

**District-Manikgonj.**

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

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 2052 of 2018.**

Parshonath Malo.

---- Plaintiff-Appellant-Petitioner.

-Versus-

Anil Malo and others.

---- Defendant-Respondent-Opposite Parties.

Mr. Chanchal Kumar Biswas, Advocate with

Mr. Bivuti Tarofder, Advocate

---- For the Plaintiff-Appellant-Petitioner.

Mr. Kamruzzaman Bhuiyan, Advocate

---- For the Defendant No.27-opposite party.

Heard On: 22.10.2025. and 20.11.2025.

And

**Judgment Delivered On: 25.11.2025.**

**Md. Toufiq Inam, J.**

By this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 05.06.2018 passed by the learned Senior District Judge, Manikgonj in Title Appeal No. 207 of 2017, affirming the order dated 17.04.2017 of the learned Senior Assistant Judge, Singair, Manikgonj (which made final the preliminary decree in Title Suit No. 85 of 1999), should not be set aside or such other order or orders be passed as this Court may deem fit and proper.

The petitioner, the plaintiff in Title Suit No. 85 of 1999, claims partition of the suit land and seeks vindication of his saham to the extent of approximately 0.0634 acres. The long and relevant procedural history is that the trial Court initially passed a partial preliminary decree, subsequently modified by appeal, and ultimately directed the parties to partition the land giving the plaintiff a presently proved title to 0.0467 acres and expressly authorising the Advocate Commissioner, in the course of local investigation, to verify and, if satisfied, amalgamate a further 0.0167 decimals (as described in clauses 6 and 7 of the plaintiff's memo) with the decreed 0.0467 acres; the decree also instructed the Commissioner to give highest priority and due weight to the plaintiff's long-standing possession over the 0.06 decimals of the suit land and to allot possession in a manner that best preserves such possession. The decree expressly stated that subsequent documents executed by any person would not prejudice the plaintiff's right to the 0.0167 decimals, subject to the Commissioner's verification.

An Advocate Commissioner was appointed and after investigation submitted his report on 22.02.2017. The Commissioner's report purported to allot 0.0267 acres to defendant No.9, who purchased it from defendant No.1, and 0.0533 acres to the plaintiff. No objection was filed by the defendants to the Commissioner's report prior to the drawing of the final decree. The trial Court accepted the report and made final decree on 17.04.2017. The plaintiff challenged the manner

of implementation of the preliminary decree by preferring Title Appeal No. 207 of 2017. The learned District Judge dismissed the appeal by judgment and decree dated 05.06.2018 on the ground that in terms of Section 97 of the Code of Civil Procedure the appeal was barred because the parties had not objected to the preliminary decree earlier. The petitioner thereafter invoked this revisional jurisdiction under Section 115 CPC and obtained the present Rule.

Mr. Chanchal Kumar Biswas, learned Advocate appearing with Mr. Bivuti Tarofder for the plaintiff-petitioner, submits that the Commissioner travelled far beyond the scope of the preliminary decree and partitioned only 0.08 acre on the northern side out of the decreed 0.16 acre. He argues that although the plaintiff held 0.0367 acre purchased from Subal Malo and a further 0.0267 acre from the share of Sunil, totaling 0.0634 acre, the Commissioner allotted only 0.0267 acre from Subal Malo's portion and entirely omitted the balance. Such omission, he submits, amounts to jurisdictional error and material irregularity. He contends that the Commissioner misread the decree and that the final decree therefore suffers from errors apparent on the face of the record, attracting revisional interference under Section 115 CPC.

Mr. Kamruzzaman Bhuiyan, learned Advocate for the opposite parties, submits that the Commissioner conducted a valid and proper local investigation and allocated saham based on the physical land

available on the spot. He contends that minor discrepancies between recorded measurement and on-the-spot measurement are normal and cannot constitute illegality. According to him, the appellate Court as the final Court of fact correctly accepted the Commissioner's findings, which should not be disturbed in revision. He further argues that the plaintiff, having failed to challenge the preliminary decree, is barred by Section 97 CPC from challenging the final decree either directly or indirectly. He contends that the petitioner's arguments relate to factual appreciation and fall entirely outside revisional scrutiny.

