

Bench:

Mr. Justice Bishmadev Chakraborty

Civil Revision No. 847 of 2012

A. Rahman alias Abdur Rahman

Biplob and otherspetitioners

-Versus-

Haji Mojibul Hoqueopposite party

Mr. Mohammad Mubarak Hossain with

Mr. Enayet Ullah Nadim, Advocates

..... for the petitioners

-Versus-

Mr. Shishir Kanti Mazumder with

Ms. Alo Mandal, Advocates

.....for the opposite party

Judgment on 30.04.2024

Leave was granted and rule was issued calling upon opposite party 1 to show cause as to why the judgment and order of the District Judge, Cumilla passed on 10.01.2012 in Civil Revision No. 88 of 2011 rejecting the revision affirming the judgment and order of the Senior Assistant Judge, Chauddagam, Cumilla passed on 12.10.2011 in Title Suit No. 42 of 2009 rejecting the application under order 39 Rule 7 of the Code of Civil Procedure (the Code) for holding Local Inspection suffers on an error of an important question of law resulting an erroneous decision occurring failure of justice and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing rule all further proceedings of Title Suit No. 42 of 2009 was stayed for a limited period which was subsequently extended till disposal of the rule.

Facts relevant for disposal of the rule, in brief, are that opposite party 1 herein as plaintiff instituted the suit praying for permanent injunction against the defendants for .11 acres of land as detailed in the schedule to the plaint. He claimed of getting the aforesaid land in execution of decree of Title Suit No. 71 of 2001. The defendants appeared in the suit and filed written statement denying the facts as stated in the plaint. In the written statement the defendants claimed that they are in possession of the suit land and as such the suit would be dismissed.

After examination of plaintiff's witnesses and during cross examination of defendants' witness 1 the defendants filed an application under Order 39 Rule 7 read with section 151 of the Code on 12.10.2011 for holding Local Inspection stating grounds that in the plaint the plaintiff stated the facts that there is a poultry farm over the suit land but the defendants in the written statement stated that there is no such farm and that defendant 1 has been residing therein by erecting house thereon and as such an Advocate Commissioner is required to be appointed to ascertain the fact whether there is any poultry farm over the suit land.

The learned Assistant Judge, Chaudagram, Cumilla heard the application and by order dated 12.10.2011 rejected the same assigning reason that such an application at this stage of the suit could not be allowed.

Being aggrieved by the aforesaid judgment and order, the defendants filed a civil revision before the District Judge, Cumilla who on ground of maintainability rejected the same and affirmed the judgment and order passed by the Assistant Judge which prompted the defendants to approach this Court with this revision under section 115(4) of the Code upon which leave was granted and rule was issued.

Mr. Mohammad Mubarak Hossain, learned Advocate for the petitioners takes me through the materials on record, particularly the application for holding Local Inspection and the orders passed by the courts below and submits that the point to be decided in disposing such an application is related with the fact. The petitioners prayed for Local Inspection as to whether there is poultry farm in a *tin shed* building over the suit land and whether the *tin shed* building consists of five rooms and anyone resides therein and also the nature and character of the suit land. The aforesaid prayer made in the application is no way related with the possession of parties over the suit land. The petitioner did not ask for holding Local Inspection to find possession of the parties in the suit land. The possession in the suit land is not the issue here. No extra evidence is to be required, if the application for holding Local Inspection is allowed. The report submitted by the commissioner, if any, will not be the conclusive proof of possession. The plaintiff will not be prejudiced, if the application for holding Local Inspection is allowed and inspection is hold as prayed for.

Mr. Shishir Kanti Mazumdar, learned Advocate for the opposite party opposes the rule and submits that the defendants have filed an application for holding Local Inspection after conclusion of the examination of the plaintiff's witnesses and during cross-examination of DW1. Our superior Court in numerous cases disapproved in allowing an application under Order 39 Rule 7 of the Code in the belated stage. In support of the submission he refers to the case of Government of Bangladesh represented by the Secretary, Ministry of Industries and another vs. Shafi A. Chowdhury and another, 47 DLR 567 and Shafi A Chowdhury and another vs. Government of Bangladesh, represented by Secretary, Ministry of Industries and another, 51 DLR (AD) 21. Mr. Mazumder finally submits that the application has been filed at the end of holding trial of the suit only to delay its disposal. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides, gone through the rule petition, documents appended thereto and *ratio* of the cases cited by Mr. Mazumder.

It transpires that the plaintiff instituted the suit for permanent injunction over .11 acres of land as detailed in the schedule to the plaint. In the plaint the plaintiff claimed that he obtained a decree of recovery of possession in Title Suit No. 71 of 2001 in respect of the suit land. In execution of the said decree he got possession of it in

Title Execution Case No.1 of 2002. In the plaint he asserted the fact of possession in the suit land. The defendants in written statement disowned plaintiff's possession and stated that they are in possession of it. It further appears that the suit was filed on 28.04.2009 and in the meantime the examination of plaintiff's witnesses has been ended. The defendants examined 1 witness and the suit was fixed for his cross-examining. At this stage the defendants filed the application for holding Local Inspection under Order 39 Rule 7 read with section 151 of the Code stating facts therein that the plaintiff stated in the plaint that he has a poultry farm in the suit land while the defendant stated in the written statement that there is no poultry farm there and they have been residing therein in a *tin shed* house. The defendants filed the application to hold Local Inspection as to whether there is a poultry farm in the suit land or whether there is a *tin shed* building consisting of five rooms therein.

It appears that the trial of the suit is almost at the end. Because the witness of the defendants' DW1 is to be cross-examined by the plaintiff. The suit is for permanent injunction and in such a suit the prime consideration is whether the plaintiff has *prima facie* title and exclusive possession over the suit land. Both the parties claimed that they are in possession of the suit land. Whether the plaintiff is in possession in the suit land or the defendants as claimed by them is to be decided in the trial of the suit by examining witnesses.

Therefore, I find that the instant application for holding Local Inspection is not necessary for effective disposal of the suit. In the case reported in 51 DLR (AD) 21, the judgment and decree passed by the High Court Division in the case of 47 DLR 567 has been affirmed. There an application for holding Local Inspection was filed after 5 years of the institution of the suit which was rejected by the trial Court and affirmed up to the appellate division. Although, the facts of the aforesaid case do not match this case but the *ratio* laid therein that an application for holding Local Inspection filed at the belated stage cannot be accepted applies here. In the case of Md. Bazlur Rahman Mridha and others vs. Mst. Asma Begum and others, 12 BLT (AD) 202 our Appellate Division disapproved allowing of an application for holding Local Inspection in a suit for permanent injunction after examining witnesses of the parties.

In view of the aforesaid facts, circumstances and discussion, I find that the Assistant Judge did not commit any wrong in rejecting the application under order 39 Rule 7 of the Code and the revisional Court below correctly rejected the revision summarily and did not commit an error on an important question of law which has resulted an erroneous decision or it occasional failure of justice.

Therefore, I find no merit in this Rule. Accordingly, the rule is discharged. No order as to costs. The order of stay stands vacated.

However, the Assistant Judge, Chaudagram, Cumilla is directed to dispose of Title Suit No.42 of 2009 expeditiously, preferably within 06(six) months from the date of receipt of this judgment and order without any fail.

Communicate this Judgment and order to the concerned Courts.