

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2840 OF 2011

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Monjer Alam (Rumel) and another
... Petitioners

-Versus-

Md. Akhirul Haque Chowdhury
... Opposite party

Mr. Md. Minhazul Hoque Chowdhury, Advocate
... For the petitioners.

None appears

... For the opposite party.

Heard and Judgment on 19.06.2023

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 12.04.2011 passed by the learned District Judge, Nilphamari in Miscellaneous Appeal No.52 of 2010 allowing the appeal, reversing the order dated 22.08.2010 passed by the Court of Senior Assistant Judge, Syedpur, Nilphamari in Other Class Suit No.52 of 2010 allowing the application for temporary injunction filed by the defendants should not be set aside.

Facts in short are that the opposite party as plaintiff instituted Other Class Suit No.52 of 2010 in the Court of Senior Assistant Judge, Syedpur, Nilphamari for a decree of perpetual injunction against the defendants in respect of 83 decimals of land as described in the schedule to the plaint.

During pendency of above suit the defendant filed a petition under Order 39 Rule 1 of the Code of Civil Procedure for an order of

temporary injunction restraining the plaintiff from entering into the disputed land and disturbing peaceful possession of the defendants in the same.

On consideration of submissions of the learned Advocate for the respective parties and materials on record the learned Senior Assistant Judge allowed above petition and passed an order of temporary injunction against the plaintiff.

Being aggrieved by above order the plaintiff preferred Miscellaneous Appeal No.52 of 2010 to the Court of District Judge, Nilphamari and on hearing the learned Advocates for respective parties the learned District Judge was pleased to allow above appeal and set aside the judgment and order passed the Judge of the Trial Court.

Being aggrieved by above judgment and order passed by the learned District Judge the defendants-respondents as petitioners moved to this Court and obtained the Rule.

Mr. Minhajul Haque Chowdhury, learned Advocate for the petitioners submits that during pendency of the Rule before this Court the Trial Court has disposed of Other Class Suit No.52 of 2010 on merit. As such, this Rule has become infructuous. As such the learned Advocate for the petitioner submits that the Rule may be discharged for being infructuous.

No one appears on behalf of the opposite party when the Civil Revision was taken up for hearing although it appeared in the list for hearing today.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

This petition under Section 115(1) of the Code of Civil Procedure was preferred challenging the legality and propriety of an order of temporary injunction passed by the learned District Judge on appeal. Above Miscellaneous Appeal No.52 of 2010 arose out of an interlocutory order passed by the learned Senior Assistant Judge in

Other Class Suit No.52 of 2010 for permanent injunction. The learned Advocate has submitted that above Other Class Suit No.52 of 2010 has already been disposed by the Trial Court on merit. As such the interlocutory order of temporary injunction passed by the learned District Judge has merged into the judgment and decree passed by the above judge in Other Class Suit No.52 of 2010.

In above view of the materials on record I find substance in the submission made by the learned Advocate for the petitioner that this Rule has become infructuous and the same may be discharged of accordingly.

In the result, the Rule is discharged for being infructuous.

However, there is no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER