

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.5398 of 2023

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Sabina Begum and others

... Petitioners

-Versus –

Babul Maris and others

... Opposite Parties

Surojit Bhattacharjee, Advocate

.... For the petitioners

Mr. Md. Mesbahul Islam, Advocate

...For the Opposite Parties

Heard and Judgment on 13.12.2023

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, the leave was granted and this Rule was issued calling upon the opposite parties No.1-10 to show cause as to why the judgment and order dated 26.09.2023 passed by the learned Additional District Judge, 4th Court, Sylhet in Miscellaneous Appeal No.41 of 2021, allowing the Appeal and reversing the judgment and order dated 22.08.2021 passed by the learned Senior Assistant Judge, Kanighat, Sylhet

in Title Suit No.23 of 2021 allowing an application for temporary injunction filed under order XXXIX Rule 1 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.

At the time of issuance of the Rule this Court stayed the operation of the judgment and order dated 26.09.2023 passed by the learned Additional District Judge, 4th Court, Sylhet in Miscellaneous Appeal No.41 of 2021 for a period of 04(four) months from date.

Facts necessary for disposal of the Rule, in short, are that the opposite parties No.1-10 as plaintiffs instituted Title Suit No.70 of 2019 on 10.04.2019 in the Court of the learned Senior Assistant Judge, Sadar Sylhet against the petitioners praying for declaration of title from their predecessor. The Title Suit No.70 of 2019 subsequently transferred in the Court of learned Assistant Judge, Kanighat, Sylhet and re-numbered as Title Suit No.23 of 2021.

On 17.11.2019 the plaintiff-opposite parties filed an application before the learned Senior Assistant Judge, Sadar, Sylhet under Order XXIX Rule 1 of the Code of Civil Procedure alleging the self same allegations made in the plaint and contending that they have a prima-facie good arguable case balance of convenience and in convenience weight heavily in favour of the plaintiff opposite party and in absence of an order of temporary injunction as prayed for the plaintiffs will suffer irreparable loss for which plaintiffs would be seriously prejudiced.

After hearing the learned Senior Assistant Judge, Sadar, Sylhet directed to show cause within 7 days asking the defendant-petitioners as to

why they should not be restrained by an order of temporary injunction as prayed for.

On receiving the notices of show cause above said the defendant-petitioners entered appearance in the suit by filing vokalatnama through their learned Advocate and contested the application for temporary injunction by filing a joint written objection denying the material allegation made in the application for temporary injunction. In the written objection the petitioners contended in thereby that there is no cause of action for filing the suit, opposite-parties did not come with clean hands, the opposite parties has no right, interest and possession in the suit land and on the other hand this contesting petitioners have been possessing the suit land by purchased and inheritance. Predecessor of the petitioners were the original owner of the suit land whose name, records of right was correctly prepared within the knowledge of the opposite parties. They have been possessing the suit land by amicable partition amongst themselves and accordingly they have been paying rents to the Government. The opposite parties alleged claims are false, fraudulent and collusive and those have been created by the opposite parties for their illegal gain. It is a downright falsehood to say the opposite parties are in absolute possession of the suit land. The petitioners have been possessing the same within the knowledge of all. The opposite parties' suit is also barred by limitation. The opposite parties filed the suit as well as the application for temporary injunction on false allegations only to harass these petitioners. The opposite parties have no prima facie and arguable case and possession in the suit land and as such

they are not entitled to get an order of temporary injunction. The application for temporary injunctions is liable to be rejected.

The petitioners filed a joint written statement dated 28.09.2020 before the learned Senior Assistant Judge alleging self same allegations made in the written objection dated 01.03.2020 and considering inter alia that belonged to Yeasin Ali. The opposite parties also stated that the suit land originally belonged to the predecessor of opposite parties and some of petitioners namely Yeasin Ali. He entered into his first marriage where his wife died leaving behind one son Abdus Samad and three daughters. Yeasin Ali entered into second marriage where one son Abdul Mosabbir and daughter Lutufunessa born to them. Abdus Samad died in the life time of his father Yeasin Ali leaving behind one son Akhtar Hussain and he is the predecessor of the plaintiffs. Yeasin Ali who died leaving behind his son Abdul Mosabbir and three daughters and Akhtar Hussain before S.A. record was made. So, the provision of inheritance Akter Hussain is not entitled to get share as his father died in the life time of his grandfather. It is a false statement about the gift of the disputed plot from the heirs of Akter Hussain. S.A. record was duly entered and B.S. corresponding to that Abdul Mosabbir sold 0.244 acre to Surotunnesa (mother of defendants No.1-6) by registered sale deed No.0982 of 1984 Abdul Mosabbir and Sorotunnesa died leaving behind the petitioners No.1-6. The opposite parties are heirs of Akter Hussain are not entitled to get the suit land. The present record is duly in corporate in plot No.1249 originated from S.A. plot No.946. An order for injunction cannot be granted over the schedule land suit is liable to be disallowed.

