party by filing written objection. It transpires that the trial court after hearing the parties and considering the facts and circumstances vide judgment and order dated 19.07.2022 rejected the prayer for injunction which has been affirmed by the lower appellate court.

On meticulous perusal of the papers and documents, it transpires that while rejecting the application for injunction the trial court categorically came to a conclusion that earlier occasions an application for injunction was rejected on 21.03.2022 against which the petitioner did not prefer any revision or appeal before the superior court. Though, it has been stated that the present application for injunction was preferred for fresh cause of action but in the order passed by the trial court and the trial court came to a clear conclusion that the plaintiff failed to assert the specific possession by giving specific description of the property claimed by the petitioner. It also transpires that the trial court considered the facts

and came to a positive finding that the plaintiff failed to prove the same. However, on appeal, it transpires that the lower appellate court also considered the aspects of injunction, balance of convenience and inconvenience and injury to be caused and came to a conclusion regarding the vagueness of the schedule in question. So, it transpires from the plaint specifically on Schedule No. 1 that the petitioner is claiming 35 decimals of land wherein it clearly found that in Schedule No. 1 the petitioner plaintiff stated 96 decimals of land in C.S. Plot No. 383 corresponding to S.A. Khatian No. 268.

On meticulous perusal of the said schedule, it transpires that there is no specification giving in the main plaint which clearly shows that there is a doubt regarding the specific possession or specification of the suit property. Apart from that it transpires that both the courts below on concurrent findings of fact and law rejected the application. As such I find no reason to interfere.

Accordingly, the instant rule is discharged without any order as to cost. The impugned judgment and order passed by the court below is hereby affirmed. The interim order passed by this court is hereby vacated. However, the trial court is directed to hear and dispose of the suit as early as possible not later than 6(six) months from the date of receipt of the instant judgment and order without fail.

Communicate the judgment and order to the concerned court below at once.

(Mamnoon Rahman,J:)