

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 3134 of 2010

In the matter of:

The Executive Engineer, Development of Works,
Government of the People's Republic of
Bangladesh, Kurigram

.....Defendant-Appellant

Petitioner

-Versus-

Mosammat Shokhina Begum

.....Plaintiff-Respondent

Opposite party

Mr Md. Zahirul Islam, Deputy Attorney General,
with

Mr Md. Ferdous Sarkar, Assistant Attorney General

.....For the Petitioner

Mr A.B.M. Altaf Hossain, Senior Advocate, with

Mr Md. Abdul Kashem, Advocate

...For the opposite party 1

Date of Hearing: 12.7.2026, 13.7.2026, and

21.7.2026 A.D.

Date of Judgment: 27.07.2026 A.D., Monday;

(১২ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ)

JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioner, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

“Let the lower Court Records be called for and a Rule issue calling upon the opposite parties to show cause as to why the impugned judgment and order dated 08.09.2008 (decree signed on 11.9.2008) passed by the learned Additional District Judge, Kurigram in Other Appeal No. 26 of 2008 affirming the judgment and order dated 21.11.2007 (decree signed on 29.11.2007) passed by the learned Senior Assistant Judge, Kurigram Sadar in Other Suit No. 210 of 2005 should not be set aside or such other order passed this Court may deem fit and proper.”

Concomitantly, this Court was pleased to stay the operation of the aforementioned impugned judgments and decrees of learned Subordinate Courts for a period of 6(six)

months from the date. Subsequently, on 26.08.2021, upon an application for injunction of the opposite party 1, this Court, after hearing, was pleased to direct the petitioner not to interfere with the peaceful possession of the applicant till further order.

The crux of the facts of the plaintiff, in short, is that the suit land, along with other lands, is recorded in the name of Ismail Hossain in S.A. Khatian No. 664. Ismail Hossain sold 67 decimals, including the suit land of plot 974, to Shiraj Uddin through deed 2740 dated 08.05.1965. Thereafter, 25 Decimals of land of Plot No. 974 were purchased by Abdul Kuddus Khan from the heirs of Shiraj Uddin through deed nos. 17017 and 17018 dated 10.12.1975. Thereafter, Kuddus Khan handed over 6 decimals of the suit land by a registered heba deed dated 13.03.1988. The remaining 19 decimals of land were recorded in the name of the heirs of Kuddus. The 6 out of 25 decimals of land were recorded in the name of the Department of Public Works, Government of Bangladesh during the Diyara settlement. There is no right and possession of the Public Works in the suit land. The plaintiff knew of the

wrong record on 05.09.2005, and hence the cause of action arose; as such, the plaintiff prayed for a decree in the suit.

Thereafter, the petitioner, as defendant no. 1, contested the suit by filing a written statement denying all material allegations made in the plaint and contending, inter alia, that the suit is not maintainable in its present form and is barred by estoppel, waiver, and acquiescence, and the cause of action is imaginary. The defendant also contended that the Government of Bangladesh acquired 300 acres of land, including the suit land, under L.A. Case No. 1/58-59 and made compensation to the owner of the acquired land. Thereafter, the Government of Bangladesh handed over the suit land along with other land to the Department of Public Works. So, at the time of Diyara Settlement, the suit land was recorded in the name of the Public Works Department. There is no right of the plaintiff in the suit land. Therefore, the suit is liable to be dismissed with costs.

Thereafter, the learned trial Court completing all legal formalities concluded the trial by delivery of judgment on 21.11.2007 decreeing the suit and then the contesting

defendant being aggrieved by and dissatisfied with the said judgment and decree preferred Appeal being Other Appeal No. 26 of 2008 before the learned District Judge, Kurigram and the same was transferred to the learned Additional District Judge, Kurigram for hearing and disposal. Thereafter, the learned Additional District Judge, Kurigram, after hearing both the parties, was pleased to disallow the appeal by affirming the judgment and decree passed by the learned Senior Assistant Judge, Sadar, Kurigram.

Thereafter, the defendant-appellant, being aggrieved by and dissatisfied with the aforesaid concurrent decisions passed by the learned Subordinate Courts, invoked this revisional jurisdiction of this Court.

Mr. Md. Zahirul Islam, learned Deputy Attorney General along with Mr. Md. Ferdous Sarkar, Assistant Attorney General, appearing on behalf of the petitioner submitted that both the Subordinate Courts without considering the acquisition in respect of 300 acres of land vide L.A. Case No. 01 of 1958-59 dated 02.8.1958 passed the impugned judgment and decrees

and thereby committed error of law, resulting in error in decision occasioning failure of justice.

