

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

Present:

Mr. Justice Md. Bashir Ullah

CIVIL REVISION NO. 2263 OF 2025

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure.

And

IN THE MATTER OF:

Ayesha Begum and others

... Plaintiffs-Appellants-Petitioners

-Vs-

Mohammad Hanif and others

... Defendants-Respondents-Opposite Parties

Mr. Palash Mallik with

Mr. Ruhul Amin, Advocate

... For the petitioners

Mr. Muhammad Rejaul Husain, Advocate

...For the Opposite parties.

Heard on: 22.10.2025

Judgment on: 27.10.2025.

At the instance of the plaintiffs in Other Suit No. 117 of 2000, this Rule was issued calling upon the opposite party nos. 1-10 to show cause as to why the order dated 15.04.2025 passed by the learned Additional District Judge, 4th Court, Chattogram in Miscellaneous Appeal No. 55 of 2021 arising out of the above-mentioned suit rejecting the application under Order 39, Rule 7 read with Section 107 and 151 of the Code of Civil Procedure, 1908 seeking local inspection

of the suit land described in schedule 1(ka) (ii)/1(kha) to the application for the end of justice should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, further proceedings of Miscellaneous Appeal No. 55 of 2021 was kept stayed for a period of 03(three) months.

Facts, relevant for disposal of the Rule, in short, are that the petitioners as plaintiffs instituted Other Suit No. 117 of 2000, before the learned Joint District Judge, 3rd Court, Chattogram seeking declaration of title, partition, recovery of khas possession, cancellation of instrument along with other reliefs.

The case of the plaintiffs in short is that 76 decimals of land appertaining to R.S. *Khatian* No. 79, R.S. Plot No. 2420 and 2 decimals of land appertaining to R.S. *Khatian* No. 423, R.S. Plot No. 2427 originally belonged to one Yousuf Ali who died leaving behind three sons namely Abdul Jalil, Abdul Barik, Abdul Khaleque and two daughters namely Siraja Khatun, Asia Khatun. Abdul Barik was entitled to 26 decimals of land. Abdul Barik died leaving behind two sons namely Abdur Rahman, Makbul Ahmed and four daughters Pakija Khatun, Firoza Khatun, Saba Khatun and Rehena Khatun. The plaintiffs are the legal heirs of Abdur Rahman and entitled to 6.33 decimals of land of R.S. plot no.2420 and 0.80 decimals of land of

R.S plot No. 2427. When a portion of the land was acquired by the Government, Abdul Jalil through L.A. Case received compensation and misappropriated the share of Abdul Barik and his sisters. Hence, the defendants are not the lawful owners of the suit land. Defendant no. 37 and 38 claimed title on the basis of *Oshiyat nama* dated 12.01.1993 which is alleged to be void and illegal. Moreover, defendant nos. 1-4 executed deed no. 6436 dated 24.04.2017 in favour of defendant no. 37. Defendant nos. 1-4, 15-32 and 37 were requested to partition and give *saham* in favour of the plaintiff on 10.2.2018. Earlier on 9.9.1998 defendant no. 1-4 attempted to forcibly enter upon the suit land.

Defendant No. 38 is a developer company and defendant No. 37 is a stranger purchaser who purchased excess land beyond the share of the co-sharers. Thus, defendant No. 37 is merely a stranger in respect of the schedule land. Defendant Nos. 37 and 38, in collusion, allegedly commenced illegal construction on the suit land, compelling the plaintiffs to institute the suit.

After filing the suit, the plaintiffs filed an application under Order 39 Rules 1 and 2 read with section 151 of the Code of Civil Procedure seeking temporary injunction against the defendant Nos. 37, 38 and 57 to 62. Upon hearing, the learned Joint District Judge, 3rd Court, Chattogram rejected the same on 19.01.2021.

Against the order dated 19.01.2021, the plaintiffs as appellants filed Miscellaneous Appeal No. 55 of 2021 before the learned District Judge, Chattogram along with an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure seeking temporary injunction. Upon hearing, the learned District Judge, Chattogram directed the parties to maintain *status quo* with regard to possession and position of the suit land.

Subsequently, the learned District Judge, Chattogram transferred the matter to the learned Additional District Judge, 4th Court, Chattogram for disposal of the said appeal. Thereafter, the appellants filed an application under Order 39, Rule 7 read with Section 107 and 151 of the Code of Civil Procedure seeking local inspection of the suit land.

It is stated that while the Appeal was fixed for judgment on 20.06.2002, all of a sudden defendant No. 37 along with miscreants attempted to forcibly enter the suit land on 02.05.2024 at 7.40 p.m. and attempted to remove gas, electricity and water connection from there from. The plaintiffs resisted such attempts.

It is contended that removal of such utility connections would seriously prejudice preservation of material evidence and frustrate the purpose of the suit and appeal. Hence, local inspection was sought to safeguard justice.

