

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

FIRST MISCELLANEOUS APPEAL No.39 of 2023

With

CIVIL RULE NO.712(FM) of 2022

Rahima Khatun

... Appellant

-Versus-

Chattogram Port Authority, Chattogram and others

... Respondents

Mr. S. M. Jahangir Alam with

Mr. Md. Harunur Rashid, Advocates

... For the Appellant.

Mr. K.S. Salah Uddin Ahmed with

... For the respondent Nos.2.

Heard and Judgment on 08.12.2024.

The above numbered First Miscellaneous Appeal has been preferred by the plaintiff against the order dated 10.03.2022 rejecting the application for temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure passed by the learned Additional District Judge, 1st Court, Chatogram, in Other Appeal No.362 of 2017 arising out of judgment and decree dated 28.03.2017 passed by the learned Senior Assistant Judge, 1st Court, Chattogram in Other Suit No.66 of 2015.

In the instant First Miscellaneous Appeal the appellant filed an application for an order of injunction and on that application the above mentioned Civil Rule No.712(FM) of 2022 was issued.

Since the instant First Miscellaneous Appeal and the Civil Rules relates to same matter those were heard together and being disposed of by this single judgment.

Mr. S. M. Jahangir Alam, learned Advocate for the appellant frankly concedes that in above appeal and in this petition under Order 39 Rule 1 of the Code of Civil Procedure the disputed land has not been properly described and the same is not easily identifiable and the quantity of the disputed land has been mentioned by kara and gonda which is obsolete and not easily intelligible. In view of above deficiencies he is not willing to press this appeal and the petition under Order 39 Rule 1 of the Code of Civil Procedure for hearing and submits that the appeal and above petition may be dismissed.

On the other hand Mr. K. S. Salah Uddin Ahmned, learned Advocate for the respondent No.2 submits that the appellant filed this petition under Order 39 Rule 1 of the Code of Civil Procedure for an order of temporary injunction in Other Class Appeal No.362 of 2017 which the learned Judge of the Court of Appeal below had rejected. Challenging the legality and propriety of the above judgment and order of the Court of Appeal below above petitioner has moved to this Court and obtained this Rule. But in the meantime above Appellate Court

below has dismissed above appeal under Order 41 Rule 17(1) of the Code of Civil Procedure for not taking appropriate steps. Since above appeal has already been dismissed this First Miscellaneous Appeal has become infructuous and the same is liable to be dismissed.

I have considered above submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

I hold that Other Appeal No.362 of 2017 having already been dismissed this miscellaneous appeal arising out of above appeal challenging the legality of an order passed by the learned Judge of the Court of Appeal below has become infructuous.

Moreover, the learned Advocate for the petitioner has conceded that the appeal and the petition for injunction suffer from serious deficiencies in terms of providing description of the disputed land and mentioning of its quantity and he prays for dismissal of the appeal and discharge of the Rule.

In above view of the materials on record I find no substance in this First Miscellaneous Appeal and the Rule.

Hence, this First Miscellaneous Appeal is hereby dismissed and Civil Rule No.712(FM) of 2022 is hereby discharged.

However, there is no order as to costs.