Learned Deputy Attorney General further submitted that the learned Appellate Court as well as the trial Court did not consider the Gazette notification dated 4 February 1971, i.e., Exhibit Nos. A & B, thus passed the aforesaid judgments and decrees which cannot be sustained in law.

Learned Deputy Attorney General further submitted that the suit was barred by limitation and the additional evidence which has been submitted before this Court by the opposite party has not been judicially proved before the fact-finding Court and the same equally did not have any credibility as per section 114 (g) of the Evidence Act, 1872.

Learned Deputy Attorney General finally submitted that the opposite party had ample opportunity to prove her case by adducing and producing proper documents before the trial Court, and at this stage this additional evidence does not make any help to the plaintiff and accordingly he referred to a decision as contained in 18 BLD (AD) (1998) 51, and also, prayed for the Rule to be made absolute.

Mr A.B.M Altaf Hossain, learned Senior Counsel assisted by Mr Abul Kashem, learned Counsel appearing on behalf of the opposite party No.1, submitted that both the Subordinate Courts, upon perusal of the evidence on record, concurrently decided that the plaintiff has been able to prove her case and finally decreed the suit, thereby, no room is available to interfere with the said decisions of the learned Subordinate Courts.

Learned Counsel further submitted that the purchase of 25 decimals of land by Abdul Quddus Khan vide deed no. 17017 and another deed no. 17018 dated 10.12.1970 is admitted and pursuance to these deeds, 19 decimals out of 25 decimals of land has been rightly recorded in R.S. Khatian in the name of sons of said Abdul Quddus Khan, thus the another 6 decimals which has been transferred to his wife vide heba deed dated 13.3.1988 to the present plaintiff Mosammat Shokina Begum wrongly recorded during R.S. operation in the name of the Government and both the Subordinate Courts concurrently found the said 6 decimals of land has been

wrongly recorded and published in the name of the defendant No.1.

Learned Senior Counsel further, relying upon the additional evidence submitted that at the time of hearing it was detected that there is a survey report dated 27.10.2005 with sketch maps prepared by the Surveyor, Office of the Deputy Commissioner, Kurigram. From the report, it is revealed that the suit plot, being S.A. Plot No. 974, was thoroughly inspected and examined on spot in accordance with the map. Upon such physical inspection, the actual location and boundaries of S.A. Plot No. 974 were found to comprise 0.04 acres along the existing Hospital Road, adjoining the Civil Surgeon's Office, and 0.05 acres towards the eastern side, comprising road and land. So, there is no link between the land of the plaintiff and the defendant 1.

Learned Counsel further submitted that the disputed plot, being No. 974, is the same as the C.S. and S.A. Plot, measuring 43 acres. Admittedly, the Government acquired 08 acres of land by requisition in L.A. Case No. 01 of 1958-1959 in C.S. Plot No. 974. The Surveyor's report dated 27.10.2005 and

sketch maps preferred by the Surveyor, Office of the Deputy Commissioner, Kurigram, reveal that the acquired property was possessed and enjoyed by the defendant-petitioner by establishing the Civil Surgeon Office of Kurigram and by constructing a road for the hospital. In the disputed plot of 0.43 acres of land, the Government acquired not more than .09 acres; the plaintiff's husband was the owner of 0.25 acres, out of which .06 acres were transferred to the plaintiff by way of gift. In the Diyara Survey, i.e. R.S record, 0.19 acres were duly prepared in the names of the plaintiff's sons, but 0.06 acres were wrongly recorded in the name of the defendant No. 1, which is admitted by the Office of the Deputy Commissioner as well as the defendant No. 1, and those are supported by the annexed Survey Report and Sketch Map. The defendant No. 1-petitioner has no possession and title over the suit land, and the DW-1, in his Cross-Examination, admitted the same; thereby, is no reason is left to interfere with the concurrent decisions of the learned Subordinate Courts.

Learned counsel finally submitted that as the defendant No. 1-petitioner admitted that by the said L.A. Case Government acquired only 300 acres of land and from the surveyor report dated 27.10.2005 with sketch maps, it reveals that Government enjoyed and possessed 0.09 acres of land from plot No. 974. Though the said surveyor report and sketch maps are important pieces of evidence, neither of the parties produced the same before the Trial Court or Appellate Court. Thus, at this stage, the opposite party No. 1 produces those documents as additional evidence before this Hon'ble Court, and for ensuring substantial justice, this Court is very much competent to take the documents as additional evidence, and he prayed for discharging the instant Rule with costs.

