

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 1048 of 2024

Advocate Ranjit Kumar Chowdhury and
anotherpetitioners

-Versus-

Ehasanul Karim and others
.....opposite parties

Mr. Purnendu Bikash Das with
Mr. Binoy Krishna Podder, Advocates
..... for the petitioners

Mr. Surojit Bhattacharjee, Advocate
..... for opposite parties 1-9

Judgment on 23.05.2024

At the instance of the plaintiffs this Rule was issued calling upon defendant-opposite parties 1-9 to show cause as to why the judgment and order dated 19.11.2023 passed by the Additional District Judge, Court No.2, Chattogram in Miscellaneous Appeal No.110 of 2022 dismissing the appeal affirming the judgment and order dated 09.02.2022 passed by the Joint District Judge, Court No.1, Chattogram in Other Class Suit No.239 of 2021 rejecting the application for temporary injunction filed under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure (the Code) should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

At the time of issuing the Rule this Court passed an order directing the parties to maintain *status quo* in respect of the

possession and position of the suit property for a period of 03(three) months which still subsists.

The plaintiffs instituted the suit praying for declaration of title in *ejmali* with defendants 10, 11 and 12 in the suit land as described in schedule-1(Ka) to the plaint with further prayer that BS record prepared in the defendants' name is erroneous. In the plaint they stated facts that Ashwini Kumar Chowdhury, Kamini Kumar Chowdhury and others were 8 annas share out of .3353 acres of suit land along with other non suited land. Ashwini died leaving behind one daughter Kaisa Sundari who had a son Rasik Chandra Dey having land in the *mouja* described in the suit schedule. In 1947 all other RS recorded tenants left this country leaving behind Amar Krishna and Rasik Chandra. Rasik died leaving his 2(two) sons Manoranjan Chowdhury and Gopal Krishna Chowdhury. Gopal subsequently left this country for India leaving his brother Manoranjan only. Manoranjan died leaving 2(two) sons Ranjit Kumar Chowdhury plaintiff 1 and Utpal Chowdhury. Utpal died leaving behind his only son Tanmoy Chowdhury plaintiff 2. The plaintiffs and defendants 10, 11 and 12 have been possessing the suit land in *ejmali*. The defendants claimed title in the suit land on 10.09.2011 and threatened the plaintiffs of dispossession on the strength of BS *khatian* prepared in their names. The plaintiffs then collected copies of the

concerned *khatian* and found that .4156 acres of land in 5 RS plots corresponding to BS plots 797 under RS *Khatian* 207 has been prepared in the names of Fazol Karim and others. The preparation of the aforesaid record is erroneous. Hence the suit as prayed for.

In the said suit the plaintiffs filed an application under Order 39 Rules 1 and 2 of the Code for temporary injunction against defendants stating the facts that the defendants on 10.09.2021 tried to enter into the suit premises forcibly but the plaintiffs somehow resisted them. At the time of leaving the premises they disclosed that they would take possession of the suit land by evicting plaintiffs' men. The plaintiffs prayed for temporary injunction restraining the defendants from making any construction work over the suit land and dispossessing them therefrom and selling the land to any other parties. Defendants 1-9 resisted the said application by filing written objection. In the written objection they claimed that Amar Krishna and others were the recorded tenants of the scheduled property. RS *khatian* was correctly prepared in their names. In an amicable settlement among the recorded tenants Shrish Chandra and Chandra Kumar got the entire suit property and started possessing the same. Shrish Chandra died leaving behind his son Chunilal. Chandra Kumar died leaving behind son Dhirendralal. Dhirendra and Chunilal through agreements dated 28.07.1959 and 29.08.1959 transferred

the suit property to Nur Ali Rashid, the proprietor of Roshnee Timber Work's and delivered possession thereof. Nur Ali mutated his name and PS *Khatian* 352 was prepared in his name. He died leaving behind one son Jahid Hossain and one wife Zohora Begum who inherited his property. The above heirs of Nur Ali subsequently sold out the property through 5 registered *kabalas* all dated 21.06.1979 to Fazal, Ambia khatun and Umme Kulsum who are the predecessors of defendants 1-8 and delivered possession thereof. The purchasers constructed dwelling house and setup a workshop named Karim Engineering Workshop thereon and thus have been enjoying the same. BS *khatian* has been correctly prepared in their names. Subsequently Fazal and his 2 (two) wives died leaving behind their 6 (six) daughters and 2 (two) sons defendants 1-8. They have been enjoying the suit property by paying rents and all utility bills to the concerned. The plaintiffs have no right, title and possession over the schedule property. The suit and the application for temporary injunction have been filed on false statements and as such the application would be rejected.

