

District: Noakhali

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 5048 of 2023

Faruk Hossain and others

.....Plaintiff-Appellant-Petitioners

-Versus-

Sofiqul Islam and others

.....Defendant-Respondent-Opposite Parties

Mr. Md. Abdun Nur, Advocate

..... For the petitioners

Mrs. Nahid Yesmin, Advocate

..... For the opposite party Nos. 1-5 & 7-8

Heard & Judgment on: 08.05.2024

Md. Zakir Hossain, J:

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

“The original suit shall proceed as usual.

Records of the case need not be called.

Let a Rule be issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 26.06.2023 passed by the learned Special District Judge, Noakhali in Miscellaneous Appeal No. 08 of 2022 dismissing the Appeal and thereby affirming the judgment and order dated 02.01.2022 passed by the learned Senior Assistant Judge, Chatkhil, Noakhali in Title Suit No. 572 of 2021 rejecting the application under Order 39, Rule 1 & 2 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 leading to the issuance of the Rule are *inter alia* that the petitioners as plaintiffs instituted Title Suit No. 572 of 2021 before the Court of the learned Senior Assistant Judge, Chatkhil, Noakhali for perpetual injunction impleading the opposite parties as defendants. The plaintiffs also filed an application under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908, in short, the CPC. Upon hearing, the learned Senior Assistant Judge was pleased to dismiss the petition for temporary injunction. Impugning the judgment and order of the learned Senior Assistant Judge, the plaintiffs being appellants preferred Miscellaneous Appeal No. 08 of 2022 before the Court of the learned District Judge, Noakhali. After admitting the appeal, the learned District Judge transmitted the record of the appeal to the learned Special District Judge, Noakhali for disposal. Upon hearing, the learned Special District Judge was pleased to dismiss the appeal. Impugning the judgment and order of the learned Special District Judge, the petitioners moved this Court and obtained the aforesaid Rule and the order of *status quo* therewith.

Heard the submissions advanced by the learned Advocates of the petitioners and the opposite parties at length 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.

The learned Senior Assistant Judge in her order came to the finding that the predecessor of the plaintiffs and the defendants were the recorded owners of the suit land. The learned Senior Assistant Judge held to the effect that the plaintiffs could not able to prove *prima facie* arguable case, balance of convenience and inconvenience in his favour and he will suffer irreparable loss and injury, if the injunction is not granted. The plaintiff claims that he has a pathway in respect of the land measuring 3 decimals. The defendants also claim that they started construction work in the suit land and in the meantime, 12 pillars were installed and basement work was completed. The joint possession of the parties in the suit land can be interfered from the facts and circumstances of the case, hence, the parties may be directed to maintain *status quo* in respect of possession and position of the suit land.

Considering the backdrop of the case, I am of the view that the original suit should be disposed of with utmost expedition to secure the ends of justice. Accordingly, the learned Senior Assistant Judge is directed to dispose of the original suit within 06 (six) months from the date of receipt of the copy of this judgment positively. Till then, the parties are directed to maintain status quo in respect of possession and position of the suit land. The learned Senior Assistant Judge may dispose of the original suit by fixing consecutive dates.

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 transmitted to the Courts below at once.

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Md. Zakir Hossain, J

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