

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1851 of 2023

Tofel Ali Waqf Estate, EC No. 3033,
represented by its Motawalli Mujibul Islam

... Petitioner

-Versus-

Mobinul Haque and others

...Opposite-parties

No one appeared.

...For the petitioner

Ms. Nusrat Jahan, Advocate

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

Judgment on 12th February, 2024.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioner Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 23.02.2023 passed by the learned Senior District Judge, Chattogram in Miscellaneous Appeal No. 557 of 2022 dismissing the appeal and thereby affirming the judgment and order dated 17.10.2022 passed by the learned Senior Assistant Judge, 1st Court, Patiya, Chattogram in Other Suit No. 342 of 2022 rejecting an application filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure for temporary injunction should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compass. The petitioner, as plaintiff, filed Other Suit No. 342 of 2022 in the Court of Senior Assistant Judge, 1st Court, Patiya, Chattogram for perpetual injunction. Plaintiff's case in short are that the schedule property was originally belonged to one Munshi Tofel Ali who by a deed of Waqf No. 4080 dated 02.09.1891 established Munshi Tofel Ali Waqf Estate in his name and enrolled the same under defendant No. 6 being E.C. No. 3033 and he himself served as Motawalli. After his death, as per terms of Waqf deed his eldest son Ashraf Ali was Motawalli and after death of Ashraf Ali his son Ear Ali was Motawalli. During R.S. operation suit property was inadvertently recorded in the name of Ear Ali inspite of Munshi Tofel Estate, represented by Motawalli Ear Ali. Actually said Ear Ali never claimed the suit property as his own property, subsequently, in 1950 on his death, brother Monir Ahmed was appointed as Motawalli of the Waqf Estate. After death of Monir Ahmed his brother Abdul Ali and then on the death of Abdul Ali present plaintiff was appointed as Motawalli of the Waqf Estate.

The defendant No. 1 Mobinul Haque, Fazlul Haque, Ekramul Haque are sons of Monir Ahmed. During B.S. operation said property rightly recorded in the name of Waqf Estate with minor mistake as Tufan Ali Waqf Estate and accordingly, the plaintiff was appointed as Motawalli by defendant No. 6 on 10.11.2019. The defendant No. 1 transferred .48 acres land of Plot No. 4115 vide Deed No. 2788 dated 17.04.2014 to his nephew Mukibul Islam Chowdhury including .06 acres of land of Waqf Estate though they have no right, title and interest. On 24.08.2022 the defendant No. 1 disclosed that he will construct “Bir Nibash” on the scheduled property of the Waqf Estate informing that he got allotment from government to establish “Bir Nibash” and threatened the plaintiff with dispossession. The defendant No. 1 also disclosed that tender was published for construction of “Bir Nibash” by LGED Patiya after taking permission from Ministry of Freedom Fighter, and hence the suit for perpetual injunction.

On 26.09.2022 the defendant No. 1 filed written objection against the application for temporary injunction filed by the plaintiff. After hearing the learned trial court rejected the same vide Order No.

06 dated 17.10.2022. Being aggrieved by the aforesaid Order No. 06 dated 17.10.2022 passed by the trial court, the plaintiff appellant preferred Miscellaneous Appeal No. 557 of 2022 before the learned Senior District Judge, Chattogram who after hearing dismissed the appeal by the impugned judgment and order dated 23.02.2023. At this juncture, the petitioner, moved this Court by filing this application under Section 115(4) of the Code seeking leave to revision instead of filing revision under Section 115(1) of the Code and obtained the present Rule and order of status-quo.

This matter was appeared in the cause list for hearing on 05.02.2024, on that day learned Advocate for the petitioner appearing before this Court prayed for adjournment of the matter for a week. Accordingly, prayer was allowed and the matter again appearing in the cause list from 11.02.2024. Today, when the matter is taken up for hearing at 2:30 PM, on repeated calls no one appeared to press the Rule or prayed for time on behalf of the petitioner, consequently, heard the learned Advocate for the opposite-party.

Ms. Nusrat Jahan, learned Advocate appearing for the opposite-party No. 1 at the very outset submits that the plaintiff

clearly stated in the plaint that the property in question stands recorded in the name of predecessor of the opposite-party No. 1. Admittedly, their predecessor named Munshi Tofel Ali made a Deed of Waqf No. 4080 dated 02.09.1891 and established Waqf Estate. Consecutive death of one after another, the plaintiff has been appointed as Motawalli of the Waqf Estate. She submits that the dispute is whether the suit property is Waqf or not. As admitted by the plaintiff the relevant khatian stands recorded not in the name of Waqf Estate but in the name of predecessor the plaintiff as his personal property acquired by Registered Deed No. 4702 dated 28.11.1945 and by inheritance. The plaintiff's predecessor and the defendant No. 1 are brothers, they used to live jointly in their paternal homestead made by Monir Ahmed. The suit property is self acquired property of Monir Ahmed, who used to live on the suit property by erecting house. The plaintiff-Motawalli and other defendants are admittedly co-sharer by inheritance, but the plaintiff claiming the property to be Waqf property filed the suit only to obstruct development and construction work.

