

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1450 of 2016

IN THE MATTER OF :

An application under section 115(4) of the Code of Civil Procedure.

-And-

In the Matter of:

Gazi Mohammad Sukur Ali

..... Petitioner

Versus

Md. Abul Kashem Patwary

.....Opposite party

No one

.... For the petitioner

No one

..... For the Opposite party

Heard and Judgment on: 14.11.2021.

Md. Riaz Uddin Khan, J-

The Rule was issued calling upon the opposite party to show cause as to why the impugned order dated 17.02.2016 passed by the learned District Judge, Rajbari rejecting the revisional application in Civil Revision No. 01 of 2016 by affirming the order dated 20.01.2016 passed by the learned Senior Assistant Judge, Sadar, Rajbari rejecting the application under Order 26, Rule 9 of the Code of Civil Procedure for local investigation of the suit land in Title Suit No. 112 of 2006 should not be set aside and or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of Rule this court stayed all further proceedings of Title suit No. 112 of 2006 pending in the court of learned Senior Assistant Judge, Sadar, Rajbari for a period of 6(six) months initially which was extended time to time.

The facts as stated in the revisional application is that S.A. tenant Abdul Latif Gazi transferred 25 ½ decimal of land of Ayesha Khatun through registered Deed No. 7426 dated 20.10.1976. Thereafter Ayesha Khatun sold 21 ½ decimal land to the plaintiff by registered deed No. 5351 dated 19.08.1977. Then Ayesha Khatun transferred rest 4 decimal land to Ahmed Sheikh. Thereafter Ahmed Sheikh transferred 4(four) decimal land to the plaintiff by registered Sub Kabala deed. Younus Dewan another sharer of S.A. Khatian No. 212 transferred 19 decimal land to Gazi Mobarak Ali by registered Sub Kabala deed No. 5694 dated 23.06.1976. Then Gazi Mobarak Ali sold the said 19 decimal land to the plaintiff by registered Sub Kabala Deed No. 5324 dated 01.06.1978. Then the plaintiff took possession of 19 decimal land which is situated in adjacent of 25 ½ decimal land which he bought before and in this way the plaintiff bought 44 ½ decimal land by three registered deed. That plaintiff possessed the said land by planting various vegetables and fruits and also cultivating fish in the lowland of the suit property. After getting possession, the plaintiff mutated his name and properly recorded his name in the B.S. Khatian no.214. The plaintiff did not put any signboard “For Sale” and did not sign any deed for sale and did not take money from defendant to sell the land. Plaintiff is a nearest person of the father-in-law of the defendant for that reason they had a good relation. On January, 2006 the plaintiff went to the defendant, an advocate, with his all original deeds, khatian and other related documents for taking advice regarding transferring the land. The defendant told him that he has to consult the matter with a senior lawyer in Dhaka and then he will give advice about that. Thereafter the defendant did not give any advice, even did not return

his original deeds and documents. Then on 31.05.2006 the defendant started erecting pacca house in the scheduled land engaging some labourers. At one stage the plaintiff tried to obstruct but the defendant claimed that he had bought the land from his co-sharer. Then by consulting with local people the plaintiff filed the instant suit.

The defendant contested that suit by filling written statement stating that owner of the scheduled 44 ½ decimal land was the plaintiff. The father-in-law of the defendant and the plaintiff is close relatives. The plaintiff put a signboard in the scheduled land marked as “The Land for Sale”. The defendant is working as a lawyer in Dhaka Metropolitan Magistrate Court and Metropolitan Sessions Court. The defendant was looking for some land for making home in village area. Then the defendant proposed to buy the scheduled 44 ½ decimal of land. Then the plaintiff proposed the land value as taka 2 lac and after consultation the land value was fixed as taka 1,90,000/- (One lac ninety thousand). Thereafter on 20.11.2005 the plaintiff offered the defendant through mobile phone that if he wants to buy the land he has to do it soon. Then on 09.12.2005 the defendant came at village and went to the plaintiff’s house with his brother-in-law Abdur Rob and deed writer Mohon. Then the plaintiff proposed the value of 44 ½ decimal land as taka 2,20,000/- (two lac twenty thousand). At one stage by the mediation of the persons present there, the land value was fixed as taka 2,10,000/- (two lac ten thousand). The latest khatian and mutation khatian were required for registration of transfer deed, so it was decided that when the plaintiff would collect the same then he would execute the deed. As per commitment the defendant paid cash taka 2(two) lac in presence of the witnesses and at the same day

the plaintiff transferred the possession of the scheduled land to the defendant and also gave him all original deed documents. Then next day the defendant made a Tin-shed house with the help of the plaintiff/helper and with the help of other local people. Then the plaintiff take long time by showing various excuses to execute the deed. Thereafter the defendant made L-pattern Tin-shed building in the schedule land. Thereafter on April, 2006 defendant went to the plaintiff's house and requested him to register the deed but the plaintiff avoid the matter showing various excuses. The defendant developed the land by various ways and the greedy plaintiff disturbed the defendant in different way and for that the suit is liable to be dismissed.

