

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

Civil Revision No. 3882 of 2017

IN THE MATTER OF

Ranjit Bikash Chowdhury

.....Plaintiff-Petitioner

-Versus-

1. Babul Kanti Majumder and another

.....Defendants-Opposite parties

2. Panchkuri Chowdhury and others

...Proforma opposite parties

Mr. Surojit Bhattacharjee with
Mr. Monishanker Sarkar, Advocates

.....For the petitioner

Mr. Md. Mubarak Hossain, Advocate

.....For opposite party Nos. 1-2

**Heard on 24.01.24, 28.01.24, 29.01.24 and judgment passed on
07.02.2024**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(4) of the Code of Civil
Procedure, 1908, was issued in the following term-

*“Leave is granted. Records of the case need not
be called for and a Rule be issued calling upon opposite
party Nos. 1-2 to show cause as to why the impugned*

judgment and order dated 05.10.2017 passed by the learned Additional District Judge, 6th Court, Chattogram in Civil Revision No. 177 of 2016 rejecting the revision filed under section 115(2) of the Code of Civil Procedure affirming the judgment and order dated 21.09.2016 passed by the learned Senior Assistant Judge, Boalkhali, Patiya, Chattogram in Other Suit No. 128 of 2014 rejecting an application filed under Order 26 Rule 9 of the Code of Civil Procedure for holding local investigation by a survey knowing Advocate Commissioner on certain points mentioned in the application should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, all further proceedings of Other Suit No. 128 of 2014 pending in the Court of learned Senior Assistant Judge, Boalkhali, Patiya, Chattogram stayed for 3 (three) months from the date, which was subsequently extended from time to time.

The present petitioner as the plaintiff instituted Other Suit No. 128 of 2014 in the Court of learned Senior Assistant Judge, Boalkhali, Patiya, Chattogram against the present opposite party Nos. 1-2 and others for a decree of declaration of title and recovery of Khas possession, and during the pendency of the suit the plaintiff filed an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908, praying for local investigation by a survey knowing Advocate Commissioner. After hearing the same the learned Trial Judge by his order dated 21.09.2016 rejected the application for local investigation. Against which the plaintiff filed a civil revision before the learned District Judge, Chattogram, and the same was numbered Civil Revision No. 177 of 2016. On transfer, after hearing the same the learned Additional District Judge, 6th Court, Chattogram by his judgment and order dated 05.10.2017 disallowed the revision by affirming those of the Trial Court. Against which the plaintiff had filed the instant civil revision before this Court.

Anyway, Mr. Surojit Bhattacharjee, the learned Advocate appearing with Mr. Monishankar Sarkar, Advocate on behalf of the

plaintiff petitioner submits that both the Courts below without considering the facts and circumstances of the case and the materials on record on an erroneous view rejected the application for local investigation and thereby committed an error of law.

Conversely, Mr. Md. Mubarak Hossain, the learned Advocate appearing on behalf of the defendant opposite party Nos. 1-2 submits that the learned Judge of the Lower Revisional Court considering the materials available on record rightly disallowed the civil revision by affirming the judgment and order so passed by the learned Trial Judge and thereby committed no illegality to be interfered with.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the present petitioner as the plaintiff filed the instant suit for a decree of declaration of title and recovery of Khas possession, and during the pendency of the suit, immediately after submission of a written statement by the defendants, the plaintiff filed an application under Order 26 Rule 9 of the Code of Civil Procedure praying for local investigation and after hearing the same, the learned Trial Judge on

elaborate discussions rejected the application for local investigation and on revision, the learned Judge of the Lower Revisional Court rightly disallowed the revision on concurrent findings and affirmed the order of the Trial Court and thereby committed no illegality. On top of that, at the time of the hearing of the Rule, the learned Advocates of the contending parties agreed on a point that the application so filed by the plaintiff praying for local investigation may be considered during the trial of the suit. In the premises, I find no reason to disagree with the above-agreed position of the learned Advocates.

Because of the above, I do not find any merit in the Rule.

Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay vacated.

The impugned judgment and order dated 05.10.2017 passed by the learned Additional District Judge, 6th Court, Chattogram in Civil Revision No. 177 of 2016 disallowing the revision by affirming those of the Trial Court is hereby affirmed.

Send a copy of this judgment to the Court concerned at once.

(TUHIN BO)