

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

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Civil Revision No. 1390 of 2024

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Mrs. Sarmin Akter and another

... Defendant nos. 1 and 2-Petitioners.

-Versus-

Md. Samsul Islam Chowdhury and others

... Plaintiff-Opposite parties.

Ms. Nurun Nahar, Advocate

...For the petitioner.

Mr. Md. Towfiqul Islam Khan, Advocate

... For the Opposite Parties.

Heard on 11.11.2024

Judgment on: 12.11.2024

Md. Bashir Ullah, J.

At the instance of defendant nos. 1 and 2 in Title Suit No. 42 of 2023, this Rule was issued calling upon the opposite party no. 1 to show cause as to why the order dated 04.03.2024 passed by the learned Joint District Judge, Second Court, Gazipur in the above-mentioned suit

should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, all further proceedings of Title Suit No. 130 of 2024, pending in the Joint District Judge, First Court, Gazipur was stayed for a period of 03(three) months which was subsequently extended on 25.08.2024 for another 01(one) year.

The salient facts, relevant for the disposal of the Rule are:

The opposite party no.1 as plaintiff instituted a suit being Title Suit No. 42 of 2023 before the learned Joint District Judge, Second Court, Gazipur seeking the following reliefs:

- ক) বাদীপক্ষ নালিশী 'ক' হইতে 'ঘ' তফসিল বর্ণিত ২৫০ শতাংশ সম্পত্তির ষোলআনা মালিক মর্মে বাদী পক্ষের পক্ষে এবং বিবাদীপক্ষের বিরুদ্ধে এক স্বত্ব ঘোষণার ডিক্রি দিতে;
- খ) আরজির 'ঙ' তফসিলের ১নং হইতে ৬নং ক্রমিকে উল্লেখিত দলিল দস্তাবেজগুলি যোগসাজসী, তঞ্চকী, কাগজী, বেআইনী, অকার্যকর এবং বাদীপক্ষের স্বত্বের উপর বাধ্যকর নয় মর্মে ঘোষণামূলক ডিক্রি দিতে।
- গ) মাননীয় আদালত কর্তৃক ঐরূপ ঘোষণামূলক ডিক্রীর অনুলিপি সংশ্লিষ্ট ভলিয়মে নোট করণার্থে ১০নং বিবাদীর বরাবরে প্রেরণের জন্য আদেশ দিতে;
- ঘ) নালিশী সম্পত্তিতে বাদীপক্ষের দখল থাকার বিষয়টি নিশ্চিত করিয়া বিবাদীপক্ষগণের বিরুদ্ধে দখল স্থিরতরের ডিক্রি দিতে;
- ঙ) মোকদ্দমায় যাবতীয় খরচ বাদীপক্ষের অনুকূলে ও বিবাদীপক্ষের প্রতিকূলে প্রদানের রায় ও ডিক্রি দিতে;

চ) আইন, সমতা আইন ও সাক্ষ্য বিচারে বাদীপক্ষ আর যে যে, প্রতিকার
পাইতে পারে তাহার আদেশ দিতে হুজুরের মর্জি হয়।

The plaintiff filed the above-mentioned suit stating *inter alia* that the land in question described in schedule “ka”, “kha”, “ga” and “gha” measuring 250 decimals belonged to one Sree Amrita Lal Mazumder, Sree Ajit Kumer Mazumder, Sree Shashanka Mazumder, Sree Birendra Kumer Mazumder, Harendra Chandra Malo and Ruhini Kumer Mali. C.S., S.A. and R.S. Khatians were recorded in their names. They sold 74.18 acres of land to Pagar Housing Society on 20.11.1968. Thereafter, the members of the Pagar Housing Society sold out 74.18 acres of land including the suit land to Dr. Sirajul Haque and Kazi Abdul Halim. They sold out the case land to Alhajj Abdul Hai, Azizur Rahman, Md. Shafiqur Rahman, Alhajj Wahid and Anwara Begum through several registered deeds. Subsequently, Azizur Rahman, Md. Shafiqur Rahman, Alhajj Wahid, Abdul Hai and Anwara Begum sold out their land to Sonargaon Textile Mill, represented by Mr. Abul Kashem Chowdhury. Thus, Sonargaon Textile Ltd. represented by Mr. Md. Abul Kashem Chowdhury became owner of 1074.50 decimals of land by deed no. 8912, 8913, 9113, 20795, 22270, 22221, 14574, 26014, 14572, 26391, 22269, 20796, 20785, 26016, 26097 and 26015 and mutated the land in the name of the said Textile Mill. Thereafter, Sonargaon Textile Ltd. sold out the suit land described in the “ka”, “kha”, “ga” and “gha” schedule measuring 250 decimals to the plaintiff namely Md. Samsul

Islam Chowdhury by registered deed no. 21778 on 29.08.2010 and delivered possession of the land to the plaintiff. After purchase of the suit land, plaintiff leased out the same to Zaber and Zubayer Fabrics Ltd. by fencing boundary. Thus, Zaber and Zubayer Fabrics Ltd. which is a 100% export oriented industry have been operating its factory by connecting gas and electricity line and employing twenty thousand laborers for more than twelve years on the suit land.

