

12.06.2025
Court No.652
Item no.45
CP

C.O. No. 1630 of 2022

Abu Taleb
Vs.
Abdul Hadi

Mr. Subhabrata Datta,
Mr. Debashis Sarkar

....for the petitioner.

Mr. Masud Karim

.....for the opposite party.

The present petition has been filed challenging the Order No. 107 dated May 11, 2022, passed by the learned Civil Judge (Junior Division), Chanchal, Malda in Misc. Pre-emption No. 34 of 2006, whereby the petition filed under Section 151 of the CPC by the opposite party no. 1 dated April 19, 2022 was dismissed.

Briefly stated, the facts are that the opposite party/plaintiff filed a Miscellaneous Preemption Case against the petitioner. In the backdrop, one Majibur Rahaman and Sajibul Hoque sold 14 Satak land out of 21 Satak land to the petitioner/defendant by way of a registered deed on June 5, 2006. Petitioner filed the preemption case claiming that he is a co-sharer of the suit land and has right to purchase the suit land as a preemptor.

It appears that two letters dated April 24, 2006 and February 25, 2006 were issued by Sajibul Hoque to the petitioner. In the Trial Court, the petitioner/defendant took a plea that Sajibul Hoque wrote a letter to Abdul Hadi that he and his brother Majibur Rahaman will sell their land if Abdul Hadi fails to purchase the same. Learned counsel submits that Sajibul Hoque filed his affidavit along with the said two letters and the said two letters were marked as 'X' for identification.

Learned counsel states at the bar that however the testimony of Sajibul Hoque remained incomplete and during the period he went missing. Learned counsel submits that therefore in these circumstances in order to prove the letter dated April 24, 2006 and February 25, 2006, he moved an application before the learned Trial Court under Section 151 of the CPC for examination of Majibur Rahaman. Learned counsel submits that the learned Trial Court without even permitting examination of the said Majibur Rahaman expressed its opinion on the authenticity of the said two letters. Learned counsel submits that this finding of the learned Trial Court is actually pre-judging of an issue and is liable to be set aside.

Learned counsel for the opposite party has vehemently refuted the averments made above and has submitted that there is no infirmity or illegality in the order of the learned Trial Court. Learned counsel submits that the learned Trial Court afforded sufficient opportunities from 2018 to 2022 and only thereafter passed the impugned order. Learned counsel submits that the learned Trial Court was well within its right to examine the authenticity of the material produced before it.

The Court has considered the submissions. It is settled proposition that procedure is handmaid of justice. The procedure has been enacted so as to facilitate the cause of justice and not to frustrate it. The Court is also conscious of the fact that if a party tries to delay the matter by taking frivolous pleas, the same has to be discouraged. But, at the same time, the parties have to be given full opportunity to prove their case in accordance with law. The Court can appreciate the material within the four corners of law after the parties are given an opportunity to present the same in accordance with law.

In the present case, Mr. Sajibul Haque who filed the affidavit was not available to complete his testimony. The Court at this stage cannot go into the reason of his disappearance. Authenticity and

validity of letters Dated April 24, 2006 and February 25, 2006 can only be assessed after the opposite party/petitioner lead its entire evidence. The Court shall form the judicial opinion after taking into account the evidence, materials, documents on record and attending facts and circumstances.

This Court considers that the learned Trial Court has fallen into an error by returning a finding as to the evidentiary value of these letters dated April 24, 2006 and February 25, 2006, without the evidence of the parties having been completed. This order is liable to be set aside.

Since it is an old matter, the petitioner/opposite party shall examine Mr. Majibur Rahaman within four weeks from the date of passing of the order. The learned Trial Court shall also decide the matter expeditiously, in accordance with law without granting any unnecessary adjournments.

The petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously.

(Dinesh Kumar Sharma, J.)