She submits that, to determine whether a property is Waqf or not the Waqf Administrator is the proper authority before whom, the

plaintiff is to file application but instead of taking recourse under Waqf Ordinance he filed the present suit. It is argued that the defendant No. 1 is a valiant freedom fighter, for welfare of the freedom fighter the government took a project against which he was awarded Tk. 16,00,000/- for construction of "Bir Nibash". To materialize the project when the defendant No. 1 took step for construction of building on the suit property at the instance of LGED the plaintiff claiming himself as Motawalli of Waqf Estate filed the instant suit.

Apart from this she argued that one of the co-sharer claiming Motawalli of the Waqf Estate is not at all entitled to get injunction against other co-sharers. The trial court while rejecting the application rightly held and observed that where the property belongs to an individual or group of individual as their self acquired property, same cannot come within the purview of Waqf property as appearing from the record of right, wherein the share of the defendants has been clearly mentioned. She submits that if the plaintiff claim that the property is Waqf property the proper forum is before the Waqf Administrator under Waqf Ordinance not the civil court. The appellate court considering ejmali possession of the

property also dismissed the appeal finding that the plaintiff has no prima facie case in his favour.

Heard the learned Advocate for the opposite-party No. 1, have gone through the revisional application, application for injunction, written objection thereto and the impugned judgment and order passed by both the courts below.

The plaintiff claims the suit property as part of Waqf property under Waqf Deed No. 4080 dated 02.09.1891 and it was wrongly recorded in the name of Ear Ali. Subsequently, recorded in the name of Monir Ahmed, but the property actually belongs to the plaintiff Waqf Estate. In support of such contention the plaintiff could not produce any paper or document before the trial court showing that the Waqf deed in question covered the suit plots in any way. On the other hand, the defendants by filing written objection claimed that the property was personal property acquired by purchase and inheritance and accordingly, present khatian also stands recorded as personal property in same khatian along with the Waqf property wherein, share of the Waqf Estate and the share of predecessor of the present opposite-parties have been mentioned. Therefore, in the

absence of any evidence of acquiring the property by the Waqf Estate or it is covered by the waqf deed in question of the year 1891, apparently, the plaintiff failed to show a prima facie case in his favour entitling him to get an order of injunction.

Admittedly, on the suit property homesteaded of Monir Ahmed is still existing in an old condition, because of his sons living abroad and at a distant place from the suit property. Admittedly, the defendant No. 1 is a freedom fighter in whose favour the government allocated an amount of Tk. 16,00,000/- for construction of a building named "Bir Nibash". When he started construction only to obstruct work the plaintiff has filed the instant suit for injunction claiming that the property in question is Waqf property whereas, no such evidence or document filed in support of his such contention.

I have gone through the judgment and order of both the courts below. The trial court while rejecting the application for injunction discussed about the prima facie case of the plaintiff pros and con and finally observed that to grant an order of temporary injunction in favour of the plaintiff no prima facie case is existing. Both the courts below concurrently observed that the property in question is private

property inherited by father of the plaintiff Motawalli along with other defendants from their father Monir Ahmed, meaning thereby, the property is joint property wherein every co-sharer has possession in every inches of the same, as such, a co-sharer claiming the property to be Waqf property is not entitled to get injunction against the major portion of the co-sharers restraining them from enjoyment of the property inherited from their father. Moreover, the plaintiff is also a co-sharer by inheritance from Monir Ahmed who for the reason best known to him, claiming the suit property to be Waqf filed the suit just with an attempt to foil somebody's travel by chopping off one's own nose.

In granting injunction the court is to see whether the plaintiff has a prima facie case, balance of convenience and inconveniences, and irreparable loss. In the instant case both the courts below concurrently found that the plaintiff has no prima facie case as the plaintiff could not substantiate his claim rather it is established that the property is a private property owned by predecessor of the defendants and they have been enjoying the same in ejmali. In the absence of any prima facie case the courts below found that the

balance of convenience and inconveniences are heavily in favour of the defendant. In the event of granting injunction a development work with the money awarded by the government to a valiant freedom fighter will be obstructed and in the event of refusing injunction there is less possibility of suffering any loss by the plaintiff.

In view of the principles enunciated regarding grant of injunction, I find all the ingredients are totally absent in the instant case. Therefore, the trial court as well as the appellate court rightly refused injunction and dismissed the miscellaneous appeal and finds no cogent grounds and reasons for interference.

Taking into consideration the above, this Court finds no merit in the Rule.

In the result, the Rule is discharged, however, without any order as to costs.

Order of *status-quo* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned
at once.

Helal-ABO