

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1800 of 2019

Nur Mohammad

..... Petitioner

-Versus-

Abdul Gaffar being dead his legal heirs:

1(i) Sahera and others

..... Opposite-Parties

Mr. Md. Mozammel Haque (Rana), Advocate

... For the Petitioner

Mr. Md. Mozammel Hossain, Advocate

... For the Opposite Parties

Judgment on 26.08.2025

In this revision Rule was issued granting leave to revision at the instance of the petitioner calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and order dated 05.03.2019 passed by the learned Additional District Judge, Court No. 2, Dhaka in Civil Revision No. 36 of 2018 allowing the revisional application and reversing the judgment and order dated 05.02.2018 passed by the Senior Assistant Judge, Court No. 06, Dhaka in Miscellaneous Case No. 05 of 2011 rejecting the application for local investigation should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that one Abdur Rahman son of late Nannu Ostager and others, as plaintiff, filed Title Suit No. 77 of 1965 in the court of Sub-Ordinate Judge, (now Joint District Judge), Dhaka against the defendants for a decree of partition of the suit land. The suit was decreed on 09.09.1981. Heirs of defendants filed Title Appeal No. 234 of 1983 before the District Judge, Dhaka which was ultimately dismissed on contest.

Being aggrieved the defendants, as petitioner, filed Civil Revision No. 364 of 1990 before this Court in which rule was discharged on 05.08.1997. Thereafter, plaintiff decree-holder put the decree in execution by filing Title Execution Case No. 03 of 1998 and got saham and possession through court. Since then the plaintiff No. 1, as decree holder, had been possessing the land with the knowledge of other including the defendant. The saham given to the plaintiff No. 1 covered by Chita Plot Nos. 10, 11, 12 and 13 covered by C.S. Plot No. 236, as depicted in the map attached to the commission report. While, the petitioner possessing the case land, the defendant-opposite party tried to dispossess the petitioner from the suit land, consequently, the petitioner registered a G.D. No. 1366 dated 22.01.2008 with the Sutrapur Police Station. The opposite

party took step for construction of structure on the case property and started stocking bricks, sand, rods and cement at the side of the case property. Again the petitioner registered another G.D. No. 446 dated 08.03.2011 as well as G.D. No. 1222 dated 22.03.2011, but the opposite party did not pay any heed to it and all of a sudden forming an unlawful assembly dispossessed the petitioner from the case land and constructed two shop house forcibly, hence, the present case for restoration of possession.

The opposite party appeared in the case, filed written objection and an application under Order 26 Rule 9 of the Code of Civil Procedure praying for local investigation of the case property. The petitioner filed written objection and against the written objection filed by the petitioner, the opposite party also filed written objection denying positive assertion of the petitioner. The trial court heard the application for local investigation and the written objection and after hearing by its order dated 05.02.2018 rejected the same.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the opposite party filed Civil Revision No. 36 of 2018 before the District Judge, Dhaka. Eventually, the revision was transferred

to the Court of Additional District Judge, Court No. 2, Dhaka for hearing and disposal who after hearing by the impugned judgment and order dated 05.03.2019 allowed the revision and the application for local investigation. At this juncture, the petitioner moved this Court by filing this revisional application under section 115(4) of the Code of Civil Procedure seeking leave to revision and obtained the present Rule and order of stay.

Mr. Md. Mozammel Haque (Rana), learned Advocate appearing for the petitioner submits that the case property covered by C.S. Plot No. 236 has been partitioned through court amongst the co-sharers. The petitioner, as plaintiff No. 1 was allotted saham from Plot No. 236 giving Chita Plot Nos. 10, 11, 12 and 13 clearly shown in the sketch map attached to the commission report. The plaintiff-petitioner since delivery of possession through court has been possessing the same for more than statutory period of limitation. The opposite party, as defendant, also allotted saham in Partition Suit No. 77 of 1965, but they have become greedy and trying to grab the property of the petitioner by any means, resultantly, they forming an unlawful assembly dispossessed the petitioner and constructed two

shop houses on a part of the property given to the saham of the petitioner covered by Chita Plot Nos. 10 and 11.

He submits that whether the opposite party dispossessed the petitioner from the property given to his saham is a matter to be decided on evidence at the time of hearing. There is no question for ascertaining possession of the property whether the shop constructed by the opposite party is standing on R.S. Plot No. 9922 or whether on Plot No. 9919.

