

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

CIVIL REVISION NO. 1251 OF 2004

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Sree Ranjit Kumar, son of late Amulla Kumar and others.

.... Petitioner

-Versus-

Saidur Rahman Mondal, son of late Badiar Rahman of Jahanpur Police Station-Dhamoi, District- Naogaon and others.

....Opposite-parties

No one appears

... For the petitioner

Heard and Judgment on 20.08.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendants in Other Class Suit No. 58 of 1992, this rule was issued calling upon the opposite-party nos. 1-4 to show cause as to why the judgment and order dated 17.02.2004 passed

by the learned Additional District Judge, Joypurhat in Miscellaneous Appeal No. 22 of 2001 allowing the appeal and reversing the judgment and order dated 08.08.2001 passed by the learned the then Subordinate Judge, 1st Court, Joypurhat in Other Class Suit No. 58 of 1992 rejecting an application for injunction should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the operation of the impugned judgment and order dated 17.02.2004 passed by the learned Additional District Judge, Joypurhat in Miscellaneous Appeal No. 22 of 2001 till disposal of the rule.

The short facts so figured in the revisional application are:

The present opposite-party nos. 1-4 as plaintiffs filed the aforesaid suit for declaration to the effect that, the judgment and order dated 28.08.1982 passed in Pre-emption Miscellaneous Case No. 72 of 1976 is illegal, collusive, fraudulent and not binding upon the said plaintiffs.

The case of the plaintiffs so described in the plaint of Other Class Suit is that, the suit properties originally belonged to the defendant no. 3 namely, Ashwani Kumar. That Ashwani Kumar had been owing the suit land within the very knowledge of his two sons, that is, defendant nos. 1 and 2 and subsequently the said defendnat no. 3 sold out the same in favour of the plaintiff by way of registered sale deed dated 26.02.1976 and handed over possession in favour of the plaintiff where the defendant nos. 1 and 2 did not have any title and possession of the said sold out land. In spite of that, the defendant nos. 1 and 2 filed a Pre-

emption Case being No. 72 of 1976 and got an order in their favour on 28.08.1982 on compromise on the basis an application for compromise dated 20.03.1982. Subsequently, a Miscellaneous Case was filed by the pre-emptors being Miscellaneous Case No. 20 of 1977 and shown to have withdrawn the consideration by the plaintiff who was shown pre-emptee in the case and hence, the plaintiff filed the aforesaid suit.

On the contrary, the present opposite-parties as defendant nos. 1(ka)-1(kha) and defendant no. 2 jointly filed a written statement denying all the material averments so made in the plaint contending *inter alia* that, the plaintiffs have got every knowledge about filing of the Pre-emption Case as well as the compromise order having no scope to say that, the judgment and order was obtained by committing fraud upon the court and therefore, the suit is liable to be dismissed. However, after filing of the suit, the plaintiffs filed an application for temporary injunction under order XXXIX, rule 1 read with section 151 of the Code of Civil Procedure stating *inter alia* that, in spite of having no title and possession over the suit property, the defendants in connivance with the local Union Parishad Chairman had been hatching conspiracy to dispossess them to grab the suit property by assembling 20/25 local goons on 21.07.2000 near the suit land and kept on threatening in dispossessing the plaintiffs though upon resistance by the plaintiffs, they retreated but such threat cast a reasonable doubt that any point of time, those unruly defendants may dispossess the plaintiffs from enjoying title and possession over the suit property. Against the application for temporary injunction though the defendants did not file any written

objection however, the learned Judge of the trial court vide judgment and order dated 08.08.2001 rejected the said application mostly holding that, since the writ of possession of the suit property had been issued in favour of the pre-emptors of the Pre-emption Case No. 72 of 1976 so it construe that, the plaintiffs have got no right, title and possession over the suit property.

Being aggrieved by and dissatisfied with the judgment, the plaintiffs of the Other Class Suit as appellant preferred an appeal being Miscellaneous Appeal being No. 22 of 2001 before the learned District Judge, Joypurhat which was on transfer heard by the learned Additional District Judge, Joypurhat. The learned Additional District Judge then upon framing as many as 4(four) different issues and on considering materials on record ultimately vide impugned judgment and order dated 17.02.2004 allowed the Miscellaneous Appeal and thereby set aside the judgment and order so passed by the trial court resulting in allowed the application for temporary injunction. It is at that stage, the defendants of the suit as petitioners came before this court and obtained the instant rule.

No one appears for the petitioners to press the rule though the matter has been referred by the Hon'ble Chief Justice of Bangladesh by an office order and it has been appearing in the list for the last several occasions with the name of the learned counsel for the petitioners. However, we have perused the impugned judgment and order and all the documents appended with the revisional application.

We have also examined the documents annexed with the revisional application and other materials on record including the impugned judgment and order passed by the courts below. On going through the impugned judgment, we find that, the learned Judge of the appellate court below came to a decision that, challenging the judgment and order dated 28.08.1982, the appellants initially filed Other Class Suit No. 43 of 1983 where the proceedings of the miscellaneous case no. 72 of 1976 was sought for stay and the learned Judge vide order dated 25.04.1982 stayed all further proceedings of the said Miscellaneous Case. The learned Judge also found that, though after getting an *ex parte* judgment and order in Miscellaneous Case No. 72 of 1976 by the pre-emptors, inadvertently a writ of possession (দখল পরওয়ানা) was issued in their favour which subsequently recalled vide order dated 22.04.1983 having no scope to say that, they got possession on the disputed land. But those very material facts has not been discussed by the trial court while rejecting the application for temporary injunction. Furthermore, since challenging the judgment and order passed *ex parte*, the present appellants-petitioners who was the purchaser of the suit property from the defendant no. 3 and the summons had not been served upon them and as the suit is now pending, so the learned Judge of the trial court has committed a grave illegality in not finding *prima facie* case of the plaintiffs-petitioners rather only basing on the issuing writ of possession in favour of the pre-emptors he found no title and possession of the plaintiffs over the suit property. But fact remains, further proceedings of the Pre-emption Case as well as the writ of possession was stayed

through Other Class Suit No. 43 of 1983 which had clearly been sidetracked by the learned Judge of the trial court. Further, since the judgment and order passed in the Miscellaneous Case is now under challenge in two different suits and it has been found from the materials on record that, soon after purchasing the property by the plaintiff from the defendant no. 3 vide sale deed dated 26.02.1976 they got possession so it construe that, before filing of the alleged Miscellaneous Case No. 72 of 1976, the plaintiffs had been in possession of the suit property so the balance of inconvenience clearly stands not in favour of the defendants rather in favour of the plaintiffs and if an order of injunction is not granted in their favour it is none but the plaintiffs would suffer irreparable loss and injury but that very vital point has clearly been avoided by the trial court while rejecting the application for temporary injunction.

Regard being had to the facts and circumstances, we don't find any substance in the judgment and order dated 08.08.2001 passed in Title Suit No. 58 of 1992 rather the judgment and order passed by the appellate court below dated 17.02.2004 in Miscellaneous Appeal No. 22 of 2001 is found to be justified and sustainable in law.

Given the facts and circumstances, we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

In the result, the rule is discharged however without any order as to cost.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of the judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.