

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1255 of 2024

Kazi Riazul Islam and others

..... Petitioners.

-Versus-

Atahar Ali Kazi and others

.....Opposite parties.

Mr. Sikder Mahmdur Razi, Adv. with

Mr. Ashoke Kumar Paul, Advocate

.....For the petitioners.

Mrs. Anjuman Ara, Advocate

..... For the opposite parties.

Heard and judgment on 12th June, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 20.02.2024 passed by the District Judge-in-charge, Pirojpur in Miscellaneous Appeal No. 31 of 2023 reversing those dated 19.11.2023 passed by the Assistant Judge, Bhandaria, Pirojpur in Title Suit No. 172 of 2023 directing the parties to maintain status quo in respect of

possession and position of the suit property till hearing of the application for temporary injunction should not be set aside.

Petitioners as plaintiffs filed Title Suit No. 172 of 2023 before the Court of Assistant Judge, Bhandaria, Pirojpur against the petitioners and others for partition.

During pendency of the suit, on 01.10.2023 plaintiff petitioner filed an application for temporary injunction and the said application was heard on 19.10.2023 and on that date the Assistant Judge passed an order to maintain status-quo in respect of possession and position of the suit property till hearing of the application for temporary injunction.

Challenging the said order, defendant preferred Miscellaneous Appeal No. 31 of 2023 before the Court of District Judge, Pirojpur. By the impugned order dated 20.02.2024 the said appeal was allowed by the District Judge, Pirojpur.

Challenging the said order plaintiff petitioner obtained the instant rule.

Mr. Sikder Mahmudur Razi, the learned advocate appearing for the petitioner drawing my attention to the judgment of the

court below submits that trial court passed an innocent order by passing an order of status-quo till disposal of the report of the local inspection saying that plaintiff has got prima-facie arguable case but the appellate court upon misunderstanding the said order most illegally reversed the said judgment and set aside the order of the trial court granting status-quo. The impugned order is not sustainable in law, which is liable to be set aside. He finally prays that a direction may be given to the trial court to decide the application for injunction afresh and till disposal of the application the order of status-quo may be maintained.

Mrs. Anjuman Ara, the learned advocate appearing for the opposite party, on the other hand drawing my attention to the report of the local investigation submits that appellate court being the last court of fact has rightly assessed that on local investigation, the Advocate Commissioner has found that defendants are in possession in the suit property and they already have two storied building in the suit premises, which is now being extended by way of further construction but due to the order of status-quo passed by the trial court, defendant is not making further construction thereon and thereby all those materials,

purchased for making further construction is going to be damaged and he has suffered huge financial loss and injuries and as such the appellate court has rightly set aside the order of the trial court of granting status-quo. Since the impugned order contains no illegality, she finally prays that rule may be discharged.

Heard the learned advocate and perused the annexure placed by way of supplementary affidavit as well as the impugned order.

This is a suit for partition. Plaintiff claims the share in the property, which has been opposed by the defendant. In the said suit, plaintiffs filed for temporary injunction and prayed for a direction upon the respondents not to proceed further construction in the suit premises and the trial court passed an order of status-quo as and when local inspection application was filed by defendant and it was allowed by the trial court. Trial court passed the order of status-quo till arrival of the local inspection report as well as final hearing of the application for injunction. Which was challenged in appeal before the appellate court. The appellate court while deciding the appeal found that an Advocate Commissioner report has arrived and upon perusal of the report it

is found that there are two storied dwelling house, which is now in the position of further construction there, which has been asked to restrain by an order of injunction. In the suit for partition, possession of each and every sharer is the possession of others. Moreover defendants found to be in possession by the Advocate Commissioner, while holding the local inspection. Noticing the same, the appellate court found that the determination by the trial court without having a notice to any document or any prima facie case that plaintiff has got prima facie arguable case, has got no meaning. Moreover while the Advocate Commissioner has found, defendants are in possession in the suit property, he vacated the order passed by the trial court on framing the opinion that if the order of status-quo is been continued defendant will suffer irreparable loss and injuries. At the time of hearing of the rule, defendant also drawing attention to this court the fact that since the Advocate Commissioner found the development on the building, possessing the defendants are been held obviously defendant is suffering huge irreparable loss by damaging all the materials brought for further constructions. Appellate court further held that if the property is been partitioned and decree is been executed and share is allocated it would be as per the possession

of the suit property, if the property, plaintiff claimed is entitled to get into his share in the suit land wherein he is in possession obviously the development or improvement of the suit property go in favour of the plaintiffs, no doubt about that. The findings of the appellate court contains thus no miscarriage of justice.

Regard being had to the law, fact and circumstances of the case, I am of the opinion that the appellate court committed no illegality in setting aside the order passed by the trial court giving an order of status-quo in the suit premises, I find no merits in the rule.

In the result, the Rule is discharged.

However the trial court is hereby directed to disposed of the suit as well as the application expeditiously as early as possible without further allowing the parties to have the adjournment any more.

The order of status-quo granted earlier is hereby recalled and vacated.

Communicate the judgment at once.