

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 886 of 2024

Sirajul Islam and others

..... Petitioners

-Versus-

Executive Engineer, LGED, Cumilla and others

.... Opposite parties

Ms. Farida Yeasmin, Advocate

..... For petitioner

Mr. Md. Asadur Rahman Khan, Advocate

.... For opposite party No. 1

Mr. Mohammad Salahuddin, Advocate

.... For opposite party No. 4

Heard and Judgment on: 27.08.2024

In the instant revisional application filed under Section 115(1) of the Code of Civil Procedure (CPC) at the instance of the plaintiff-appellant-petitioners, this Court on 03.03.2024 issued a Rule calling upon the opposite parties to show cause as to why the judgment and order dated 31.01.2024 passed by the learned District Judge, Cumilla in Miscellaneous Appeal No. 69 of 2023 dismissing the appeal and thereby affirming the judgment and order No. 15 dated 23.10.2023 passed by the learned Assistant Judge, Muradnagar, Cumilla in Title Suit No. 134 of 2023 rejecting the application filed under Order XXXIX rules 1 and 2 of the CPC should not be set aside.

The present petitioners as plaintiffs filed suit for permanent injunction being Suit No. 134 of 2023 in the Court of Assistant Judge, Muradnagar, Cumilla impleading the present opposite parties as defendants. In the said suit, the plaintiffs filed an application for temporary injunction. The defendant Nos. 1 and 2 and defendant Nos. 3-5 filed separate written objection against the said application for injunction. The trial Court rejected the application for temporary injunction, vide order dated 21.10.2023 against which the plaintiffs filed Miscellaneous Appeal No. 69 of 2023 before the Court of learned District Judge, Cumilla, who, vide judgment and order dated 31.01.2024 dismissed the appeal and hence, instant revision.

It appears from the schedule of the plaint that the plaintiffs filed the suit for permanent injunction in respect of three plots, namely plot Nos. 964, 965 and 966. It appears from the judgment and orders passed by the Courts below that before filing the suit the plaintiff No. 6 gifted plot No. 965 to a mosque. The Courts below categorically observed that the plaintiffs filed the application for temporary injunction in respect of three plots whereas they do not own plot No. 965 and as such, they filed the application for temporary injunction by suppressing material fact. Suppression of material fact was one of grounds for rejection of the application for temporary injunction.

It appears from the supplementary affidavit dated 29.02.2024 filed by the plaintiff-petitioners that after the judgment and order

passed in the Miscellaneous Appeal No. 69 of 2023, the plaintiffs filed an application for amendment of the plaint which was allowed by the trial Court on 20.02.2024. By the said amendment, plot No. 965 was deleted from the schedule of the plaint.

The situation, as it stands now after amendment of the plaint, is that plaintiffs' suit for permanent injunction relates to plot Nos. 964 and 966. However, the application for temporary injunction was filed in respect of plot Nos. 964, 965 and 966. Due to amendment of the plaint, this Court is of the view that since the finding of facts arrived at by the Courts below relate to three plots as per the original plaint, it would not be just and proper to adjudicate the instant Rule on merit after amendment of the plaint.

Be that as it may, the plaintiffs are at liberty to file fresh application for temporary injunction in the trial Court as per the amended plaint, if so advised. In that event, the trial Court shall give an opportunity to the defendants to contest the said application for temporary injunction, if any, and consider the said application on merit in accordance with law but shall not take into consideration of the earlier order rejecting the application for temporary injunction as well as the order of lower appellate Court.

With above observation and directions, the Rule is disposed of.