The Joint District Judge rejected the application for temporary injunction deciding all the material issues against the petitioners. Against which the plaintiffs preferred miscellaneous appeal before the District Judge, Chattogram. The Additional District Judge, Court No.2, Chattogram heard the appeal on

transfer and dismissed the same affirming the judgment and order passed by the Joint District Judge that prompted the petitioners to approach this Court with this revision upon which the Rule was issued and *interim* order was passed.

After issuance of the Rule and *interim* order of *status quo* opposite parties 1-9 filed an application on 21.04.2024 praying for vacating the *interim* order passed by this Court. I kept the application with the record and fixed this Rule for hearing on merit.

Mr. Purnendu Bikash Das, learned Advocate for the petitioners takes me through the plaint, application for temporary injunction and the orders passed by the Courts below and submits that the petitioners claimed the suit property by way of inheritance. The statements made in the application for injunction support their possession in the suit land through tenant. On the other hand the defendants claimed title over the suit land by way of 2(two) unregistered deed of agreement for sale which were not brought before the Court. Those documents do not create any title in favour of the defendants. The defendants' claim is baseless. Since the plaintiffs proved the genealogy in support of their title in the suit land and the defendants threatened them for dispossession, they are entitled to get an order of injunction. Both the Courts below misdirected and misconstrued in their approach of the

matter and thereby committed error of law in not granting temporary injunction occasioning failure of justice. The rule, therefore, would be made absolute.

Mr. Surojit Bhattacharjee, learned Advocate for opposite parties 1-9 opposes the Rule and submits that the plaintiffs in support of their title produced purchase deeds and the records prepared in the name of their predecessor. They produced rent receipts and other utility bills in support of their possession in the suit property. The balance of convenience and inconvenience for granting temporary injunction is not in favour of the plaintiff-petitioners. They have no *prima facie* arguable case to get an order of temporary injunction. The trial Court correctly rejected the application for temporary injunction which was affirmed by the lower appellate Court and as such the judgment and orders passed by the Courts below may not be interfered with by this Court in revision.

I have considered the submissions of both the sides and gone through the materials on record. This is a suit for declaration of title claiming joint possession with the defendants in the suit property as described in the schedule to the plaint with further prayer that BS khatian prepared in the name of defendants is erroneous. On going through the schedule of the plaint it is found that the land has been described in schedule-1(Ka) as- “বি এস ২০৭

নং খতিয়ানে বি এস ৭৯৭ দাগের ১৬.৭৭ বা ৩৩৫৩ শতাংশ বা ১৬।১-১ দস্ত বাড়ী ভূমির আন্দর ৮.৩৮ বা ১৬৭৬ শতাংশ। রকম-বাড়ী ভিটি ভূমি।” In the application they prayed for injunction over the same land as described in the schedule to the plaint. The schedule of the land as described above is found vague and unspecified. Concisely the plaintiffs claimed title over .1676 acres of land out of .3353 acres of schedule 1(Ka). It further appears that the defendants have produced relevant *khatians* prepared in the name of their predecessor. They have produced rent receipts as well as the utility bills paid in the names of Roshnee Timber Work’s and the defendants. Therefore, it can be safely said that the defendants are in possession of the suit land. The balance of convenience and inconvenience is not found in favour of the plaintiffs and at this stage no *prima facie* arguable case is seen in their favour. The title by way of inheritance as claimed by the plaintiffs can be decided in the trial of the suit. The Joint District Judge correctly rejected the application for temporary injunction which was affirmed in the appeal. I find no error committed by the Courts below resulting in an error in such decision occasioning failure of justice for which those may be interfered with by me.

Under the facts and circumstance, I find no merit in this Rule. Accordingly, the Rule is discharged without any order as to

costs. The judgment and orders passed by the Courts below is hereby affirmed.

The order of *status quo* stands vacated.

However, the Joint District Judge, Court No. 1, Chattogram is directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and order. In dealing with the case, the trial Court shall not allow either party any adjournment without dire necessity.

Communicate this judgment to the Courts concerned.