

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 2938 of 2004

Matiur Rahman Fakir and others

...Petitioners

-Versus-

Sree Arun Kumar Sarker

...Opposite Party

Mr. Zahidul Bari, Advocate

...for the petitioners

No one appears for the opposite party

Judgment on 16.2.2012

This Rule at the instance of the defendant-respondents was issued calling in question the legality of judgment and order dated 5.5.2004 passed by the Additional District Judge, Third Court, Bogra in Miscellaneous Appeal No.154 of 2002 allowing the same on setting aside order dated 28.10.2002 passed by the Senior Assistant Judge, Bogra in Other Suit No.125 of 2002. By the said order the Senior Assistant Judge rejected an application for temporary injunction filed by the plaintiff.

Opposite party Sree Arun Kumar Sarker instituted the suit for declaration of title over the suit land and subsequently filed an

application for temporary injunction therein. Defendant Nos.1-4 (herein petitioners) entered appearance and filed a written objection claiming title and possession over the suit land by way of settlement from the Government through a registered instrument.

The Senior Assistant Judge heard the application and rejected the same by his order dated 28.10.2002. The plaintiff (herein opposite party) preferred Miscellaneous Appeal No.154 of 2002 before the District Judge, Bogra challenging the said order of rejection. The Additional District Judge, Third Court, Bogra ultimately heard the appeal and allowed the same by his judgment and order dated 5.5.2004. Against the said judgment and order the defendant-respondents moved in this Court with the instant civil revision and obtained an order of stay, which was extended from time to time. Subsequently the order of stay was modified as an order of statusquo to be maintained by the parties in respect of possession of the suit land by order dated 20.8.2008.

Mr. Zahidul Bari, learned Advocate appearing for the petitioners, submits that the trial Court on proper consideration of the plaint, application for temporary injunction, written objection filed in opposition thereto and documents filed by the parties rejected the application for temporary injunction. But the appellate Court without any exhaustive discussion on possession of the respective parties in the

suit land allowed the miscellaneous appeal granting temporary injunction against the petitioners and thereby committed error of law. The appellate Court also did not find any balance of convenience and inconvenience in favour of the plaintiff, which was incumbent upon the Court to decide the temporary injunction matter. Learned Advocate, however, cannot apprise me whether the suit is still pending in trial.

I have considered the submissions of the petitionersø learned Advocate and gone through the materials on record. It appears from the order of rejection passed by the trial Court that earlier the plaintiff had instituted Other Suit No.83 of 1988 before the Second Court of Assistant Judge, Bogra in respect of a part of the suit land, which was disposed of on contest. On perusal of the documents submitted by the plaintiff, the trial Court was not satisfied whether he had a prima facie case. On the diverse claim of title and possession of the parties, the trial Court also found it difficult to arrive at a definite finding of possession without evidence and thus rejected the application for temporary injunction.

On the other hand, the Additional District Judge sitting in the appellate Court assailed the trial Courtø order on the ground that it did not refer to any particular document. Then he referred to some documents filed by the plaintiff in support of his title over the suit land and found prima facie case in his favour. In doing so the learned Additional District Judge missed the point that in deciding an application

for temporary injunction, a prima facie case regarding possession of the applicant is necessary. In the impugned order passed by the appellate Court, there is no reference to any documents of possession like rent receipt, khatian, etc. that could be filed by the plaintiff.

This civil revision is pending for nearly eight years. The notice has been served upon the plaintiff-opposite party, but he has not turned up to contest the Rule or to get the order of statusquo vacated.

Under the above facts and circumstances, I think it would be just and proper, if the parties are directed to maintain statusquo in respect of possession of the suit land.

Accordingly the Rule is disposed of. The parties are directed to maintain statusquo in respect of possession of the suit land till disposal of the suit, if the suit still pending. The impugned judgment an order is modified to that effect.