I have perused the revisional application, documents appended thereto and, considering the submissions of the learned counsel of both parties, it is apparent that the original suit was filed by the plaintiff for declaration of title due to a wrong R.S. record and the learned trial Court decreed the suit. Thereafter, the learned Appellate Court also affirmed the judgment of the trial Court, and both the Subordinate Courts

concurrently found that the said R.S. record was wrongly prepared, and it was in the name of the defendant No.1.

However, on perusal of the judgment of the learned trial Court, it is found that the learned trial Court observed that, during cross-examination, unsuccessfully the defendants made strenuous efforts to discredit and contradict the statements of P.W.1 in various ways. P.W.2, Md. Ab. Samad, stated in his deposition that his residence is adjacent to the suit land. He also asserted that plaintiff, Sakhina, wife of Kuddus Khan, is in possession of the 0.06 acre of suit land. There are dwelling houses and shop rooms on the suit land. The suit land is by no means Government khas land. Similarly, P.W.3, Md. Kalim Uddin, stated in his deposition that the plaintiff and the suit land are known to him. The plaintiff, Sakhina, is in possession of the suit land. His house is situated adjacent to the suit land. Out of 0.43-acre, 0.06 acre constitutes the suit land. There are dwelling houses and shops thereon.

Learned trial Court also found that even during their cross-examination, the defendants could not elicit any

material contradiction or discrepancy from P.Ws.2 and 3. Since their houses are situated adjacent to the suit land, they are naturally in a position to have better knowledge regarding the nature, character and possession of the land in question.

Moreover, it is evident that the defendants' contention was that, had the suit land been acquired, the lands belonging to P.Ws.2 and 3 and the adjoining lands would also have been included within the scope of acquisition for the requirements of the newly developed town. In fact, no such acquisition took place. Consequently, the Diara Record in respect of the suit land was prepared in the name of the Government as khas land. Such a contention, however, appears to be misconceived and without any factual or legal foundation. The same, therefore, does not in any manner affect or extinguish the plaintiff's right, title and interest in the suit land.

Concomitantly, the learned appellate Court observed that the plaintiff claims that he is in possession of the suit land by constructing a dwelling house, shop rooms and other structures thereon. In this regard, P.W.2, Md. Ab. Samsad, stated in his deposition that the 0.06-acre suit land is in the

possession of Sakhina, wife of Kuddus Khan. There are dwelling houses and shop rooms on the suit land. The defendants could not draw out anything otherwise from him by way of cross-examination. On the same issue, P.W.3, Md. Kalim Uddin, stated in his deposition that, out of 0.43 acre, there are dwelling houses and shop rooms on 0.06 acre of the suit land. He further stated in cross-examination that a dwelling house of Kuddus Khan stands on 25 decimals of land.

Learned Appellate Court also found that D.W.1, Md. Abdul Baten, examined on behalf of the defendant 1, who stated in his deposition that the plaintiff's side has no title or possession over the suit land. However, in his cross-examination, he stated that he did not know whether the plaintiff had any dwelling house on the suit land. He further admitted that there was nothing belonging to the Public Works Department on the suit land.

Learned Appellate Court, upon an overall consideration of the aforesaid evidence, particularly the documentary evidence and the consistent testimony of the P.Ws., opined that, in reality, the plaintiff's side has been in possession of

the suit land. The evidence on record, taken as a whole, sufficiently establishes the plaintiff's possession and interest in the suit land. Accordingly, the said Court was pleased to hold that the plaintiff has successfully established his interest and possession over the suit land by adducing cogent and credible evidence. Accordingly, the plaintiff's claim of possession and interest in the suit land stands proved.

Upon careful consideration of the facts and circumstances of the case, the pleadings of the contending parties, the evidence adduced by them, the judgment and decree passed by the learned trial Court, as well as the judgment and decree of the learned appellate Court, it appears that both the learned Subordinate Courts have concurrently arrived at the finding that the plaintiff has been able to establish her right, title and possession in respect of the suit land. The said concurrent findings, as borne out from the judgments under challenge, appear to have been arrived at upon due consideration of the oral and documentary evidence available on record and upon application of the

settled principles of law governing the determination of title and possession in a civil proceeding.

It is well settled that, in a civil suit, the plaintiff is required to establish her case on the touchstone of the **preponderance of probabilities** and not upon the standard of proof beyond reasonable doubt applicable to criminal proceedings. Where the evidence, when assessed in its entirety, tilts the balance of probability in favour of the plaintiff and establishes her asserted title and possession with reasonable certainty, then Court would be justified in granting the relief claimed. In the instant case, both the Subordinate Courts, upon appreciation of the evidence on record, have concurrently found that the plaintiff succeeded in discharging the burden so cast upon her.

