

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 2718 of 2021**

Hasna Bewa alias Hameda and others

Defendant-petitioners

-Versus-

Md. Layeb Uddin being dead his legal heirs Mst.  
Zorina Bewa and others

Plaintiff-opposite parties

Mr. Md. Shariful Islam, Advocate

...For the petitioners

Mr. M.G.H. Ruhullah, Advocate

... For the opposite parties

Heard on: 09.02.2025 and 10.02.2025

Judgment on: 18.02.2025

The instant Rule arises out of the judgment and order dated 16.02.2021 passed by the District Judge and Jananirapotta Bignokari Oporadh Daman Tribunal, Rajshahi in Civil Revision No. 28 of 2018 rejecting the revision and affirming the judgment and order dated 05.06.2018 passed by the Assistant Judge, Tanore, Rajshahi in Other Class Suit No. 160 of 2009 rejecting the application filed by the defendant Nos. 1-7 for local investigation under Order 26 rule 9 of the Code of Civil Procedure (CPC).

The plaintiff-opposite parties have filed counter-affidavit.

I have heard the learned Advocates of both sides and perused the materials on record.

The plaintiffs filed the suit praying for declaration of title and partition of 18 decimals of land out of 43 decimals in plot Nos. 409 and 412 as described in schedule-‘Kha’ of the plaint. The defendant Nos. 1-7 filed a joint written statement denying the case of the plaintiffs. Their specific case is that they are the owners of 43 decimals of land described in the ‘Kha’ schedule and that the plaintiffs have no right, title and interest in the said land. Both sides adduced oral and documentary evidence in the suit. When the suit was fixed for argument, the defendants filed the application for appointment of commissioner for local investigation under Order 26 rule 9 of the CPC on the grounds that in the R.S. khatian the nature of the suit land was recorded as paddy but the plaint is silent as to the nature of the suit land and that the total area of land in ‘Kha’ schedule of the plaint in plot Nos. 409 and 412 is more than 43 decimals. Therefore, in order to ascertain the nature of the suit land and the actual quantity of the same, local investigation is required.

The trial Court rejected the application for local investigation holding that the nature and quantity of the suit land can be ascertained on consideration of the evidence and no local investigation is

required. The revisional Court below concurred with the observation of the trial Court.

The instant suit is a suit for declaration of title and partition. The defendants (present petitioners) in their pleading denied the title of the plaintiffs and claimed that they are the owner of the suit land by succession. Plaintiffs have to prove their own case. The trial Court has already taken evidence in the suit and the same is awaiting for argument.

In *Nadera Banu vs. Protiva Rani Sen Gupta and others*, 55 DLR 149, it was held:

“The law on local investigation is well-settled. The Court can under Order XXVI rule 9 CPC issue an order for commission to hold local investigation when it deems it necessary for removing any ambiguity, confusion or uncertainty regarding the identity of the suit land or for elucidating any matter in dispute between the contending parties. The real object of a local investigation is not to collect evidence which can be taken in Court but to obtain evidence which from its very nature can only be had on the spot. The issuance of a Commission is thus a matter of discretion for the Court, which must be exercised judicially and not fancifully. When the trial Court does not find local investigation necessary for deciding a suit and rejects the prayer for local investigation on assigning reasons a superior Court cannot impose it on the trial Court”.

Considering the facts and circumstances of the case, the findings of the Courts below and the ratio laid down in the above-mentioned reported case, I do not find merit in the Rule. Hence, the Rule fails.

In the result, the Rule is discharged. The judgment and orders passed by the Courts below are affirmed.