

**Present- Md. Hasan Zaman, Senior Assistant Judge,
Patiya, Chattogram**

Order No- 470 Today is fixed for passing necessary order.

Date-31.10.2022 Both sides file haziras. The case record is taken up for passing necessary order.

This is a case under Order 39 Rule 2(3) read with section 151 of the Code of Civil Procedure. According to the petitioner, the opposite parties as plaintiffs filed a suit for declaration and partition, being O.S. No.04/1997, against the petitioner and others in respect of the suit property. In the said suit, the petitioner brought an injunction petition and accordingly ad-interim injunction was passed by the Ld. Court on **29.06.1997**, by which, both the parties to that suit was directed to maintain status-quo in respect of the suit property. There was also a local inspection of the suit property, conducted by the Ld. Advocate, **Mr. Tapon Kumar Chowdhury**, on **07.07.1997**. In spite of the said order of injunction and protest by the petitioner's brother in law Nurul Islam, the opposite parties along with some 20/25 unknown miscreants forcibly cut away several valuable trees from the suit property and started raising of a paaca house thereon. The opposite parties are trying to raise further construction over the suit property by violating the Court's order of injunction. As the opposite parties have violated the court's order of injunction, so they are required to be punished as per the law. Hence, this application.

The opposite parties No.1/2 to this case are contesting the present case by filing a written objection and denying and refuting the allegation of the petitioner in her application for violation of injunction. According to the opposite parties, they have got the suit property by way of inheritance and by purchase. They have been residing in the suit property since long by constructing house therein. They have alleged that the petitioner is always trying to grab their share in the suit property in one way or the other. These opposite parties have contended that the present case has been filed by the petitioner only to fulfill her alleged desire to

occupy their share in the suit property and also to tarnish their image in the society. These opposite parties have alleged that they have never tried to violate the court's order of injunction. These opposite parties have ultimately prayed for the dismissal of the present case.

POINT FOR CONSIDERATION

The only point for consideration is that whether or not the OP has violated the court's order of injunction.

DECISION WITH REASONS

It is a cardinal principle of law that in a proceeding for violation of injunction, as the same is punitive in nature, so it requires stricture proof than in other civil action, though the standard of proof in criminal proceeding may not apply. In the backdrop of the aforesaid proposition of law, let me now consider the case of the respective parties.

As appears that the petitioner has tried to establish that the present opposite party no 1 and 2 are very much dangerous and desperate in nature. They have filed the present suit, being O.S. 04/1997, against this petitioner on some false and frivolous ground. However, in the said suit there was an order of injunction passed by the Ld. Court on 29.06.1997. By the said order of injunction, the Ld. Court had directed both the parties to the said suit to maintain status quo in respect of the nature and character of the suit property till disposal of the said suit. In spite of the said order of the Ld. Court, the opposite parties with the help of some 20/25 miscreants have forcefully and most unlawfully cut away several valuable trees from the suit property and started construction of a pacca house on the suit land on 30.06.1997. In order to ascertain the said fact of violation of the Court's order of injunction, a local inspection of the suit property have been made. From the reports of the Ld. Commissioner the fact of violation of injunction by the opposite parties can be ascertained.

In support of the petitioner's case, the petitioner examined a witness namely Nurul Islam, the attorney of the petitioner, as the Pt.W-1. Learned Advocate commissioner Mr. Yapon Kumar Chowdhury has

been examined as C.W.1 .The documents produced and proved on his behalf are :- 1) A local inspection report, dated **06.08.1997** along with other relevant papers as the **Exhibit-X** series.

On the contrary, the opposite parties have tried to establish that they are the real owner of the suit property. By inheritance and purchase they got the suit property. As the present petitioner has tried to grab their share in the suit property so they have filed the present suit seeking separation of their share in the suit property. These opposite parties have denied the fact that they have tried to violate the Court's order of injunction by raising any construction over the suit property or cutting trees therefrom. These opposite parties have alleged that the petitioner has filed this case falsely against them only to harass them. In support of the case of the opposite parties, the following witnesses have been examined:- 1) Md Abdul Malek , the opposite party No.2, as the O.P.W.-1. The documents produced and proved on behalf of the opposite parties are order of Misc 252/1997 and other relevant papers which have been marked as **Exhibit No-X1** .

