

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

Present:
Mr. Justice Md. Mozibur Rahman Miah

CIVIL REVISION NO. 3098 OF 2016

In the matter of:

An application Under Section 115(1) of the Code of Civil Procedure.

AND

In the matter of:

Md. Abdul Haque, son of Alhaj Abdur Rashid of village- Pakuria, Police Station- Chunarughat, District- Habiganj.

... Petitioner

-Versus-

Ramjan Ali being dead his heirs 1(a) Misira Khatun and others.

..... Opposite-parties.

No one appears.

... For the petitioner.

No one appears

.....For the opposite-parties

Heard and Judgment on 20.02.2024.

Md. Mozibur Rahman Miah, J:

At the instance of the defendant no. 3 in Title Suit No. 90 of 2003, this rule was issued calling upon the opposite-parties to show cause as to why the judgment and order dated 11.01.2016 passed by the learned

Additional District Judge, Habiganj dismissing the Civil Revisional Application being No. 76 of 2006 and affirming the order dated 27.08.2006 passed by the learned Assistant Judge, Chunarughat, Habiganj in Title Suit No. 90 of 2003 rejecting the defendant-petitioner's written objection filed against the commissioner's report and accepting the same should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned order dated 11.01.2016 passed in Civil Revision No.76 of 2006 was stayed till disposal of the rule.

The precise facts so figured in this revisional application are:

The predecessor of the present opposite-party nos. 1(a) to 1(e), Ramjan Ali filed the aforesaid suit seeking following reliefs:

“(ক) নালিশা তপশীল বর্ণিত ভূমিতে বাদীপক্ষের ষোলআনা খরিদা ও জোতস্বত্ব সাব্যস্ত হওয়ার এবং নালিশা ভূমিতে বাদীপক্ষের দখল স্থিরতর থাকার।

(খ) ১নং বিবাদী যাহাতে বাদীপক্ষকে নালিশা ভূমি হইতে জোরে বলে বেদখল করিতে না পারে কিংবা বাদীপক্ষের শান্তিপূর্ণ সার্কিকভোগ দখলে কোন প্র কার বাঁধা বিঘ্ন সৃষ্টি করিতে না পারে কিংবা বাদীপক্ষের ফসলাদি ফলানো ও উত্তোলনে কোন প্র কার বাঁধা বিঘ্ন সৃষ্টি করিতে না পারে তৎমর্মে মূল বিবাদীর বিরুদ্ধে স্থায়ী নিষেধাজ্ঞার ডিক্রী পাওয়ার।

(গ) অত্র মোকদ্দমা নিষ্পত্তি না হওয়া পর্যন্ত “খ” দফায় বর্ণিত মতে অস্থায়ী ইতিমধ্যে অন্তবর্তীকালীন নিষেধাজ্ঞার আদেশ হওয়ার।

(ঘ) আদালতের ন্যায় বিচারে আইন ও ইকুইটি মতে বাদী অন্য কি অতিরিক্ত যেভাবে যে যে উপকার পাওয়ার যোগ্য বলিয়া বিবেচিত হন তাহা পাওয়ার।

(ঙ) সর্বাধিকায় সমূহ আদালত ব্যয় সহ বাদীর অত্র মোকদ্দমা
খরচসহ ডিক্রী পাওয়ার।”

After filing of the suit, the plaintiffs on 30.06.2004 filed an application for holding local investigation of the suit properties which has been described in the schedule of the application. Though beforehand, the defendant no. 3-petitioner filed written statement denying all the materials averments so made in the plaint. However, on the application filed for holding local investigation, the learned Judge of the trial court appointed an Advocate Commissioner for holding local investigation on the suit properties and the Advocate Commissioner upon giving notice to the learned Advocates for the plaintiffs and the defendant no. 3-petitioner submitted a report before the trial court. Against that report, the defendant filed written objection praying for not to accept the report though the Advocate Commissioner was examined and cross-examined by the defendant-petitioner. However, the learned Judge of the trial court vide order dated 27.08.2006 rejected the application of the defendant resulting in accepted the report fixing 03.09.2006 for framing issue.

Challenging the said judgment and order passed by the trial court, the defendant as petitioner then filed a Civil Revision being Civil Revision No. 76 of 2006 before the learned District Judge, Habiganj which was on transfer heard by the learned Additional District Judge, Habiganj. The learned Additional District Judge after hearing the parties and perusing the record, vide judgment and order dated 11.01.2016 dismissed the revision and upheld the judgment and order passed by the

trial court accepting the Advocate Commissioner's report. It is at that stage, the defendant no. 3 as petitioner came before this court and obtained the instant rule and order of stay.

No one appeared either for the petitioner or for the opposite-parties to press or oppose the rule.

Anyway, I have gone through the revisional application in particular, the grounds taken thereof and all other documents annexed therewith the revisional application. I have also gone through the judgment passed by the trial court dated 27.08.2006 and the revisional court order dated 11.01.2016. On going through the two judgments, I find that, on two counts, the defendant-petitioner raised objection against the Advocate Commissioner's report. *Firstly*, it was alleged that, the notice of holding investigation was not served upon him and *secondly*, the commissioner has not held the investigation from the three boundaries pillars that surrounds the suit properties yet the learned Judge of the revisional court as well as the trial court below found that, since the notice was duly served upon the learned Advocate for the petitioner so there has been no necessity to serve the notice upon the defendant physically and it has also been found by the learned Judge of the courts below that, since the commissioner was duly cross-examined and it was not found that, the Advocate who conducted the case for the petitioner has not been notified him.

It has also been found by the courts below that, now-a-days, there has been no existence of the boundary pillar in the country due to theft since the pillar is very valuable one and the measurement has been taken

from plot nos. 1170 and 1175 to indentify the suit property having no irregularity in making measurement or holding investigation of the suit properties. On going through the grounds so taken by the petitioner, I don't find that any plausible argument has been advanced for refuting the assertions taken by the learned Judges of the court below.

Regard being had to the above facts, circumstances and discussion, I don't find any irregularity or illegality in the impugned judgment and order passed by the courts below.

Accordingly, the rule is discharged however without any order as to cost.

At any rate, the order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the court concerned forthwith.