

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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 402 OF 2017

In the matter of:

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

And
Ansar Ali and others
... Petitioners

-Versus-
Abdul Matin and others
... Opposite parties

Mr. Mubarak Hossain, Advocate
... For the petitioners.

None appears
... For the opposite parties.

Heard and Judgment on 29.01.2026

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon opposite parties to show cause as to why the impugned judgment and order No.71 dated 19.10.2016 passed by the learned Joint District Judge, Additional 4th Court, Cumilla in Title Appeal No.236 of 2011 for dispose of the matter of the Commissioner Report at the time of disposal of Title Appeal should not be set aside and/ or such other or further or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party No.1 as plaintiff instituted Title Suit No.1545 of 2008 for partition in the Court of Assistant Judge, Cumilla which was decreed on 28.06.2011 and the

defendants as appellants preferred Title Appeal No.236 of 2011. Petitioner and others submitted a petition in above appeal on 26.09.2012 under Order 1 Rule 10 of the Code of Civil Procedure for being added as respondents which was allowed. Respondent No.1 filed a petition on 06.02.2013 under Order 26 Rule 9 of the Code of Civil Procedure for local investigation to ascertain if registered kabla Deed Nos.890 dated 1.02.1919 executed by Rajab Ali to Jagat Tara Saha attracts the tank and surrounding land of C. S. Plot Nos.261 and 262. The learned Joint District Judge allowed above petition and appointed Mr. Abdul Matin Majumder as Advocate Commissioner who on conclusion of investigation submitted a report on 17.04.2013. Respondent Nos.3-16 submitted written objection against above report and above Advocate Commissioner gave evidence as CW1 in support of his report and subjected himself to cross examination by above respondent. The learned Joint District Judge heard arguments for both sides on above report but instead of passing an order as to acceptance or rejection of above report kept the same for disposal along with the appeal by the impugned judgment and order dated 19.10.2016.

Being aggrieved by and dissatisfied with above judgment and order of the learned Joint District Judge above respondents as petitioners moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Mubarak Hossain, learned Advocate for the petitioners submits that in his report the Advocate Commissioner stated that the disputed tank and surrounding land appertaining to C. S. Plot Nos.261 and 262 are attracted by the registered kabla deed 890 dated 1.02.1919 executed by Rajab Ali to Jagat Tara Saha. The petitioners submitted a written objection against above erroneous report. Above Advocate Commissioner gave evidence as CW1 in support of the report and the petitioners cross examined him. The learned Joint District Judge also heard arguments of the learned Advocates for respective parties on above report. As such the learned Joint District Judge should have passed an order accepting or rejecting above report but the learned Joint District Judge committed serious illegality and kept above report for disposal along with appeal which is not tenable in law.

Opposite parties did not enter appearance in this Civil Revision nor anyone was found available at the time of hearing of this Rule.

I have considered the submissions of the learned Advocate for the petitioners and carefully examined all materials on record.

As mentioned above Mr. Abdul Matin Majumder was appointed Advocate Commissioner for local investigation to ascertain whether the pond and surrounding land appertaining to C. S. Plot Nos.261 and 262 are attracted by registered kabla Deed No.890 dated 11.12.1919 executed by Rajab Ali to Jagat Tara Saha. Above Advocate Commissioner on conclusion of investigation submitted a report stating that above pond and adjoining land was attracted by above registered

kabla deed No.890 dated 11.02.1919. Respondent Nos.3-16 submitted a written objection against above report stating that the Advocate Commissioner could not find out any boundary pillar nor he examined relevant witnesses and submitted on erroneous report. Above Advocate Commissioner gave evidence as CW1 in support of above report and subjected himself to cross examination by the respondents. The learned Joint District Judge also heard arguments of the learned Advocates on above report but instead of passing an order as to acceptance or rejection of above report kept the same for disposal along with the appeal.

An Advocate Commissioner records evidence of witnesses or investigates or inspects any matter which is relevant for the disposal of the suit and submits report to the Court. The report of the Advocate Commissioner forms part of evidence of the suit and case record if no objection is raised as to the report of the Commissioner. But if any party submits written objection against the report of the Advocate Commissioner then the Advocate Commissioner is required to give evidence in support of his report and subjected himself to the cross examination by the opposite party. On consideration of above materials the Court has to give a decision as to the correctness or incorrectness of the Advocate Commissioner's report and accept or reject the same. Order 26 Rule 10(3) of the Code of Civil Procedure provides as follows:

10(3): "Where the Court is for any reason dissatisfied with the proceedings of the

Commissioner, it may direct such further inquiry to be made as it think fit.”

If a decision is not passed by the learned Judge as to the fate of Advocate Commissioner’s report then no direction for further investigation can be passed by the Court.

In above view of the facts and circumstances of the case and materials on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order No.71 dated 19.10.2016 passed by the learned Joint District Judge, Additional 4th Court, Cumilla in Title Appeal No.236 of 2011 is set aside. The learned Joint District Judge is directed to pass an order as to above Advocate Commissioner’s report and then proceed with the hearing of the appeal in accordance with law.

However, there is no order as to cost.

MD. MASUDUR RAHMAN
BENCH OFFICER