During trial the plaintiff-opposite party examined four witnesses while the defendant-petitioner examined five witnesses respectively. After conclusion of taking evidence the learned judge of the trial court fixed the case for argument.

At that stage the present defendant-petitioner filed an application for local investigation under Rule 9 of Order 26 of the Code of Civil Procedure against which the plaintiff petitioner filed written objection.

After hearing both the parties the learned Judge of the trial court rejected the application by his order dated 20.01.2016. Against that order of the trial court the defendant-petitioner filed Civil Revision No. 01 of 2016 before the learned District Judge, Rajbari.

The learned District Judge on the date fixed for admission of the revision by his order dated 17.02.2016 dismissed it *inlimini* by affirming the order of the trial court. Against that order of the learned District Judge

dated 17.02.2016 the defendant petitioner filed the instant revision for granting leave before this court and a single bench of this court was pleased to grant leave and issue the Rule as mentioned above.

Today when the Rule was taken up for hearing no one appears to support or oppose the rule.

The defendant-petitioner has taken as many as 4 grounds in his revisional application. He would submit that the impugned order passed by the court below is a non speaking order. His 2nd ground is that the order of the court below is passed arbitrarily and not judicially. His 3rd ground is that the court below failed to arrive at a decision that if the application is not allowed the petitioner will be prejudiced but the court below most illegally and without lawful authority by rejecting the application committed error of law resulting an error in decision occasioning failure of Justice. And the defendant-petitioner's last ground is that for taking proper decision regarding the identity/position of the suit land the court below ought to have allowed the application for local inspection(?) but both the courts below with wrong finding and decision rejected the application committing error of law resulting an error in decision occasioning failure of justice.

The plaintiff-opposite party did not appear by filing Vokatnama or any counter affidavit.

I have examined the revisional application along with the annexures annexed with the application. I have also perused the impugned order passed by the learned District Judge in revision as well as the order passed by the trail court.

It appears from the order of the trial court that at the stage of hearing the arguments, after conclusion of taking evidence from both the sides, this application for local investigation was filed by the defendant. The trial court opined that the points raised by the defendant in the application for local investigation is not necessary as it can be decided by the documentary and oral evidence already adduced before the court. The trial court further opined that it is immaterial whether this application is allowed or rejected and if the court ultimately decrees the suit or dismiss the suit the result of this application will have no bearing on it.

It appears from the order dated 17.02.2016 passed by the learned District Judge, Rajbari that he opined that already 9 years have been elapsed from the date of filing of the suit and the date fixed for hearing the argument and at that stage the defendant filed the instant application for local investigation. It seems that he has filed it as a dilly dally tactic. The learned Judge also opined that the defendant-petitioner did not challenge the plot number, Khatian number or the identity of the suit property in his written statement. It is clear from the plaint that the suit property is not vague, so at that stage the application for local investigation has no basis.

I have minutely examined the plaint as well as the written statement. From careful reading it appears that the plaintiff has clearly mentioned the schedule property in his plaint and it further appears that though in the written statement the defendant as a formal statement stated that the suit land scheduled in the plaint is vague but did not challenge the identity of the suit property which is to be elucidated challenging the Dag/plot number or Khatian number rather claimed that he purchased the land in question from the plaintiff and got possession of the same.

Moreover, both the plaintiff and the defendant have already adduced and produced their witnesses and documents respectively before the trial court. The suit was fixed for hearing the argument on the very date of passing the impugned order of the trial court that is 20.01.2016. So, the lower court rightly observed that the application for local investigation cannot be allowed at that stage because the defendant in his pleadings or written statement nowhere challenged the plot number or Khatian number or identity of the suit land.

The object of the local investigation is to obtain evidence which from its very nature can only be obtained on the spot and to elucidate any point which is left doubtful on evidence taken before the court. Where the identity of the suit land was not challenged in the written statement, question of holding local investigation for identification of the suit land cannot arise. If the suit land is not properly described and remained vague and unidentified, local investigation can be allowed. It is long settled position of law that it is for the court to decide whether local investigation is necessary in the case or not. It is in the discretion of the court but this discretion should not be exercised fancifully and in an application for local investigation in rejecting or allowing such application the court must state reasons. It has already been noticed that both the courts below by giving reasons rejected the application for local investigation. So, it is not a non speaking order rather both the courts recorded reasons for passing such order. When an application for local investigation has been disposed of by the trial court assigning reasons, it should not be interfered with in revision unless the reasoning has no basis.

In the above mentioned discussions, facts and circumstances of the case I am of the view that this Rule has no substance which is destined to fail.

In the result the **Rule is discharged**, however, without any order as to cost.

The trial court is directed to dispose of the suit expeditiously considering that the instant suit is an old one of 2006 and was fixed for hearing the arguments.

Send a copy of this judgment and order to the trial court at once.