The pertinent question, however, that calls for consideration is whether, notwithstanding such concurrent findings of fact, the opposite parties can seek to introduce and rely upon further evidence at the revisional stage, and whether this Court, in exercise of its revisional jurisdiction, can take such additional material into consideration for the

purpose of arriving at a just and proper adjudication of the dispute.

In this regard, it is necessary to bear in mind that the revisional jurisdiction of this Court is undoubtedly limited to the facts, and is not intended to provide a second appellate forum for re-appraisal of evidence merely because another view of the evidence may be possible. At the same time, such limitation does not mean that the revisional Court is powerless in every circumstance to receive or consider additional evidence where such evidence is necessary for the proper determination of the controversy and for doing complete justice between the parties. The power of the revisional Court in an appropriate case to consider additional evidence has been judicially recognized.

In this connection, reliance may profitably be placed upon the decision reported in **51 DLR (AD) 141**, in the case of Managing Director, Janata Bank Vs Bazlur Rahman and others wherein their Lordships were pleased to observe:

"The revisional Court may, in appropriate cases, consider additional evidence. ---(5)"

However, it is evident that the additional evidence has not been considered in the above mentioned case. Thus, the aforesaid proposition makes it abundantly clear that the revisional Court's power to consider additional evidence is neither excluded nor rendered unavailable merely because the matter has reached the revisional stage. The exercise of such power, however, must necessarily depend upon the facts and circumstances of each individual case and must be guided by the overriding consideration of securing the ends of justice and enabling the Court to arrive at a correct and effective adjudication of the dispute.

In the case at hand, the additional evidence sought to be considered is not a piece of private or self-serving evidence produced by any of the contending parties. Rather, **Annexure-2**, sought to be relied upon as additional evidence, contains the report prepared by the **Surveyor of the Deputy Commissioner, Kurigram**, following an actual survey and measurement of the land in question. The said report,

according to the materials placed before this Court, specifically indicates that the alleged 06 decimals of land falls within the periphery of the plaintiff's other 19 decimals of land.

The significance of the said report cannot, in my view, be brushed aside merely on the ground that it was not placed before the Subordinate Courts. The report emanates from a public authority and relates directly to the identity, location and physical situation of the disputed land, which are matters lying at the heart of the controversy between the parties. The report is, therefore, not a piece of evidence wholly extraneous to the dispute; rather, it has a direct bearing upon the question as to whether the disputed 06 decimals of land form part and parcel of the plaintiff's adjoining 19 decimals of unquestionable land.

It is also of considerable significance that no specific allegation of fraud, fabrication, false personation or manipulation has been made against the preparation of the said survey report. No material has been brought before this Court to demonstrate that the report was procured by

practicing fraud upon the concerned authority or that the surveyor acted beyond his official authority in preparing the same. In the absence of any such allegation being substantiated by cogent materials, the report, having been prepared by a competent government survey authority upon physical inspection and survey of the land, carries considerable evidentiary significance.

At this juncture, it must also be appreciated that **the purpose of receiving additional evidence is not to afford a party an opportunity to fill up a lacuna deliberately left in its case or to introduce an entirely new case at the revisional stage. Such power is to be exercised cautiously and only where the additional material has a legitimate nexus with the controversy and its consideration is necessary or conducive to reaching a just decision. The Court must, therefore, distinguish between an attempt to improve a deficient case and the production or consideration of material which may assist the Court in resolving an existing controversy more effectively.**

Tested on the aforesaid principle, the government survey report contained in **Annexure-2** stands on a different footing. The report does not seek to introduce a new cause of action or a new plea. Rather, it relates to the very subject-matter of the suit and lends support to the plaintiff's existing case regarding the identity, location and possession of the disputed land. Moreover, the report appears to have a corroborative character inasmuch as it is capable of being considered alongside the oral and documentary evidence already assessed by the Subordinate Courts.

It is further noteworthy that the learned Subordinate Courts have concurrently found the plaintiff's title and possession to have been established on the basis of the evidence already on record. The additional government survey report, therefore, does not stand in isolation; rather, it appears to provide further corroboration to the concurrent findings already recorded by the Subordinate Courts.

In this context, I am of a firm conviction that, **where additional evidence is necessary *ex debito justitiae* (i.e., as a matter of due justice) to test or elucidate an existing finding,**

its reception is permissible, provided that it does not transform the proceeding into a *de novo* (i.e., afresh/again) trial or enable a party to fill up lacunae in its case.

