

District: Madaripur

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

Present:-

Mr. Justice Md. Zakir Hossain

Civil Revision No. 1169 of 2024

Nur Mohammad Kholifa and others
.....Defendant-Respondent-Petitioners
-Versus-

A. Kader Kholifa and others
..... Plaintiff-Appellant-Opposite Parties

Mr. Md. Manjurul Haque, Advocate
..... For the petitioners

Mr. Taposh Kumar Biswas with
Mr. Quazi Ferdousul Hasan, Advocates
...For the opposite party Nos. 1-5

Heard and Judgment on: 21.05.2024

Md. Zakir Hossain, J:

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

“Records of the case be called for.

Let a Rule be issued calling upon the opposite party Nos. 1-5 to show cause as to why the judgment and order dated 14.02.2024 passed by the learned Additional District Judge, 1st Court, Madaripur in Miscellaneous Appeal No. 17 of 2023 allowing the appeal and reversing the judgment and order dated 14.03.2023 passed by the learned Senior Assistant Judge, Shibchor, Madaripur in Civil Suit No. 674 of 2022 rejecting an application under Order 39, Rule 1 along with section 151 of the Code of Civil Procedure filed by the plaintiffs 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 opposite parties being plaintiffs instituted Title Suit No. 674 of 2022 before the Court of the learned Senior Assistant Judge, Shibchor, Madaripur impleading the petitioners as defendants for declaration of title in respect of the land as mentioned in the schedule to the plaint. The plaintiffs also filed an application for temporary injunction. The defendant Nos. 1-4 entered appearance in the suit and by filing a written statement denied the material allegations set out in the plaint. The defendant also averted the injunction petition by filing a written objection. 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 defendants preferred Miscellaneous Appeal No. 17 of 2023 before the Court of the learned District Judge, Madaripur. After admitting the appeal, the learned District Judge was pleased to transmit the record of the appeal to the learned Additional District Judge, First Court, Madaripur for disposal. After hearing, the learned Additional District Judge was pleased to allow the appeal and thereby set aside the judgment and order of the learned Senior Assistant Judge. Questioning the chastity of the judgment and order of the Appellate Court, the petitioners moved this Court and obtained the aforesaid Rule and stay therewith.

Heard the submissions advanced by the learned Advocates of the parties 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.

It appears from the record that the learned Senior Assistant Judge held that the defendants have homestead in the suit land. The learned Additional District Judge held that the plaintiffs have *prima facie* arguable case. The contention of the opposite parties is that the petitioners are their relatives. They purchased the suit land by dint of six registered deeds and got their names mutated and they have been possessing the suit land by cultivating and planting trees. But unfortunately 42.83 decimals of land were wrongfully recorded in favour of the defendants in the latest B.R.S khatian. The contention of the defendant-petitioners is that they also purchased some land by registered deed and they admitted that both the plaintiffs and the defendants are co-sharers and as such, it transpires that both the parties are in possession of the suit land.

The learned Advocate for the defendant-petitioners submits that if the work of under construction building of the defendants is postponed, it will entail irreparable loss and injury to the defendants.

In the above backdrop, the complicated question of title cannot be settled down without taking evidence. In such circumstances, the original suit should be disposed of with utmost expedition to secure the ends of justice. In the meantime, the parties are directed to maintain

status quo in respect of possession and position of the suit land. The petitioner-defendants may continue the construction work at their own risk and peril and the defendants shall be bound to dismantle the land constructed building thereon, if the trial Court so directs.

With the above observation and direction, the Rule is disposed of. The earlier order of stay granted by this Court shall stand recalled and vacated.

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. The learned Senior Assistant Judge may fix consecutive dates for hearing. No unnecessary adjournment petition shall be entertained from either side.

Let a copy of this judgment along with LCRs be sent down to the courts below at once.

(Md. Zakir Hossain, J)

Naser.
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