

02.09.2024

Mr. Sherder Abul Hossain with

Md. Zahangir Alam, Advocates

.....For the plaintiff-petitioner.

Mr. Sree Probir Kumar Ghosh, Advocate

.....For the defendant-opposite parties

This is an application for withdrawal of the Suit for formal defect with permission to sue afresh.

It is contended in the application that the the petitioner as plaintiff filed Other Class Suit No. 39 of 2019 praying for declaration of title in respect of 1.29 acres of land although the learned Advocate at the time of preparation of the plaint described the chain of title of the suit land which ought to have mentioned in the schedule of the plaint but did not resulting the averments of the plaint in comparison with the schedule of the plaint do not disclose the meaningful scene. The constructions of the plaint have been made in a defective way in which the real controversy cannot be adjudicated in accordance with law. It is further contended that in a suit of this nature it is not possible to cure the defect by way of amendment of the plaint and in the attending facts and circumstances the petitioner-applicant needs to withdraw the suit with kind permission to sue afresh.

Mr. Sherder Abul Hossain, the learned advocate appearing for the applicant (plaintiff-petitioner) after placing the application submits that in the attending facts and circumstances of the case the formal defects which cannot be cured by way of amendment of the plaint and the assertions made in the plaint being not clear and lump in nature and unless the suit is withdrawn for formal defect to sue afresh, the innocent plaintiff-petitioner-applicant shall suffer irreparable loss and injury for no fault of his own.

Finally, Mr. Sherder Abul Hossain submits if the suit is allowed to be withdrawn for formal defect with a permission to sue afresh, the plaintiff-petitioner shall deposit a good amount of money as costs as per direction of this court in favour of the contesting defendants.

Mr. Sree Probir Kumar Ghosh, the learned Advocate appearing for the defendant-opposite parties, on the other hand, at the very outset upon referring a decision reported in 46 DLR 246 submits that the plaintiff-petitioner having not specifically stated in the application as to formal defects and as such, the application for withdrawal of the Title Suit with a permission to sue afresh is liable to be rejected.

Having heard the learned Advocates for both the sides, perused the application and other materials on record.

It appears that the plaintiff-petitioner stated in the application that his engaged Advocate in the trial Court due to his mistake or lack of experience could not draft the plaint of the suit stating chain of title of the suit properly resulting the schedule of the plaint does not express the meaningful sense and position of the suit land. It is also stated in the application that the plaint has been drafted in a defective manner which cannot adjudicate the matter in accordance with law.

Considering the facts and circumstances of the case as revealed from the materials on record, I find little substance in the application for withdrawal of the Title Suit with permission to sue afresh filed by the plaintiff-petitioner after being unsuccessful in both the Courts below.

However, in the facts and circumstances of the case and law bearing on the subject and in view of then submission of the learned advocate for the applicant, the application dated 28.08.2024 for withdrawal of the suit with permission to sue afresh is allowed.

The Rule is, therefore, discharged. It is the option or desire of the plaintiff-petitioner to bring a fresh suit on the same cause of action. The order

of status-quo granted earlier by this Court stands vacated.

However, if the plaintiff-petitioner wants to file a fresh suit, he shall deposit a cost Taka 25,000/- in favour of the contesting defendants in court and the contesting defendants will be at liberty to withdraw the same.

Let a copy of this order along with lower Court's record be sent down at once.