The principle of finality of concurrent findings of fact is undoubtedly an important consideration in the exercise of revisional jurisdiction. Nevertheless, such principle cannot be applied mechanically so as to prevent the Court from considering relevant and reliable material which has a direct bearing upon the just determination of the dispute. The ultimate object of judicial adjudication is not merely to preserve procedural finality but to ensure that the rights of the parties are determined upon a correct appreciation of the materials having legitimate evidentiary value.

In the facts and circumstances of the present case, I am of the considered view that Annexure-2 cannot be regarded as an irrelevant or inadmissible piece of material merely because it was brought before this Court at the revisional stage. On the contrary, the report of the Surveyor of the Deputy Commissioner, Kurigram, being the result of an official survey concerning the disputed land, has a direct and substantial

bearing upon the question involved in the suit. Its consideration would assist the Court in determining the real controversy between the parties and would not cause any prejudice to the opposite parties, particularly when no credible allegation of fraud or fabrication has been established against the said report.

Accordingly, having regard to the proposition of law enunciated in **51 DLR (AD) 141**, I find that this is an appropriate case in which the revisional Court may take the said additional evidence into consideration. The government survey report contained in **Annexure-2** is, therefore, liable to be considered as additional evidence for the limited purpose of appreciating the identity, location and physical status of the disputed 06 decimals of land and its relationship with the plaintiff's adjoining 19 decimals of land.

Upon consideration of the said report in conjunction with the evidence already available on record and the concurrent findings of the Subordinate Courts, I find no reason to dislodge the conclusion that the plaintiff has succeeded in establishing her title and possession over the

suit land on the standard of preponderance of probabilities. Rather, the government survey report lends further support and corroboration to the findings concurrently arrived at by the learned Subordinate Courts.

In such view of the matter, the additional evidence contained in **Annexure-2** deserves to be taken into consideration in the interest of justice. Its consideration does not amount to a wholesale re-appraisal of the evidence or an impermissible exercise of appellate jurisdiction; rather, it constitutes a limited exercise of the revisional Court's power to consider relevant additional material where such consideration is necessary for reaching a just, effective and legally sustainable conclusion.

I, therefore, hold that the government survey report contained in Annexure-2 is a relevant and material piece of evidence having a direct nexus with the controversy involved in the suit and that this Court, in exercise of its revisional jurisdiction, is competent to consider the same as additional evidence in the facts and circumstances of the present case. The said report, read together with the oral and documentary

evidence already on record, reinforces the concurrent findings of the learned Subordinate Courts regarding the plaintiff's title and possession over the suit land.

Consequently, I find no legal or factual ground warranting interference with the concurrent judgments and decrees passed by the learned Subordinate Courts. The findings recorded by them are supported by evidence, consistent with the applicable principles of law, and further stand corroborated by the aforesaid government survey report. The impugned judgments and decrees, therefore, call for no interference in the exercise of the revisional jurisdiction of this Court.

However, considering the above evidence and circumstances, the proposition of law, I am of the view that the revisional Court has no scope to interfere with the concurrent decisions of the facts found by Subordinate Courts in point of concurrent finding of facts, if there is no apparent misreading non-consideration evidence, misconstruction on law, or any kind of fraudulent activities, Corum non judice, this Court no jurisdiction to interfere with the concurrent finds of

the Subordinate Courts. Thereby, the judgment and order dated 08.09.2008 (decree drawn up thereunder and signed on 11.9.2008) passed by the learned Additional District Judge, Kurigram in Other Appeal No. 26 of 2008 affirming the judgment and order dated 21.11.2007 (decree drawn up thereunder and signed on 29.11.2007) passed by the learned Senior Assistant Judge, Kurigram Sadar in Other Suit No. 210 of 2005, are hereby confirmed.

Considering the above, I do not find any essence in the Rule as the learned Subordinate Courts did not commit any illegality or miscarriage of justice. Accordingly, the Rule is discharged without any order as to costs.

The order of stay and ad-interim order relating to temporary injunction granted earlier by this Court are hereby recalled and vacated.

However, the plaintiff has the right to have a correct record of rights through mutation or by any subsequent survey unless and until this judgment is set aside or recalled by any higher forum.

The office is hereby directed to send down the Subordinate Courts Records (SCR) along with a copy of this judgment, forthwith.

This Court places on record its appreciation for the diligent assistance rendered by the learned Counsels appearing for both the parties, whose able submissions and assistance have materially facilitated the Court in arriving at a just and proper determination of a long-pending case.

(Abdur Rahman, J)