

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 945 of 1997

In the matter of:

Ambagan Bastuhara Samity and others

Plaintiff-respondent-petitioners

-Versus-

Bangladesh Railway (Eastern Zone),
Chattogram and others

Defendant-appellant-opposite parties

None

...For the petitioners

Mr. Shaheed Alam, Senior Advocate

... For the opposite party No. 1

Heard on: 22.10.2024 and 29.10.2024

Judgment on: 05.11.2024

Ambagan Bastuhara Samity, registration No. being 784, and others as plaintiff filed Other Suit No. 175 of 1991 impleading Bangladesh Railway (Eastern Zone), Chattogram and others as defendants in the Court of Senior Assistant Judge, 2nd Court, Sadar, Chattogram for permanent injunction restraining the defendants from evicting the members of the plaintiff samity from the suit land and from creating any

obstacle in the peaceful possession of the same by the plaintiffs. The trial Court decreed the suit on 14.07.1993 (decree signed on 21.07.1993) with modification restraining the defendants from evicting the members of the plaintiff samity from the suit land till disposal of the application filed by the plaintiff samity for rehabilitation. The defendants filed Other Appeal No. 362 of 1993. The learned Sub-Judge, 2nd Commercial Court, Chattogram heard the appeal and, vide judgment and decree dated 30.01.1997 (decree signed on 05.02.1997) allowed the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit. Hence, the instant revision filed by the plaintiff samity. This Court on 25.03.1997 issued a Rule.

None appeared for the plaintiff-petitioners when the Rule was taken up for hearing.

Mr. Shaheed Alam, the learned Senior Advocate appearing for the defendant-opposite party No. 1 (Bangladesh Railway, Eastern Zone, Chattogram), made submissions supporting the judgment of reversal passed by the appellate Court below.

Admittedly, the members of the plaintiff samity are in possession of the suit land which is owned by the Bangladesh Railway. The trial Court considered exhibit-11 and based on the

same decreed the suit restraining the defendants from evicting the members of the plaintiff samity from the suit land till disposal of the application for rehabilitation. Exhibit-11 is an application dated 18.03.1993 filed by the plaintiff samity before the defendant No. 1 for allotment of the suit land in its favour. The suit was filed on 01.10.1991. Therefore, it is clear that the said application was filed before the defendant during pendency of the suit but written statement was not amendment. The appellate Court below rightly observed that the trial Court made out a 3rd case in granting injunction. In my view, the trial Court not only made out a 3rd case, it also travelled beyond the pleadings which is not permissible in law.

The appellate Court below found that the plaintiff samity is unauthorised occupant of the suit land and as such, it does not have any prima facie title in the suit land. The finding of the appellate Court below is supported by the materials on record. This being the position, the Rule fails.

In the result, the Rule is discharged.