

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:
Mr. Justice Md. Khairul Alam

Civil Revision No. 368 of 2021.

Md. Amjad Hossain.

..... Petitioner.

-Versus-

Jahanara Motin and others.

..... Opposite parties.

Mr. Md. Harun Ar Rashid, Advocate.

..... For the petitioner.

Mr. Md. Motiur Rahman, Advocate

..... For the opposite parties.

Heard on: 02.07.2025, 03.07.2025 and

Judgment on: 08.07.2025.

This Rule was issued calling upon the opposite parties No. 1-4 to show cause as to why the impugned order dated 17.02.2015 passed by learned Joint District Judge, 1st Court, Jamalpur in Title Suit No. 153 of 2013 allowing an application filed by the plaintiff under Order XXVI Rule 9 for appointing a commission for local investigation should not set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the rule are that the predecessor of the present opposite parties No. 1-4 as plaintiff instituted Title Suit No. 153 of 2013 before the Court of Joint District Judge, 1st Court, Jamalpur impleading the present petitioner and proforma opposite party No. 5 as defendants seeking declaration of title of the suit property by way of adverse possession. The defendants have been contesting the suit by filing a written statement denying the material allegations made in the plaint. In the said suit plaintiff filed an application under Order XXVI Rule 9 of the Code of Civil Procedure for issuing a commission to make a local investigation to ascertain the fact whether there fall within the suit land any 35/36 years old, 70X10-feet tin shed house and some

trees. The present petitioner as defendant No.1 contested the application by filing a written objection denying the material allegations made in the application, contending inter alia, that the plaintiff forcibly dispossessed the contesting defendant from the suit land with the structure and trees mentioned in the application and filed the suit as well as the application on false allegation only to frustrate the order of the Court directing to hand over the possession of the suit land to the contesting defendant in pursuance of a criminal proceeding. The application was allowed by the order dated 17.02.2015 and one Mr. Md. Omar Faruque, an Advocate of the Jamalpur Bar Association, was appointed as the commissioner.

Being aggrieved thereby the present petitioner moved before this Hon'ble Court and obtained the Rule and an order of stay on 15.05.2021, but in the meantime, on 25.02.2021, Mr. Md. Omar Faruque, the commissioner, submitted his report.

Mr. Md. Harun Ar Rashid, the learned Advocate appearing on behalf of the petitioner submits that the purpose of local investigation is to elucidate any ambiguity and uncertainty in any manner in dispute, since there was no dispute about the structure and trees as stated in the application, the court below committed an error of law resulting in an error in the decision occasioning failure of justice.

On the other hand, Mr. Md. Motiur Rahman, the learned Advocate appearing for the opposite parties supports the impugned order and submits that the learned Joint District Judge was perfectly justified in allowing the prayer for local investigation. He further submits that the learned Joint District Judge duly applied his judicial mind in the facts and circumstances of the case and the law bearing on the subject and rightly passed the impugned order.

Heard the learned Advocates, and perused the revisional application and other materials on record including the impugned judgment and order.

Admittedly, the impugned order was passed allowing an application for local investigation filed under Order XXIV rule 9 of the Code of Civil Procedure which runs as follows:

“In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount or any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court within such time not exceeding three months as may be fixed by the Court”.

On a plain reading of the said provision it appears that to elucidate any matter in dispute, the Court may issue a commission for local investigation. The object of such investigation is to assist the Court by obtaining information about the physical features of the property inspected which can only be had on the spot. It has been settled for the said commission that before the investigation the commission must issue notice to the parties. Any report without notice is not a report in the eye of the law. Commission's report does not fall under section 35 of the Evidence Act and it can only be proved after examining the writer or witness. Using the word “may” makes the provision discretionary for the court. Under sub-rule 3 of rule 10 of Order XXVI of the Code of Civil Procedure, the Court may issue a fresh commission; therefore, the question of res judicata does not arise at all. In the case of *Abdur Rouf vs Abul Hashem* reported in 53 DLR 458, this Division held that the court can appoint a commissioner for ascertaining the existence of any structure on the suit land. In the case of *Nadera Benu vs Provati Rani Sen Gupta and others* reported in 55 DLR 149 this Division held that when an application for local investigation has been disposed of by the trial Court, it will not be interfered with in revision.

In the present case, the plaintiff filed an application for the appointment of a commission for ascertaining the existence of a structure and some trees on the suit land, and said application was allowed. The learned Advocate for the

petitioner filed to show that the trial Court committed an error of an important question of law resulting in an erroneous decision occasioning failure of justice.

Therefore, I am of the view that the Court below after proper consideration of the facts and law passed the impugned order and does not find any reason to interfere with the same.

Accordingly, the Rule is discharged.

However, there is no order as to costs.

The order of stay granted earlier by this court is hereby recalled and vacated.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O