Defendant Nos. 37 and 38 as respondents contested the application by filing written objection. Upon hearing the parties, the learned Additional District Judge, 4th Court, Chattogram by order dated 15.04.2025 rejected the application.

Being aggrieved by and dissatisfied with the order dated 15.04.2025 passed by the learned Additional District Judge, Forth Court, Chattogram in Miscellaneous Appeal No. 55 of 2021, the petitioners preferred this revisional application.

Mr. Palash Mallik with Mr. Ruhul Amin, the learned Advocate appearing on behalf of the petitioners submits that the learned Additional District Judge without assigning any reason most illegally and arbitrarily rejected the application under Order 39, Rule 7 for local inspection. So, the impugned order dated 15.04.2025 is liable to be set aside.

He further submits that the petitioner filed an application seeking local inspection over the schedule land 1(ka) (ii) and 1(kha) in respect of 04(four) issues and in that application the petitioner clearly stated those issues and prayed to pass an order for proper disposal of the miscellaneous appeal. But the appellate Court without considering the facts and circumstances and legal point of law passed the impugned judgment and order as such the impugned judgment is not tenable in the eye of law.

He further submits that there is serious dispute regarding possession, existence of structures, and utility connections, which cannot be effectively adjudicated without holding a local inspection. Denial thereof would cause irreparable loss and injury to the petitioners. He also submits that Defendant No. 37 is a stranger purchaser who has already transferred the land to Defendant No. 38.

Finally he prays for making the Rule absolute.

Per contra, Mr. Muhammad Reazul Hussain, the learned Advocate appearing on behalf of the defendant No. 37-opposite party No. 1 submits that there is no illegality, infirmity in the impugned order.

He next contends that the appellate Court lacks jurisdiction to entertain an application for local inspection and granting such relief would render the Court Coram non judice. So, the appellate Court rightly rejected the application.

He further contends that no injunction or *status quo* should be granted in urban area in a partition suit.

The learned counsel finally prays for discharging the Rule.

Upon perusal of the application for local inspection it appears that the plaintiff-petitioner sought for inspection the following points:

A) Is there any semi-paca structure over the schedule land “1(क)(ii)” and “(খ)”?

B) Is there any gas, wasa and electricity connection over the schedule land “୧(କ୍)(ii)” and “(୩)”?

C) If the answer of question “A” and question “B” is affirmative in nature then describe the nature and feature of the semi-pacca structure with mentioning the specific gas, wasa and electricity meter number.

D) During the time of conducting local inspection the real picture of the schedule land would be sketched out with specific identification of semi-pacca structure as well as pointing out gas, wasa and electricity connection in order for precise formulation of inspection report.

I am of the considered view that allowing the application filed under Order 39, Rule 7 read with sections 107 and 151 of the Code of Civil Procedure for local inspection, would not cause any prejudice to the opposite parties, particularly when such inspection is to be carried out in a neutral and controlled manner through a Court-appointed Commissioner. On the contrary, it would assist the Court in effective adjudication of the interlocutory dispute.

It is also the considered view of this Court that there is no bar preventing an appellate court, in a miscellaneous appeal from ordering local inspection. Such power flows from a combined reading of

Section 107(2) and Order 39, Rule 7 of the Code of Civil Procedure. Sub section (2) of Section 107 expressly provides that an Appellate Court “shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this code on courts of original jurisdiction.”

Since the trial Court is empowered to order local inspection under Order 39, Rule 7, the Appellate Court is equally competent to exercise such power by virtue of Section 107(2) of the Code of Civil Procedure, albeit cautiously and judiciously, particularly where the appeal concerns interlocutory relief.

An appellate Court in a Miscellaneous Appeal (an appeal against an appealable order not a decree) can allow an application for local inspection under Order 39 Rule 7 read with section 107 and section 151 of the Code of Civil Procedure, 1908 though it is an exercise of discretionary power and it should be exercised cautiously.

For securing proper and complete adjudication of the case I consider it urgent inevitability of conducting local inspection over the schedule mentioned property which shall facilitate space to resolve the principal dispute.

Given the facts and circumstances of the case, I do not find any shred of substance in the impugned order which is liable to be set aside. I am of the view that the rule deserves merit.

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

The impugned order dated 15.04.2025 passed by the learned Additional District Judge, 4th Court, Chattogram in Miscellaneous Appeal No. 55 of 2021 is hereby set aside and allowed the application for local inspection under Order 39, Rule 7 read with Section 107(2) and 151 of the Code of Civil Procedure.

The order of stay granted earlier by this Court at the time of issuance of the Rule stands recalled and vacated.

The Appellate Court is directed to take necessary steps for local inspection at the instance of the plaintiffs-appellants and dispose of the miscellaneous appeal as expeditiously as possible preferably within 06(six) months from the date of receipt of the order.

Let a copy of this Judgment and order be communicated to the concerned Court forthwith.

(Md. Bashir Ullah, J.)