At the very outset of my discussion, I would like to say that the aforementioned partition suit has already been disposed of between the parties to this suit in preliminary form, declaring that the present opposite parties will get only 1.83 decimals land out of 14.50 decimals land in disputed Dag No 990 and 991. It is also worthwhile to mention here that the suit property has not yet been partitioned by metes and bounds between the said parties. Accordingly, it can safely be said that the suit property is still the undivided property of the respective parties to this case.

Now coming back to the evidences, as adduced by the respective parties to this case, it appears that Pt.W.1 specifically alleges in his examination in chief that the opposite parties in spite of being aware of order of court, unlawfully removed some valuable trees and started construction works thereon. But he could not say the exact date of violation by the O.P. Admittedly a Misc case was filed by petitioner u/s 145 of CrPC against the O.P earlier of this suit. The investigation report of that case reveals that there lies a two storied building structure recently completed on the

suit land owned by the OP. These facts certainly creates an impression in my mind that the petitioner or her said witness are not at all sure about the fact of the alleged act of forceful construction of the building over the suit property by the opposite parties, after violation of the injunction order. It further appears from the evidence of the said witness that on 30.06.1997 the opposite parties had forcefully cut away several valuable trees from the suit property, but he failed to say the names and the numbers of the trees, which had been forcibly cut away by the opposite parties. In such circumstances, I am of the opinion that the petitioner had the opportunity to get the alleged act of violation of the injunction order proved through some independent witnesses. Surprisingly enough, the petitioner did not think it necessary to examine any independent witness in support of her aforesaid case.

At this stage, Ld. Lawyer for the petitioner tries to argue that from the inspection report of the C.W.1, it reveals that the Ld. Commissioner has specifically mentioned in his report that there exist a recent constructed building over the suit property. On careful perusal of the inspection report of the C.W.1, dated 06.08.1997, it transpires that though the Ld. Commissioner has mentioned in his report about the existence of a recent constructed building over the suit premises but in cross examination he could not say when it has been constructed. In this context, I would like to say that inspection report is silent about the fact as to when and how, and above all, which category of trees had been removed from the suit property and by whom. Needless to mention that the law is now well settled that an order under Rule 2(3) of Order 39 of the Code cannot be passed on suspicion or as a matter of course. There should be clear proof that order to be obeyed was clear, unambiguous, and with full knowledge of its contents it was disobeyed. From the trend of evidence, as adduced on behalf of the petition, I cannot but to say that no clear, convincing and indubitable evidence is forthcoming from the petitioner's side to establish the alleged act of violation of injunction order by the opposite parties to this case.

Per contra, from the evidence of the O.P.Ws, it appears that the O.P.W.1 has categorically denied the fact that the opposite parties have violated

the injunction order of this Court, by raising construction over the suit property or cutting away several valuable trees therefrom. Rather, it reveals from his evidence that they have raised the building structure in place of their old dilapidated house and the constructions work was completed just before filing of the suit. The said witness has been cross-examined at length on behalf of the petitioner, but could not drifted away. However, where an act has already been done before the injunction order has been issued, there can be no punishment for disobedience. Even for the sake of argument, I accept the contention of the petitioner that the opposite parties have done some construction work over the suit property, then also I have to say that will not be sufficient to accuse the opposite parties under the present provision of law until and unless it is established beyond all shadow doubt that the said act of the opposite parties had caused a change in the nature and character of the suit property, because the injunction order passed in this suit was only to maintain status quo regarding the nature and character of the suit property. From the narration of fact and law, it is manifestly clear that the petitioner has failed to bring home the allegation of violation of injunction order, passed in T.S. 04/1997, against the opposite parties. Resultantly, the petitioner's case fails to sustain.

The present case is properly stamped.

Hence, It is, O R D E R E D

that the present case be and the same is dismissed on contest without any cost.

Dictated & Corrected by me.

Senior Asst. Judge, 2nd Court.

Patiya, Chattogram.

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