

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam
First Miscellaneous Appeal No. 239 of 2013
with
Civil Rule No. 407 (F.M) of 2013

In the matter of:

Memorandum of appeal against original order.

-and-

In the matter of:

Md. Siddiquir Rahman Chowdhury

...Plaintiff-appellant

-versus-

Md. Manik and others

...Defendants-respondents

Mr. Abdur Rafique, Advocate

....For the appellant

No one appears

...For the respondents

Heard on: 30.04.2025

Judgment on: 13.05.2025

Md. Mansur Alam, J:

The brief facts of this first miscellaneous appeal are that this appeal being aggrieved and dissatisfied is preferred by the plaintiff appellant against the order dated 14.02.2013 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 130 of 2012 rejecting the prayer of injunction under order 39, rule 1. Against that order plaintiff appellant brought this First Miscellaneous Appeal No. 239/13.

The plaintiff brought Title Suit No. 130 of 2012 with a prayer for declaration of title of the suit land and for permanent injunction against the defendants. The brief facts of the plaintiff appellants are that one C. S tenant of the suit land Kudratullah died leaving behind one son Hasen Ali,

four daughters. Thereafter Hasen Ali died leaving behind three sons Rup Mian, Abdul Jabbar, Ajgor Ali and four daughters Banesa Bibi, Tukni Bibi, Joygun Nesa and Rahela Khatun and S. A. khatian No. 24 is prepared in their name. Ajgor Ali died leaving above two brothers and four sisters. These two brothers and four sisters inherited his (Ajgor Ali) share and possessing their properties by amicable settlement. Thereafter Abdul Jabbar and Banesa Bibi sold out 0.2 acre of land from S. A. plot No. 714 to Jainal Abedin on 04.09.1967. Rup Mian transferred .43 acre of land to Noab Ali by way of a kabala deed dated on 22.06.1986 but erroneously plot No. 1087 was written in the place of 1077. Noab Ali got mutated that .43 acre of land and thereafter Noab Ali transferred the suit land to the plaintiff by way of kabala deed on 14.10.1993. The plaintiff got mutated the suit land and now have been possessing the same. In this background defendant No. 1 and father of the defendant No. 27 threatened the plaintiff to dispossess from the suit land though they have no possession over the suit land.

Defendant respondent entered in the suit filing written objection denying all materials allegations made in the petition under order 39 rule 1/2 read with 151 of Civil Procedure Code contending inter alia that every sons of Kudratwallah got .68 acre of land and his every daughter got .34 acre of land as heirs. Johra Khatun died leaving behind her four sons Abdur Rahman, Sabdor Ali, Soleman Ali, Emam Ali and they inherit .34 acre of land each. Abdul Jabbar and Rup Mian transferred .42 acre from the plot No. 582, .44 acre from plot No. 677, .44

acre from plot No. 677, .43 acre from plot No.710, and .21 acre from plot No. 786 and these Kabala purchaser have been possessing their land by leasing out the same to others. Thereafter Abdur Rahman died leaving behind the defendants No. 27-30 and the leasee's used to pay half of the crops of the suit land to defendants No. 27-30. Thereafter on the death of Abdul Jabbar and Rup Mian, the leasee stopped to pay the benefit to defendants No. 27-30. The defendants No. 27-30 thereafter came to know on search that R.S khatian is wrongly prepared by the name of Rup Mian, Abdul Jabbar, Aymon and others. So the plaintiff is not entitled to get any relief of temporary injunction in this case.

After hearing the application for temporary injunction learned Joint District Judge, 1st Court, Dhaka vide order dated 14.02.2013 rejected the application for temporary injunction.

Mr. Abdur Rafique, the learned counsel appearing for the Plaintiff appellant submits that the S. A. and R. S. recorded tenant separated the holding and mutated their name. Thereafter, the Plaintiff appellant purchased the suit land and possessing the same since 1993 and Dhaka city Jorip/record also prepared and finally published in the name of Plaintiff appellant paying rent up to date. So Learned Joint District judge committed wrong in finding no right title of the plaintiff appellant over the suit land.

No one appears on behalf of the respondents on repeated calls.

On close appraisal of the injunction petition, written objection, impugned order and the other materials on record and the contention put

before us by the Learned Counsel for the appellant. It is admitted that the plaintiff appellants vendor Noab Ali purchased land from the plot No. 1087 and he transferred the same land to this plaintiffs appellant. So the plaintiff appellant became owner of the plot No. 1087, not of the suit plot No. 1077. Learned Joint district judge is quite right in observing that the plaintiff appellant has no right title over the suit land. The plaintiff appellant claimed that the plot No. 1087 is wrongly inserted in kabala deed No. 5078 and 6709 transferred by Rup Mian and similar mistake was happened to the deed No. 1101 dated 14.10.93 transferred to this plaintiff by Noab Ali. It is also contended by the plaintiff appellant that Noab Ali and thereafter they got mutated the suit plot in their name and paid rent to the government. This situation proves that Noab Ali and the plaintiff were quite aware of the wrong insertion of plot No. 1087 instead of plot No. 1077 since the execution of deeds No. 5078 and 6709 are in the year of 1968 and 1993 respectively. But the plaintiff appellant did not rectify the above mentioned deed till today. It is needless to say that the plaintiff appellant has not acquired any right whatsoever in the land in question. Also it is admitted that R. S. record of right is not in the name of the plaintiff appellant. Learned Joint district judge thus quite right in holding the view that the plaintiff has got no prima facie and arguable case in his favor. As we find the R. S. record of right is prepared in the name of plaintiff's predecessor, so balance of convenience and inconvenience is in favor of the defendants respondents.

In view of our discussion made in above by now we are of opinion that instant miscellaneous appeal is liable to be failed.

In the result, the first miscellaneous appeal is dismissed.

Since the appeal is dismissed the connected rule being No. 407 (F) of 2013 is discharged.

Learned Joint District Judge court is directed to dispose of the case at the earliest.

Let a copy of this judgment and order be sent to the concerned Courts at once.

Sheikh Abdul Awal, J:

I agree.