The learned Senior Assistant Judge, Kanighat, Sylhet on considering the cause the parties and the documents filed by them correctly found that the opposite parties failed to prove prima facie case, the documents on which the plaintiff and the contesting petitioners are claiming the suit property cannot be decided now, which would be decided on taking the oral evidence of the parties, S.A. record in respect of the suit land does not prove the absolute possession of the opposite parties, possession of the suit land in therefore, depend on the oral evidence of the parties. If injunction as prayed for is not passed opposite parties will not suffer any loss, the balance of convenience and inconvenience is in favour of the petitioners and in question of giving out threat by the petitioners of the opposite parties is also not proved and upon such findings the learned Senior Assistant Judge, rejected the application for temporary injunction filed by the plaintiff-opposite parties by his order dated 22.08.2021 passed in Title Suit No.23 of 2021.

Being aggrieved by and dissatisfied with the judgment and order dated 22.08.2021 passed by the learned Senior Assistant Judge, Kanighat, Sylhet in Title Suit No.23 of 2021 the plaintiff-opposite parties filed Miscellaneous Appeal No.41 of 2021 in the Court of learned District Judge, Sylhet. Thereafter, the said Miscellaneous Appeal was transferred to the learned Additional District Judge, 4th Court, Sylhet for disposal. After hearing both the parties the learned Additional District Judge, 4th Court, Sylhet allowed the Miscellaneous Appeal No.41 of 2021 allowing the application for temporary injunction restraining defendants No.1-6 from dispossessing the plaintiffs from the suit land by force till disposal of the

Title Suit No.23 of 2021 and setting-aside the judgment and order dated 22.08.2021 passed by the learned Senior Assistant Judge, Kanighat, Sylhet in Title Suit No.23 of 2021 by his judgment and order dated 26.09.2023.

Being aggrieved by and dissatisfied with the judgment and order dated 26.09.2023 passed by the learned Additional District Judge, 4th Court, Sylhet in Miscellaneous Appeal No.41 of 2021, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Surojit Bhattacharjee, the learned Advocate appearing for the petitioners submits that the learned Additional District Judge, 4th Court, Sylhet misconceived the moot points involved in order to disposing of an application filed under Order XXXIX Rule 1 of the Code of Civil Procedure and in consequence erred in law resulting in an error in the decision occasioning failure of justice.

He further submits that the Appellate Court below relying only on the record of right in respect of the suit property proceeded to allow an application for temporary injunction thereby committed an error of law resulting in error in the decision occasioning failure of justice and inasmuch as the S.A. record of right is not a document of title and the same has no presumptive value at all.

The learned Advocate appearing for the petitioners lastly submits that the trial Court on considering the cases of the parties and the documents filed by them correctly found that the plaintiff failed to prove prima facie case, the documents on which the plaintiff and the contesting defendants are claiming the suit property cannot be decided now which

would be decided on taking the oral evidence of the parties, record in respect of the suit land does not prove the absolute possession of the plaintiffs, in the suit land, therefore, it is depend on the oral evidence of the parties, if injunction as prayed for as not passed plaintiffs will not suffer any loss, the balance of convenience and in convenience is in favour of the defendants, question of giving out threat by the defendants to plaintiffs is also not to proved the appellate Court below without noticing and reversing the finding of the trial Court erroneously allowed the said appeal and thus committed an error of law in the decision occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

