

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 1048 of 2022.

Syed Belayet Hossain.

..... Petitioner.

-Versus-

Mustafizur Rahman alias Salim and others.

..... Opposite parties.

Mr. Md. Abdul Quddus Badal, Advocate.

..... For the petitioners.

Mr. Md. Mosiul Alam, Advocate

..... For the opposite parties.

Heard on: 07.05.2025, 15.05.2025 and

Judgment on: 22.05.2025.

Md. Khairul Alam, J.

This Rule was issued calling upon the opposite parties No. 1-11 to show cause as to why Order No. 02 dated 05.01.2022 passed by the learned District Judge, Laxmipur in Civil Revision No. 08 of 2021 rejecting the same summarily and thereby affirming Order No. 406 dated 17.11.2021 passed by the learned Assistant Judge, Ramgonj, Laxmipur in Title Suit No. 510 of 2007 allowing the application filed by the opposite parties under Order XXVI Rule 9 for local investigation should not set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the rule are that the present petitioner and others as plaintiffs instituted Title Suit No. 510 of 2007 before the Court of Assistant Judge, Ramgonj, Laxmipur impleading the present opposite parties No. 1-11 as defendants praying for declaration of title and recovery of khas possession of the suit property. The defendants have been contesting the suit by filing a written statement denying the material allegations made in the plaint. In the said suit defendant Nos. 20-24 filed an application under Order XXVI Rule 9 of the Code Civil Procedure for issuing a commission to make a local

investigation to ascertain the fact how 36 decimals of the suit land in plots No. 4290 and 4300 of Old P.S. khatian No. 1851 had been recorded in the new plots of New P.S. Khatian No, 5157 specifically in new plot No. 2448. The learned Assistant Judge, Ramgonj, Laxmipur after hearing the said application by the order dated 17.11.2021 allowed the said application. Against the said order the petitioner preferred Civil Revision No. 08 of 2021 before the Court of District Judge, Laxmipur. The learned District Judge, Laxmipur after hearing the said Civil Revision by the order dated 05.01.2022 dismissed the Civil Revision summarily.

Being aggrieved thereby the present petitioner moved before this Court and obtained the Rule and an order of stay.

Mr. Md. Abdul Quddus Badal, the learned Advocate appearing on behalf of the petitioner submits that the suit property as described in the application for local investigation is not the same as described in the plaint, but both the Courts below without considering the same allowed the application and thereby committed error of law resulting an error in the decision occasioning failure of justice. He further submits that earlier a local investigation for the suit property was held, therefore the impugned judgment and order for a further local investigation is an abuse of the process of the court. He lastly submits that after filing the suit fresh Record of Rights in respect of the suit property has been prepared, therefore the local investigation based on the previous Record of Rights is redundant.

On the other hand, Mr. Md. Mosiul Alam, the learned Advocate appearing for the opposite parties supports the impugned order and submits that a new record of rights for the suit land has been prepared and therefore to elucidate the fact that how the said land has been recorded in the new record of right a local investigation is must and both the courts below after considering this legal aspect rightly passed the impugned order.

Heard the learned Advocates, and perused the revisional application and other materials on record including the impugned judgment and order.

In the present case, an application for local investigation under Order XXIV rule 9 of the Code of Civil Procedure was filed contending that a new record of rights for the suit land has been prepared and therefore to elucidate the fact of how the said land has been recorded in the new record of right a local investigation was required. The application was allowed.

Order XXIV rule 9 of the Code of Civil Procedure runs as follows:

“In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount or any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court within such time not exceeding three months as may be fixed by the Court”.

On a plain reading of the said provision it appears that to elucidate any matter in dispute, the Court may issue a commission for local investigation. The object of such investigation is to assist the Court by obtaining informant with regard to the physical features of the property inspected which can only be had on the spot. It has been settled for the said commission that before the investigation the commission must issue notice to the parties. Any report without notice is not a report in the eye of the law. Commission report does not fall under section 35 of the Evidence Act and it can only be proved after examining the writer or witness. Using the word “may” makes the provision discretionary for the court. Under sub-rule 3 of rule 10 of Order XXVI of the Code of Civil Procedure, the Court may issue a fresh commission; therefore, the question of res-judicata does not arise at all.

The petitioner mainly contended that the suit property as described in the application for local investigation is not the same as described in the plaint. I have perused the plaint and the application in the light of the submission. On

perusal of the plaint and application, I do not find any substance in the said submission. The Revisional Court below also considered the issue and passed the impugned judgment and order with an elaborate discussion of the issue.

The learned Advocate for the petitioner filed to show that the courts below committed any error of an important question of law resulting in an erroneous decision occasioning failure of justice.

Therefore, I am of the view that both the Courts below after proper consideration of the facts and law passed the impugned judgment and order and do not find any reason to interfere with the same.

Accordingly, the Rule is discharged.

However, there is no order as to costs.

The order of stay granted earlier by this court is hereby recalled and vacated.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O