The central question for determination in this revisional proceeding is not whether the plaintiff succeeded or failed on disputed facts that were open to the Commissioner. The narrow and determinative question is whether the Advocate Commissioner and the Courts below acted within the terms, scope and mandate of the preliminary decree as embodied in the trial Court's judgment; and, if not, whether such action amounted to jurisdictional error or material irregularity of a nature that this Court ought to correct under Section 115 CPC.

It is necessary to emphasise three legal propositions which govern the resolution of the present controversy:

First, a preliminary decree when it becomes final and unappealed is binding as to the legal rights and shares declared in it; parties cannot ordinarily re-open or re-agitate the correctness of those declared rights at the stage of preparing the final decree. That rule protects the

conclusiveness of judicial determinations of title and share. But binding finality does not mean that the Court or the Commissioner may disregard or fail to implement the distinct and express directions contained in a preliminary decree. When a preliminary decree sets out both a presently proved entitlement and leaves a specific contingent task to the Commissioner (for example, to verify and allot an identified additional quantum), the Commissioner's role is to act strictly within that mandate and to implement the decree's instructions.

Second, revisional jurisdiction under Section 115 CPC is available to correct jurisdictional errors, material illegalities or gross misreadings of a decree which result in substantial injustice. When the person charged with carrying the decree into effect (the Commissioner) omits to perform an essential function explicitly required by the decree, or misapplies the decree so that the declared rights are defeated or substantially impaired, the error is not merely one of factual appreciation but a failure of the Court's process and thus amenable to supervisory correction.

Third, procedural defaults and failure to object are relevant and may have the effect of precluding certain remedies. Yet the bar against challenging the correctness of a preliminary decree and the bar against belated objections to a Commissioner's report are different in nature. A party's failure to object to the preliminary decree does not validate

a Commissioner's express non-compliance with the concrete, unambiguous directions of that decree; nor does the silence of other parties who did not object to the Commissioner's report cleanse a report that has omitted to implement an essential component of the decree. Courts must remain vigilant to ensure that the final decree given effect by the process truly reflects the decree already pronounced.

Applying these principles to the present record, this Court finds that the preliminary decree was a compound order. It declared a presently proved title to 0.0467 acres and simultaneously authorised the plaintiff to claim an additional 0.0167 decimals during the Commissioner's local inquiry; it mandated, should the Commissioner be satisfied, that the 0.0167 decimals be amalgamated with the decreed 0.0467 acres, and directed that priority be given to preserving the plaintiff's long-standing possession over 0.06 decimals. The decree therefore imposed an obligation on the Commissioner to verify the plaintiff's specific claim to the 0.0167 decimals and, if verified, to allot an aggregate share approximating the plaintiff's claimed 0.0634 acres in a manner preserving his possession.

The Commissioner's report, when read in the context of the decree, does not satisfactorily demonstrate that the Commissioner performed the adjudicatory function entrusted to him with respect to the 0.0167 decimals. The report shows allotments in physical terms (0.0267 to

defendant No.9 and 0.0533 to the plaintiff) but is silent or deficient in explaining how the Commissioner applied the specific mandate to verify and, where established, amalgamate the 0.0167 decimals with the 0.0467 acres. The Commissioner's report does not record a reasoned finding on the plaintiff's claim under clauses 6 and 7 of the memo; it does not set out a clear calibration of record measurements against physical measurements in the manner required by the preliminary decree; and it fails to show that the Commissioner gave the highest priority and due weight to the plaintiff's long-standing possession as the decree expressly directed. In short, the report does not show implementation of the precise tripartite mandate contained in the preliminary decree: (i) verification of the 0.0167 decimals, (ii) amalgamation with the 0.0467 acres where verified, and (iii) allotment that preserves plaintiff's possession.