He submits that in the event of failure of the petitioner to prove that the opposite party constructed two shop houses on the R.S. Plot No. 9919 corresponding to Chita Plot Nos. 10 and 11 in that case their claim will be failed, but before recording evidence and proving dispossession by the petitioner question of local investigation cannot arise. Moreover, the point for investigation as given in the application are vague and indefinite, the opposite party sought local investigation in respect of R.S. Plot No. 23, but the disputed plot is covered by Plot Nos. 9919 and 9922 as claimed by the opposite party. The trial court rightly held that the petitioner prayed for recovery of possession from the case property, but the opposite party prayed for local investigation not relating to case property. As such, the application is liable to be rejected. The revisional court while allowing the

revision and application for local investigation unfortunately held that because of passage of time nature and position of the suit property may be changed, that's why, unless the property is locally investigated and a report to that effect is furnished before the court it would be difficult for the court to come into a definite conclusion whether the opposite party actually dispossessed the petitioner from the case property. Though the revisional court rightly held that this is a matter of evidence and without adducing evidence to that effect no conclusive decision can be given by the trial court. As such, the revisional court committed error of law in the decision occasioning failure of justice. In support of his submissions he has referred to the cases of *Lakshmi Bazar Shahi Masjid Committee and another vs. St. Francis Xavier's Girls High School* reported in *51 DLR 557*, *Maulana Abdul Motin and others vs. Shah Alam Bhuiyan and others* reported in *41 DLR 243* and *Md. Belayet Hossain vs. Shah Alam Parvez and others* reported in *19 BLD (HCD) 359*.

Mr. Md. Mozammal Hossain, learned Advocate appearing for the opposite parties submits that it is the definite assertion of the opposite party that they have constructed shop houses on R.S. Plot No. 9922 and the saham given to the petitioner is covered by R.S.

Plot No. 9919. Because of this situation, whether the opposite party constructed shop on the Plot No. 9922 or 9919 can be ascertained only by way of local investigation not by evidence. As such, the revisional court rightly allowed the application and has not committed any error in the decision occasioning failure of justice. Moreover, it will help both the parties as well as the court to come to a definite conclusion whether the opposite party at all dispossessed the petitioner from the case property.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, written objection, application for local investigation, written objection thereto and impugned judgment and order of both the courts below.

Admittedly, the petitioner and the opposite party got saham in Partition Suit No. 77 of 1965 and got possession of the saham property through court. The petitioner claimed that the opposite party dispossessed the petitioner from the case property allotted to him from C.S. Plot No. 236 corresponding Chita Plot Nos. 10 and 11 and constructed two shop houses on the case property. From Advocate Commissioner report it

appears that the entire case property covered by C.S. Plot No. 236, there is no mention of present R.S. Plot Nos. 9919 or 9922.

The report reflects that petitioner, as plaintiff No. 1, in Title Suit No. 77 of 1965 was allotted Chita Plot Nos. 10, 11, 12 and 13. The petitioner claimed that the opposite party dispossessed him from Chita Plot Nos. 10 and 11 and constructed two shop houses on the same. The opposite party by filing written objection claimed that the plaintiff No. 1 was allotted Chita Plot No. 13 only, but the report did not support such contention of the opposite party. By Advocate Commissioner's report the plaintiff was delivered with the possession of saham property covered by Chita Plot Nos. 10, 11, 12 and 13, the petitioner claimed that opposite party dispossessed him from a part of Chita Plot Nos. 10 and 11 measuring 13 feet north-south and 12 feet east-west. Claim of the petitioner in specific, the opposite parties could have prayed for local investigation to tally C.S. Plot No. 236 with R.S. Plot No. 9919 and Chita Plot Nos. 10 and 11 and to ascertain whether the opposite party constructed two shop house on the C.S. Plot No. 236, R.S. Plot No. 9919 and Chita Plot Nos. 10 and 11, but the opposite party prayed for a report

by appointing survey knowing Advocate Commissioner on the points quoted below:

“(খ) ৬ষ্ঠ সহকারী জজ আদালতের দেওয়ানী ৭৭/৬৫ নং মোকদ্দমায় দরখাস্তকারী শহর ঢাকা হালে ওয়ারী মৌজার সি, এস, ২৩৬ নং দাগের তাহার পূর্ববর্তীর ছাহাম বাহির করিয়া তাহা দেখাইতে হইবে। উক্ত ছাহামের আর, এস, দাগ কত তাহাও দেখাইতে হইবে।

(গ) ১নং প্রতিপক্ষ আব্দুল গাফফার যে ২টি দোকান ঘর তৈরী করিয়াছেন উহার অবস্থান নির্ণয় করিতে হইবে এবং দোকানগুলি ২৩ নং আর, এস, দাগের উপর তা নির্ণয় করিতে হইবে।”

The above mentioned ‘Kha’ point has already been decided when the plaintiff and defendant in Title Suit No. 77 of 1965 was delivered possession of their saham property through court. Point No. ‘Ga’ is not relating to case property as the petitioner did not claim R.S. Plot No. 23 in their application for restoration of possession. If the case property is allowed to be locally investigated by a survey knowing Advocate Commissioner on the point as mentioned above it will bring nothing for adjudication of the matter in dispute. The opposite party failed to pray for local investigation on the specific point whether newly constructed two shop house actually constructed on the property covered by C.S. Plot No. 236, R.S. Plot No. 9919 corresponding to Chita Plot Nos. 10 and 11 by dispossessing the petitioner, but they technically avoided the fact of dispossession and construction of two shop houses on the case property. As such, the trial court rightly rejected the application, but the revisional

court without appreciating the fact that the points for local investigation as given in the application are vague, indefinite and will not serve the purpose of the parties for adjudication of the matter in dispute, as such, it has committed an error of law in the decision occasioning failure of justice.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule is made absolute, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned at once.