It is further stated that the defendant nos. 1 and 2 published a news in the Daily Inqilab on 31.10.2022 claiming ownership in the suit land. The deed dated 17.01.1989, dissolution of partnership deed dated 13.03.2002 executed by Ahammad Ali Sardar, deed no. 3982 dated 04.10.2006 executed by defendant no. 1, heba deed no. 7463 dated 29.04.2008 executed by defendant no. 1 in favour of defendant no. 2, deed no. 6149 dated 22.04.2009 executed by defendant no. 2 in favour of defendant nos. 4 to 8 and deed no. 22591 dated 08.11.2010 executed by defendant no. 2 in favour of defendant no. 3 are illegal, inactive and fabricated. Thus, the defendants created false and fabricated deeds and documents which are collusive, inactive, illegal and void. The plaintiff is the 100% owner of the scheduled land and hence, he instituted the suit for declaration of title of suit land.

The defendant nos. 1 and 2 entered appearance in the suit but without filing any written statement filed an application under Order 1 section 10(2) of the Code of Civil Procedure, another application under

Order 11 Rule 15 of the Code of Civil Procedure, an application for serving summons upon defendant nos. 3 to 11 and other two applications for adding Fatema Akter and Kazi Maruf Hossain as parties. Ultimately it was fixed for filing written statement on 06.02.2024 but the defendant nos. 1 and 2 filed an application praying time till disposal of the five applications. Upon hearing, the trial Court fixed the next date on 04.03.2024 for filing written statement in default for hearing the suit *ex parte*. Being aggrieved, the defendant nos. 1 and 2-petitioners decided to file civil revision before the District Judge, Gazipur and filed an application to that effect under section 10 of the Civil Procedure Code on 04.03.2024 before the trial Court to stay the proceedings of the suit till filing of the civil revision.

Upon hearing the parties, the learned Joint District Judge, Second Court, Gazipur rejected the application filed under section 10 of the Civil Procedure Code on 04.03.2024.

Being aggrieved by and dissatisfied with the order dated 04.03.2024, the defendants as petitioners filed the instant civil revision before this Court and obtained Rule and order of stay.

During the pendency of the above-mentioned suit, the learned Senior District Judge, Gazipur transferred the suit to the learned Joint District Judge, First Court, Gazipur under section 24 of the Code of Civil

Procedure on 11.03.2024 and the suit was renumbered as Title Suit No. 130 of 2024.

Ms. Nurun Nahar, learned Advocate appearing on behalf of the defendant-petitioner contends that an order under section 10 of the Code of Civil Procedure was necessary for staying the proceedings of the suit till filing of the revision but the trial Court failed to consider the prayer and thus committed an error of law resulting in an error in the decision occasioning failure of justice in rejecting the application for stay of proceedings of Title Suit No. 42 of 2023 till filing Civil Revision before the Court of District Judge, Gazipur.

She further contends that the trial Court passed a non-speaking order which is liable to be set aside and finally, she prays for making the Rule absolute by setting aside the impugned order.

Per contra, Mr. Towfiqul Islam Khan, learned Advocate appearing on behalf of the plaintiff-opposite party contends that there is no other suit pending in the same or other Court between the parties and thus section 10 of the Code of Civil Procedure is not applicable and there is no illegality or infirmity in the impugned order passed by the learned Joint District Judge, Second Court, Gazipur and finally prays for discharging the Rule.

We have heard the learned Advocates for both the sides, perused the civil revision, impugned order and other materials on record.

We have gone through the application dated 04.03.2024 filed by the defendant nos. 1 and 2-petitioners praying for stay of the proceeding of the suit under section 10 of the Code of Civil Procedure. We found no cause for filing such application. The defendants did not mention in the application that earlier any suit was instituted or any suit is pending between the same parties that requires to apply section 10 of the Code of Civil Procedure.

However, section 10 of the Code of Civil Procedure is reproduced below for our ready reference:

“10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh established or continued by the Government and having like jurisdiction, or before the Supreme Court.”

Learned Advocate appearing on behalf of the petitioners contends that the impugned order is not a speaking order and no reason was assigned by the trial Court in rejecting the application filed under section

10 of the Code of Civil Procedure but we cannot consider the contention as a valid one for interference of the impugned order. In this regard reliance may be placed in the case of *Abdul Motaleb vs. Md. Ershad Ali and others*, reported in 18 BLD (AD) 121 wherein the apex Court observed:

“The High Court Division does not interfere with an order in revision unless the Subordinate Court has committed any error of Law “resulting in an error in the decision occasioning failure of Justice.” Not all errors of Law call for interference unless the Court is satisfied that there has been an error in the decision also occasioning failure of justice. The order of the Subordinate Judge may have been a bad order and improper one not having given any reasons but, before interfering with the same the High Court Division ought to have examined whether the same has resulted in an erroneous decision occasioning failure of justice which it has completely failed to do.”

While rejecting the application filed under section 10 of the Code of Civil Procedure, the learned Joint District Judge, Second Court, Gazipur rightly observed that the defendants did not make out any specific case why under section 10 of the Code of Civil Procedure the

proceeding of the suit would be stayed and the trial Court found no cogent reason to stay the proceeding by allowing the application filed under section 10 of the Code of Civil Procedure. Further, the Court below after considering the materials on record and laws correctly rejected the application thereby committed no error of law. So, the findings of the Court below are not liable to be interfered with by this Court as well.

Given the above facts and circumstances, we do not find any substance in the Rule rather we find that the trial Court has committed no error of law resulting in an error in the decision occasioning failure of justice in rejecting the application filed by the defendants-petitioners under section 10 of the Code of Civil Procedure and as such the Rule is liable to be discharged.

As a result, the Rule is discharged, however without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands recalled and vacated.

Let a copy of this judgment be communicated to the concerned court forthwith.

Md. Mozibur Rahman Miah, J.

I agree.