

District: Patuakhali

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 5287 of 2023

Md. Mosharef Hossain

.....Defendant No. 6-Appellant-Petitioner
-Versus-

Md. Idris and others

.....Plaintiff-Respondent-Opposite Parties

Mr. Md. Aminul Ehsan, Advocate

..... For the petitioner

Mr. Md. Habibur Rahman, Advocate

..... For the opposite party No. 1

Heard on:06.03.2024

Judgment on: 28.05.2024

Md. Zakir Hossain, J:

At the instance of the petitioner, the Rule was issued by this Court with the following terms:

“Records of the case need not be called for.

Let a Rule be issued calling upon the opposite party No.1 to show cause as to why the judgment and order dated 24.08.2023 passed by the learned District Judge, Patuakhali in Miscellaneous Appeal No. 48 of 2022 affirming the order No. 37 dated 31.05.2022 passed by the learned Joint District Judge, Third Court, (Acting Assistant Judge, Bauphal), Patuakhali in Title Suit No. 136 of 2016 rejecting the application of the petitioner for temporary injunction under Order 39 Rule 1 read with Section 151 of the Code of Civil Procedure shall not be set aside and/or such other

or further order or orders passed as to this Court may seem fit and proper.”

Facts to the issuance of the Rule are *inter alia* that in Title Suit No. 136 of 2016, the learned Joint District Judge, Third Court and Assistant Judge (In Charge), Bauphal, Patuakhali was pleased to reject the petition for temporary injunction filed by the plaintiff-respondent-opposite parties. Impugning the order of the learned Assistant Judge (In Charge), the defendant No. 6 preferred the Miscellaneous Appeal No. 48 of 2022 before the Court of the learned District Judge, Patuakhali. Upon hearing, the learned District Judge was pleased to dismiss the appeal and thereby affirmed the order of the learned Assistant Judge (In Charge). Questioning the chastity of the judgment and order of the learned District Judge, the petitioner moved this Court and obtained the aforesaid Rule and *status quo* therewith.

Heard the submissions advanced by the learned Advocates of the parties and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

It appears from the record that the plaintiff prayed for partition and separate *saham* in respect of the land as mentioned in the schedule ‘Ka’ to the plaint and prayed for separate *saham* in respect of 0.75 decimal of land as mentioned under paragraph No. 8 and 0.37 decimal of land appertaining to paragraph No. 9 to the plaint, but the description of the property is not sufficient to identify. Nevertheless, in the petition for

temporary injunction, the defendant No. 6 prayed for temporary injunction in respect of 0.12 decimals of land showing specific description of the boundary to the said land.

It also appears from the record that the learned Assistant Judge (In Charge) held that the plaintiff has *prima facie* arguable case and the balance of convenience and inconvenience is in favour of the plaintiff and if the temporary injunction is not granted, it will cause serious prejudice to the plaintiff. Consequently, the learned Assistant Judge (In Charge) rejected the injunction petition. In this respect, the relevant portion of the judgment of the learned Assistant Judge (In Charge) may read as follows:

“উপরোক্ত আলোচনা পর্যালোচনা করলে প্রতীয়মান হয় যে, অত্র নিষেধাজ্ঞার দরখাস্তের *Prima facie* এবং *arguable case* আছে। দরখাস্তের *balance of convenience & inconvenience* বাদীর পক্ষে এবং কোনরূপ অস্থায়ী নিষেধাজ্ঞা প্রদান করলে বাদীর অপূরণীয় ক্ষতি (*irreparable loss*) হবে। সুতরাং, সার্বিক পর্যালোচনায় ৬নং বিবাদী কর্তৃক আনীত দেওয়ানী কার্যবিধি আইনের ৩৯ নং আদেশের ১ নিয়ম এবং ১৫১ ধারামতে দরখাস্ত না-মঞ্জুরযোগ্য।”

On perusal of the materials on record, it transpires that the plaintiff and the defendants are full-brothers and they are co-sharers in the suit land, therefore, it would be difficult to restrain any party from enjoying their respective portion of the property and hence, this Court holds the view that the partition suit between the parties should be disposed of with utmost expedition.

The learned Assistant Judge, Bauphal, Patuakhali is directed to dispose of the original suit within 04 (four) months from the date of receipt of the copy of the judgment fixing the consecutive dates for hearing. Till then, the parties are directed to maintain *status quo* in possession and position of the suit land. No unnecessary adjournment petition shall be entertained from either side.

With the above observation and direction, the Rule is disposed of, however, without passing any order as to costs.

Let a copy of the judgment be sent down to the Courts below at once.

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Md. Zakir Hossain, J

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