

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3271 of 2002.

In the matter of:

An application under section
115(1) of the Code of Civil
Procedure.

And

Md. Sadek

...Petitioner

-Versus-

Sub Divisional Engineer, Public
Works Department, Noakhali

...opposite party

No one appears

...For the petitioner

Mr. Md. Mahfuzur Rahman, DAG with
Mr. Md. Moshihur Rahman, AAG with
Mr. Md. Mizanur Rahman, AAG

...For the opposite party

Heard & Judgment on 13.11.2024 .

This rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 30.05.2002 passed by the learned Additional District Judge, 2nd Court, Noakhali in Title Appeal No.52 of 2002 dismissing the appeal and affirming the order dated 14.02.2002 passed by the learned Senior Assistant Judge, Sadar, Noakhali in Title Suit No.13 of 2002 rejecting the plaint should not be set aside and/or pass such other

order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that Memo No.615 of 2002 dated 15.11.2000 issued by the defendant No.1 directing for removal of the structures from the disputed land and hand over vacant possession to the defendant is unlawful and not binding upon the plaintiff.

On 14.02.2002 in above suit the plaintiff filed a petition under order 39 rule 1 of the Code of Civil Procedure for an order of temporary injunction.

The learned Senior Assistant Judge passed an ad-interim order directing both the parties to maintain status-quo as to the possession of the disputed land and fixed 14.02.2002 for hearing of the injunction petition.

On consideration of the submissions of the learned advocate for respective parties the learned Senior Assistant Judge rejected above petition for temporary injunction and rejected the plaint under Section 151 of the Code of Civil Procedure.

Being aggrieved by above judgment and decree of the learned Senior Assistant Judge above plaintiff as appellant preferred Title Appeal No.52 of 2002

to the District Judge, Noakhali which was heard by the learned Additional District Judge 2nd Court who dismissed above appeal and affirmed the judgment and decree of the trial court.

Being aggrieved by above judgment and decree of the court of appeal below above appellant as petitioner moved to this court and obtained this rule.

No one appears on behalf of the petitioner at the time of hearing of this Civil revision although the matter appeared in the list for hearing on several days.

Mr. Md. Moshihur Rahman learned Assistant Attorney General submits that the petitioner was given yearly lease of the tank for the purpose of pisciculture but in violation of the terms of the lease the defendant erected structures in the above land. As such the defendant issued notice upon the plaintiff to remove unlawfully constructed structures and hand over vacant possession of above land.

The learned Judge also found that since the lease of the plaintiff expired and he had no locus-standi to maintain above suit against his lessor and rightly rejected the plaint in exercise of inherent power under Section 151 of the Code of

Civil procedure. The learned Judge of the court of appeal below on correct appreciation of materials on record rightly dismissed the appeal and upheld the judgment and decree of the trial court which calls for in no interference.

I have considered the submissions of learned Assistant Attorney General and carefully examined all materials on records.

The plaintiff did not seek declaration of his title in the disputed land but merely challenged the legality of an eviction notice issued by the defendant. In the plaint plaintiff admitted that the disputed land belonged to the Public Works Department of the government and he was given settlement for constructing a dwelling house. The learned Senior Assistant Judge on examination of the lease deed of by the plaintiff rightly found that the plaintiff was given only a yearly lease for piciculture.

A lease of an immovable property for a period of one year is considered a temporary lease and on the basis of temporary lease no construction of pucca structure is permissible. Such a leasee is evitable with due notice after expiry of the term of his lease. Admittedly above yearly lease of the

disputed land to the plaintiff had expired before filing of this suit.

On consideration of above materials on record the learned Senior Assistant Judge rightly rejected the petition under order 39 rules 1 of the Code of Civil Procedure which calls for no interference.

But the learned Senior Assistant Judge committed illegality in rejecting the plaint invoking Section 151 of the Code of Civil Procedure. The suit was fixed for hearing of the petition under order 39 rules 1 of the Code of Civil Procedure and not for maintainability hearing of the suit.

The plaint was rejected without giving the plaintiff an opportunity of being heard. The Code of Civil Procedure provides order 7 rule 11 for rejection of plaint. As such there was no necessity of invoking the provision of Section 151 of the Code of Civil Procedure for rejection of the plaint.

The learned Senior Assistant Judge could fix a date for maintainability hearing of the suit and then after giving the plaintiffs an opportunity of being heard pass an appropriate order in accordance with law.

The learned Judge of court of appeal below failed to appreciate above materials on record properly and most illegally dismissed the appeal and affirmed the flawed judgment and decree of the trial court which is not tenable in law.

In above view of the materials on record I find substance in this petition under section 115(1) of the Code of Civil Procedure and the rule issued in this connection deserves to be made absolute in part.

In the result, the rule is made absolute in part.

The impugned judgment and decree dated 30.05.2002 passed by the learned Additional District Judge, 2nd Court, Noakhali in Title Appeal No.52 of 2002 affirming those dated 14.02.2002 passed in Title Suit No.13 of 2002 by the learned Assistant Judge is set aside in part.

The learned Senior Assistant Judge is directed to frame an issue on maintainability of the suit and after hearing the learned Advocate for both sides pass an appropriate order in accordance with law.

The ad-interim order passed at the time of issuance of the rule is hereby vacated.

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.

Md. Kamrul Islam
A.B.O