

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

Present:

**Mr. Justice Md. Khairul Alam**

**Civil Revision No. 6692 of 2023.**

Nur Nahar and another.

..... Petitioners.

-Versus-

Abu Sobhan Sikder (Minor) and others.

..... Opposite parties.

Mr. Md. Jashim Uddin Rabbani with

Mr. Md. Abdur Rahman Majumder, Advocates

..... For the petitioners.

Mr. Minarul Islam, Advocate

..... For the opposite parties.

Heard on: 13.08.2025 and  
**Judgment on: 19.08.2025.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 14.09.2023 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Cox's Bazar in Civil Revision No. 81 of 2022 dismissing the revision and thereby affirming the order dated 10.11.2022 passed by the learned Assistant Judge, Teknaf, Cox's Bazar in Other Suit No. 351 of 2021 rejecting the application filed by the petitioners under Order XXXIX Rule 7 read with section 151 of the Code of Civil Procedure (hereinafter referred as the Code) for inspection of the suit land 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 petitioners as plaintiffs instituted Other Suit No. 351 of 2007 in the Court of Assistant Judge, Teknaf, Cox's Bazar impleading the present opposite parties as defendants praying for declaration of title and also for a declaration that the gift deed as described in the schedule to the plaint is void, illegal and inoperative. The case of the plaintiffs, in short, is that Al-haj Nurul Alam was

the owner and possessor of the suit land by purchase. After the death of Al-haj Nurul Alam, the plaintiffs became the owners and possessors of the suit land, who have been in possession by constructing a semi-pucca tin-shed house thereon and by enclosing the same with a boundary wall. The further case of the plaintiffs is that the defendants are their stepbrothers who were claiming the ownership of the land, disclosing that Al-haj Nurul Aalm executed and registered the gift deeds in favour of the mother of the defendants. Hence, the plaintiffs filed the suit.

In the said suit, the plaintiffs filed an application under Order XXXIX Rule 7 of the Code for inspection of the suit land. The learned Assistant Judge, Teknaf, Cox's Bazar after hearing the said application by the order dated 10.11.2022 rejected the application.

Against the said order, the petitioners preferred Civil Revision No. 81 of 2022 in the Court of District Judge, Cox's Bazar which was subsequently transferred to the court of Additional District Judge, 3<sup>rd</sup> court, Cox's who by the judgment and order dated 14.09.2023 dismissed the Civil Revision and thereby affirmed the order passed by the trial court.

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

Mr. Md. Jashim Uddin Rabbani, the learned Advocate appearing on behalf of the petitioners submits that the courts below in passing the impugned judgment and order failed to appreciate the scope of Order XXXIX Rule 7 of the Code. He further submits that the power under the provision is wide enough to direct the inspection for elucidating the subject matter of the suit and to decide the issue effectively as prayed in the application for inspection.

On the other hand, Mr. Minarul Islam, the learned Advocate appearing for the opposite parties supports the impugned judgment and order and

submits that praying for inspection for collecting evidence is beyond the provision and therefore, the courts below rightly rejected the application.

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

It appears that by the impugned judgment and order an application for inspection of the suit land under Order XXXIX Rule 7 of the Code was rejected.

Therefore, the issue to be adjudicated is whether the courts below were justified in rejecting the application filed under Order XXXIX Rule 7 of the Code.

Order XXXIX Rule 7 of the Code runs as follows:

“The court may, on the application of any party to a suit, and on such terms as it thinks fit,-

- (a) make an order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein;
- (b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and
- (c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provision as to execution of process shall apply mutatis mutandis to persons authorise to enter under this rule”.

From a plain reading of the said provision, it appears that under Order 39, Rule 7 of the Code, the Court can make an order for inspection of the subject matter of the suit, if it is in the possession of any other party to such suit. Therefore, for allowing an application for inspection of the suit property filed under Order XXXIX Rule 7 of the Code, the applicant must have to admit that the subject matter of the suit is in the possession of any other party to such suit.

In the application under Order XXXIX Rule 7 of the Code, the petitioners stated to that effect:-

“বাদীগণ নালিশী জমিতে টিনশেড বিল্ডিং, উত্তর-দক্ষিণ পশ্চিম পার্শ্ব বাউন্ডারী ওয়াল উপলক্ষ্যে ভোগ দখলে আছেন। বাদীগণের মামলা সু-প্রমাণের নিমিত্তে এবং নালিশী জমির বাস্তব চিত্র বিজ্ঞ আদালতের সম্মুখে উপস্থাপন করার জন্য একজন সার্ভেজানা এডভোকেট কমিশনার নিয়োগক্রমে নালিশী জমি স্থানীয় পরিদর্শন করা একান্ত আবশ্যিক। অন্যথায় ন্যায় বিচারে বিঘ্ন ঘটিবে এবং বাদীগণের অপূরণীয় ক্ষতি হহবে”।

From the said statements it appear that the petitioners claimed that they are in possession of the suit property and therefore this application under Order XXXIX Rule 7 of the Code by the petitioners is beyond the scope of rule 7 and, as such, I am of the view that both the Courts below after proper consideration of the facts and law passed the impugned judgment and order.

The learned Advocate for the petitioners failed 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 do not find any reason to interfere with the impugned judgment and order.

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.