

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.912 OF 2002

In the matter of:

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

And

Chowmuhani Bazar Small Tradara Co-operative Society
... Petitioner

-Versus-

Chowmuhani Pourashava
... Opposite party

None appears

... For the petitioner.

Mr. Md. Moshihur Rahman, Assistant Attorney General
.... For the opposite party.

Heard and Judgment on 14.11.2024.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 16.01.2002 passed by the learned Joint District, 1st Court, Noakhali in Title Appeal No.70 of 2001 reversing those dated 21.06.2001 passed by the Senior Assistant Judge, Begumgonj, Noakhali in Title Suit No.70 of 2001 should not be set aside and or pass such other or further 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 a decree of perpetual injunction against the defendant restraining him to lease out the disputed premises until the petition of the plaintiff for perpetual lease of above property is disposed of by the Ministry of Land.

In above suit plaintiff filed a petition under Order 39 Rule 1 of the Code of Civil Procedure for an order of temporary injunction restraining the defendant from giving lease of the disputed property pursuant to the lease notice issued by the defendant till disposal of the Suit. The defendant Mayor of Chowmuhani Pourashava submitted a petition under Order 7 Rule 11(D) of the Code of Civil Procedure for rejection of plaint since the plaintiff is hit by Section 152 of the Pourashava Ordinance, 1977 for not issuing a notice upon the defendant before 30 days of filing of above suit.

The learned Senior Assistant Judge took up above two petitions for hearing on 21.06.2001 and on consideration of the submissions of the learned Advocates for respective parties and materials on record rejected the petition filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure and allowed the petition filed by the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure and passed an order of temporary injunction restraining the defendants from leasing out the disputed premises till disposal of above suit.

Being aggrieved by above judgment and order of the trial Court the defendant preferred Other Appeal No.70 of 2001 to the District Judge, Noakhali which was heard by the learned Joint District Judge, 1st Court who allowed above appeal and set aside the impugned judgment order of the trial Court and rejected above plaint.

Being aggrieved by and dissatisfied with above judgment and order of the Court of Appeal below above respondent 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 Rule although this matter appeared in the list for hearing on several dates.

Mr. Md. Moshihur Rahman, learned Assistant Attorney General for the opposite party submits that admittedly the disputed premises belonged to the defendant No.1 Chairman, Chowmuhani Pourashava and the plaintiff claims to have obtained temporary lease of the same from the defendant and the term of above lease had expired. The plaintiffs claimed that they have submitted a petition to the Ministry of Land for perpetual lease of the above premises. But since the plaintiffs did not get any lease of above property they had no locus standi to maintain a suit for permanent injunction or to get an order of injunction. On consideration of above materials on record the learned Joint District Judge rightly rejected the petition of the plaintiff filed under Order 39 Rule 1 of the Code of Civil Procedure. As far as rejection of the plaint is concerned admittedly the plaintiff did not give any notice upon the defendant under Section 152 of the Pourashava Ordinance, 1977. As such the learned Judge of the Court of Appeal below rightly rejected the plaint which calls for no interference.

I have considered the submissions of the learned Assistant Attorney General for the opposite party and carefully examined all materials on record.

It turns out from the plaint as well as the petition submitted by the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure that the plaintiff did not have any rightful claim of title in the disputed premises. It has been admitted that above premises belonged to the Government and plaintiff obtained temporary lease of the same from the defendant. The learned Assistant Attorney General submits that the term of above temporary lease had expired long before the passing of the impugned order under Order 39 Rule 1 of the Code of Civil Procedure.

In order to get an order of temporary injunction mere possession of the disputed land is not enough. The plaintiff must make out a case of lawful possession that is a possession which corresponds to a claim of rightful title. The plaintiffs claim to have obtained temporary lease of the disputed premises from the defendant admitting that the defendant was the rightful owner of above property.

In view of above materials on record I hold that the learned Judge of the Court of Appeal below on correct appreciation of the materials on record has rightly rejected the petition of the plaintiff under Order 39 Rule 1 of the Code of Civil Procedure which calls for no interference.

It is well settled that a plaint can be rejected on consideration of the averments made in the plaint and not on the basis of a claim made by the defendant in the written statement unless above claim of the defendant has been admitted by the plaintiff. There is nothing in the plaint to show that the plaintiff did not issue a notice upon the defendant under Section 152 of the Pourashava Ordinance, 1977 or due to some special circumstances the plaintiff was prevented or unable to cause service of such a notice upon the defendant under above provision.

On consideration of above materials on record I hold that the learned Judge of the Court of Appeal below should have framed an issue on the maintainability of the suit and on receipt of the evidence on above point disposed of the appeal in accordance with law.

In above view of the materials on record I hold that the impugned judgment and order of the learned Judge of the Court of Appeal below as far as the same relates to the rejection of plaint under Order 7 Rule 11(D) of the Code of Civil Procedure is not tenable in law.

As such I find substance in the revisional application under section 115(1) of Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute in part.

In the result, the Rule is hereby made absolute in part.

The impugned judgment and order dated 16.01.2002 passed by the learned Joint District, 1st Court, Noakhali in Title Appeal No.70 of

2001 as far as the same relates to the rejection of the plaint is set aside and the trial Court is directed to proceed with the trial of the suit in accordance with law.

However, there is no order as to cost.

MD. MASUDUR RAHMAN
BENCH OFFICER