Mr. Md. Mesbahul Islam, the learned Advocate appearing on behalf of the opposite parties submits that On 17.11.2019 the plaintiff-opposite parties filed an application before the learned Senior Assistant Judge, Sadar, Sylhet under Order XXIX Rule 1 of the Code of Civil Procedure alleging the self same allegations made in the plaint and contending that they have a prima-facie good arguable case balance of convenience and in convenience infavour of the plaintiff – petitioner. In absence of an order of temporary injunction as prayed for the plaintiffs would be seriously prejudiced. The learned Senior Assistant Judge, Kanighat, Sylhet after hearing both the parties rejected the application for temporary injunction filed by the plaintiff-opposite parties by his order dated 22.08.2021 passed in Title Suit No.23 of 2021. Being aggrieved by and dissatisfied with the judgment and order dated 22.08.2021 passed by the learned Senior Assistant Judge, Kanighat, Sylhet in Title Suit No.23 of 2021 the plaintiff-opposite parties filed Miscellaneous Appeal No.41 of 2021 in the Court of

learned District Judge, Sylhet. Thereafter, the said Miscellaneous Appeal was transferred to the learned Additional District Judge, 4th Court, Sylhet for disposal. After hearing both the parties the learned Additional District Judge, 4th Court, Sylhet allowed the Miscellaneous Appeal No.41 of 2021 allowing the application for temporary injunction restraining defendants No.1-6 from dispossessing the plaintiffs from the suit land by force till disposal of the Title Suit No.23 of 2021 and setting-aside the judgment and order dated 22.08.2021 passed by the learned Senior Assistant Judge, Kanighat, Sylhet in Title Suit No.23 of 2021 by his judgment and order dated 26.09.2023 rightly. Accordingly, he prays for discharging the Rule.

I have heard the submission of the learned Advocate for the opposite parties, perused the revisional application, the impugned order of the Court's below, the papers and documents as available on the record.

It appears from the record that admittedly owner of the scheduled lands was Yeasin Ali and plaintiff-opposite parties are the heirs of Yeasin Ali's grandson Akter Hossain. The opposite parties claimed that their predecessor Akter Hossain was the son of Abdus Samad who was the predeceased son of yeasin Ali. Accordingly, it is claimed by the opposite parties that after death of yeasin Ali predecessor of plaintiff Akter Hossain lived in house with wife of Yeasin Ali and other heirs of yeasin Ali. As Abdus Samad died leaving his father Yeasin Ali according to Muslim Law Akter Hossain was not entitled to any property of Yeasin Ali as heir and that's why wife of yeasin Ali named Rakiba Banu along with son daughters of Yeasin Ali orally gifted the suit lands to Akter Hossain and against the S.A. plot No.946 "মৌখিক দানসূত্র আক্তার হোসেন" has been recorded under S.A.

DP khatian No.63. On perusal of the S.A DP khatian No.63, it is found that there is mention of possession of Akter Hossain through oral gift has been mentioned. Moreover, from the B.S. DP khatian No.143/1, 522 it is found that 15 decimal lands of plot No.946 and 1.06 acres of plot No.946 has been recorded in the names of Akter Hossain and other heirs of Yeasin Ali. So, from the insertion of S.A. DP khatian No.63 possession of Akter Hossain is found and in that khatian fact of oral gift has been recorded. Accordingly, it is determined that plaintiff has made out a good prima facie case in respect of the suit lands. However, the learned trial Court while rejecting the petition under Order XXXIX Rule 1 did not consider the fact of S.A. DP khatian No.63. Moreover, whether Akter Hossain got the suit lands through oral gift is a matter of evidence and it will come to conclusion by taking oral & documentary evidences. So I think justice will be best serve if the both the parties are directed to maintain status-quo till disposal of the suit and learned lower Court is directed to disposed of the original case within one year from the date of receipt of the copy of judgment and order.

Considering the above facts and circumstances and materials on record, I think that the learned Additional District Judge, 4th Court, Sylhet passed the judgment and order dated 26.06.2023 in Miscellaneous Appeal No.41 of 2021 in which have substance to interference.

In the Result, the Rule is disposed of.

The judgment and order dated 22.08.2021 passed by the learned Senior Assistant Judge, Kanighat, Sylhet in Title Suit No.23 of 2021 and the judgment and order dated 26.09.2023 passed by the learned Additional

District Judge, 4th Court, Sylhet in Miscellaneous Appeal No.41 of 2021 are hereby set-aside.

The learned Senior Assistant Judge, Kanighat, Sylhet is hereby directed to dispose the Title Suit No.23 of 2021 within 01(one) year from the date of receipt of this judgment and order and both the parties of this suit are hereby directed to maintain status-quo till disposal of this Suit.

The order of stay 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