

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 3216 of 2010

Krion Chandra Nath and another

..... petitioners

-Versus-

Fouzul Azim

..... opposite party

No one appears for the petitioner

Mr. Maqbul Ahmed, Advocate

..... for the opposite party

Judgment on 03.03.2024

The leave was granted and rule was issued calling upon opposite party 1 to show as to whether the judgment and order of the District Judge, Chattogram passed on 11.03.2010 in Civil Revision No. 177 of 2009 allowing the revision reversing the judgment and order of the Assistant Judge (in charge), Lohagara, Satkania Chouki, Chattogram passed on 17.05.2009 in Other Class Suit No. 13 of 2008 rejecting the application for addition of party and granting order of *status quo* suffers from an error on important question of law resulting an erroneous decision occasioning failure of justice and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the rule, the parties were directed to maintain *status quo* in respect of the possession and position in the suit property till disposal of the leave. This Court further passed order that the proceeding of the suit shall continue as usual.

Facts relevant for disposal of the rule, in brief, are that the petitioners herein as plaintiffs instituted the suit for declaration of title in respect of the land described in the schedule to the plaint. The defendants 1 and 2 appeared in the suit and filed written statement to contest it. During pending of the aforesaid suit opposite party 1 herein as third party filed an application under Order 1 Rule 10 read with section 151 of the Code of Civil Procedure (the Code) for adding him as defendant in the suit. In the application he claimed that he purchased .21 acres of the suit land from defendants 1 and 2 by a registered *kabala* dated 16.03.2009. The above defendants did not inform him about pending of the suit in respect of sold property. The plaintiffs also filed an application praying for temporary injunction restraining the defendants from creating any disturbance in the enjoyment of the suit land. The Assistant Judge took up both the applications for hearing and by its judgment and order passed on 17.05.2009 allowed the application of the plaintiffs for temporary injunction and directed the parties maintain *status quo* in respect of the suit land but rejected the application of the third party (opposite party 1 herein) filed under Order 1 Rule 10 of the Code for adding him as defendant. Being aggrieved by the third party petitioner preferred Civil Revision No. 177 of 2009 before the District Judge, Chattogram. The District Judge after hearing allowed the

revision on 11.03.2010 and set aside the judgment and order passed by the Assistant Judge. In this event, the plaintiffs approach this Court and leave was granted and rule was issued with an interim order to maintain *status quo* in respect of the suit land.

No one appears for the petitioners. Although the matter has appearing in the list with the names of learned Advocates of both the parties. This is a very old matter against order and as such it is taken up for disposal on merit hearing the learned Advocate for opposite party 1.

Mr. Maqbul Ahmed, learned Advocate for opposite party 1 opposes the rule and prays for its discharge. He submits that the District Judge on appreciation of fact and law allowed the revision. He committed no error of law resulting an erroneous decision for which it can be interfered with. He apprises this Court that the trial Court did not proceed with the suit and it is still pending for disposal.

I have considered the submissions of the learned Advocate for opposite party 1, gone through the judgments passed by the Courts below and documents appended with the application.

The petitioner brought the suit against defendants 1 and 2 for declaration of title in respect of the suit land as described in the

schedule to the plaint. The opposite party 1 as third party filed an application for adding him as defendant to the suit.

It appears from annexure-A, the application for addition of party that the applicant purchased .21 acres of the suit land from defendants 1 and 2 by a registered *kabala* dated 16.03.2009 and inducted into the possession and that he was not aware about pending of the suit between the parties. Therefore, he was require to be added as defendant to the suit. The application for temporary injunction filed by the plaintiffs and the application for addition of party were heard together by the Assistant Judge. But he rejected the application for addition of party on the principle of *lis pendens* but allowed the application for temporary injunction directing the parties to maintain *status quo* in respect of the suit land. The revision filed by the third party was allowed by the District Judge and the judgment and order passed by the Assistant Judge was set aside. By the aforesaid order virtually the District Judge allowed the application for the addition of party and vacated the order of *status quo* passed by the Assistant Judge. The plaintiffs approach this Court challenging the aforesaid judgment and order passed by the lower revisional Court upon which leave was granted and rule was issued with an interim order directing the parties to maintain *status quo* in respect of the suit land. This Court did not pass any

order of stay of the impugned judgment and order passed by the District Judge but directed that the suit shall continue as usual.

Since the learned District Judge has set aside the judgment and order passed by the Assistant Judge. The third party has (opposite party 1 herein) entered into the suit as defendant to contest it. Because this Court did not pass any order staying operation of the judgment and order passed by the District Judge. On perusal of the judgment and order passed by the District Judge I find no error on any important question of law which has resulted an erroneous decision occasioning failure of justice, and as such I do not find any ground to interfere with the judgment and order passed by the District Judge. The District Judge by the impugned judgment just allowed the third party to contest the suit finding him necessary and proper party to the suit which is correct.

Therefore, I find no merit in this rule. Accordingly, the rule is discharged without any order as to costs. The Judgment order passed by the District Judge shall stand but the order passed by this Court directing the parties to maintain *status quo* in respect possession shall continue.

However, if the Other Class Suit No. 13 of 2008 is still pending, the Assistant Judge, Lohagara, Satkania Chouki, Chattogram shall dispose of it within 06 (six) months from the

date of receipt of this judgment and order. In dealing with the suit, the Assistant Judge shall not allow either party any adjournment without extreme exciency.

Communicate this judgment and order to the concerned Courts.

Rajib