The learned trial Court accepted the Commissioner's report and drew the final decree without eliciting or recording any clarificatory explanation addressing those lacunae. No objection was filed by the defendants to the report, nor, surprisingly, was there a contemporaneous and reasoned acceptance by the trial Court demonstrating that all the decree's conditions had been satisfied. The District Judge in appeal treated the controversy as one barred by Section 97 CPC because no party objected to the preliminary decree earlier; that approach overlooks the crucial distinction between a challenge to the correctness of a preliminary decree and a challenge to

the implementation of the decree by the Commissioner. Section 97 is properly invoked to prevent the re-opening of declared shares; it is not a tool to immunise an executed final decree that was prepared on the basis of a report which manifestly fails to carry out the decree's explicit directions. Where the implementation itself defeats a declared right fixed by the preliminary decree, the supervisory jurisdiction is properly invoked to correct the defect.

In the circumstances of this case the Court is satisfied that the Commissioner's report and the subsequent proceedings leading to the final decree suffered from a material irregularity and misapplication of the preliminary decree. That misapplication is substantive and cannot be said to be a mere difference of opinion as to measurements or a routine rounding-off of physical and record measurements. The preliminary decree expressly required that the plaintiff's additional claim of 0.0167 decimals be examined and, if established, be amalgamated. The record before this Court does not show that this directed verification and amalgamation were carried out in substance. The consequence is that the final decree, insofar as it purported to give effect to the Commissioner's report without ensuring compliance with the mandatory directions of the preliminary decree, cannot stand.

Accordingly, this Court is satisfied that interference under Section 115 CPC is justified to correct the jurisdictional defect and to ensure the preliminary decree is implemented in accordance with its terms.

For these reasons, **the Rule is made absolute.**

The judgment and decree dated 05.06.2018 passed by the learned Senior District Judge, Manikgonj in Title Appeal No. 207 of 2017, insofar as it affirms the final decree dated 17.04.2017 of the learned Senior Assistant Judge, Singair, Manikgonj making the preliminary decree final on the basis of the Commissioner's report dated 22.02.2017, are set aside.

The matter is remanded to the learned Senior Assistant Judge, Singair, Manikganj, who shall refer it back to the Advocate Commissioner, or if the Court considers it necessary for ensuring impartiality and a proper inquiry, appoint a fresh Commissioner to conduct a local investigation afresh in strict conformity with the preliminary decree and the specific directions summarised above. The Commissioner shall be instructed to:

1. The Advocate Commissioner shall undertake a fresh local investigation strictly in accordance with the terms and directives of the preliminary decree.
2. The Commissioner shall specifically examine, record, and adjudicate the plaintiff's claim to the additional 0.0167 acres, as described in clauses 6 and 7 of the plaintiff's memo, and shall deliver clear and reasoned findings based on documentary evidence, witness statements (if any), and on-site physical inspection.

3. If, upon such inquiry, the plaintiff's claim to the said 0.0167 acres is found to be established, the Commissioner shall amalgamate that area with the plaintiff's decreed 0.0467 acres. In that event, the Commissioner shall effect partition of the entire 0.16 acres of the 'Ka' schedule land, comprising both the 0.08 acres on the northern side and the 0.08 acres on the southern side, in the manner expressly mandated by the preliminary decree.
4. In preparing saham, the Commissioner shall give highest priority to preserving the plaintiff's longstanding and uncontested possession over approximately 0.06 acres, and shall, as far as possible, allot to the plaintiff land in such a manner as to best maintain and reflect such possession.
5. Notwithstanding the above, the allotment of 0.0267 acres in favour of Defendant No. 9, arising from the share of Anil, is hereby affirmed as correct and shall remain undisturbed.
6. The Commissioner shall set out for each party precise metes and bounds, shall compare record measurements with physical measurements, explain any variations or discrepancies, and shall state the legal and factual basis for each allotment,

including justification for ignoring or discounting any documents subsequently executed by third parties.

7. Before finalising the report, the Commissioner shall provide all parties with an opportunity of being heard.

On receipt of the fresh report the trial Court shall consider any objections filed by the parties and pass a reasoned order either accepting the Commissioner's report or modifying it in accordance with law. The trial Court's order shall clearly record whether the Commissioner has complied with the express terms of the preliminary decree, instructions given above and shall not draw final decree unless satisfied that the decree's directions have been implemented in substance.

No order as to costs is made.

Let the lower court record be remitted forthwith with a copy of this judgment.

This Rule is hereby made absolute in the terms recorded above.

**(Justice Md. Toufiq Inam)**