

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

Present:

Ms. Justice Kazi Zinat Hoque

Civil Revision No. 2820 of 2022

Hobibor Rahman Prang being dead his legal heirs
1. Md. Jahidul Islam and others

.....Petitioners.

-VERSUS-

Md. Noya Miah Kazi being dead his legal heirs
1(a) Most. Jobeda Bewa and others

.....Opposite Parties.

Mr. Md. Abdus Saleque, Advocate
..... For the petitioners

Mr. Sahabuddin Khan (Large), Advocate
.....For the opposite parties

Heard on:04.12.2025 and 08.12.2025.

And

Judgment on: 11.12.2025.

Kazi Zinat Hoque, J :

This Civil Revision is directed against the impugned judgment and order dated 18.04.2022 passed by the learned Additional District Judge, 2nd Court, Bogura in Civil Revision No.84 of 2015 affirming the judgment and order dated 30.06.2015 passed by the learned Joint District Judge, 2nd Court, Bogura in Partition Suit No.06 of 2005.

Relevant facts for disposal of the Rule are that opposite parties preferred Partition Suit No.06 of 2005 for partition against the defendants (present petitioners). On the prayer of the contesting defendants dated 26.01.2011 the learned Joint District Judge

appointed an Advocate Commissioner to hold local investigation of the suit property. The Writ was issued by the learned Joint District Judge to the following effect:

“to determine whether the property relates to the registered deed No.2023 dated 10.01.2021 transferred by Kadim and others in favor of Mohosen Ali Sardar is identical with .73 acre land of plot No.1200 appertaining to C.S. Khatian No.4 of Mouza Ovirampur under Police Station-Shibgonj, District-Bogura (Annexure-B).”

The learned Advocate Commissioner held local investigation and submitted a report along with field book and sketch map with an opinion that the property described in deed No.2023 dated 10.01.2021 transferred by Kadim and others in favour of Mohosen Ali Sardar is identical with .73 acre of land of plot No.1200 appertaining to C.S. Khatian No.4 of Mouza Ovirampur under Police Station-Shibgonj, District-Bogura. After submission of the Advocate Commissioner’s report, the plaintiffs (present opposite parties) submitted an objection alleging that the report was not proper, not justified and not impartial inasmuch as the statement of the boundary men of the deed and their successors’ names were noted baselessly and for the aforesaid grounds the same is liable to be set aside.

Vide order No.33 dated 30.06.2025, the learned Joint District, 2nd Court, Bogura set aside the Commissioner's report with an observation that the impugned report of the Advocate Commissioner was not proper and justified. Feeling aggrieved the defendants moved the District Judge Court, Bogura in Revision No.84 of 2019 contending, that the learned Joint District Judge, 2nd Court, Bogura rejected the Commissioner's report illegally. The said Revision was transferred to the court of learned Additional District Judge, Bogura who vide judgment and order dated 18.04.2022 disallowed the revisional application and affirmed the order of the learned Joint District Judge, 2nd Court, Bogura. Being aggrieved by and dissatisfied with the judgment and order dated 18.04.2022 passed by the revisional court below, Bogura the defendants preferred this Civil Revision.

Mr. Md. Abdus Saleque, learned Advocate appearing for the petitioners, argued that the revisional court below committed gross mistake in not considering the corresponding MRR and DP Khatian Nos.9 and 627 respectively of CS Khatin No.4 in rejecting the Commission report and as such both the courts below committed error of law resulting in an error in the decision occasioning failure of justice. He further argued that the learned trial court did not consider

the presumptive value of C.S. Khatian of plot No.1200 while considering the report submitted by the learned Advocate Commissioner and as such there was an error of law resulting in an error in the decision occasioning failure of justice.

The Rule has been opposed by the opposite parties. Mr. Md. Sahabuddin Khan (Large), learned Advocate representing opposite parties, argued that both the courts below concurrently held that the finding of the Commissioner that land, covered in Kabla No.1023 dated 10.01.1921, measuring 49 decimals or $1\frac{1}{2}$ Bigha and land measuring 73 decimals, appertaining to plot No. 1200 of C.S. Khatian No.4, are the same is erroneous as such the courts below rightly rejected the Advocate Commissioner's report. Therefore, the Rule is liable to be discharged.

Order XXVI rule 9 of the Code of Civil Procedure deals with Commission to make local investigation. The aforesaid Rule is reproduced below:

“9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in on dispute, or of ascertaining the market-values 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]:

2[Provided that the Court may, on the prayer of the Commissioner and on sufficient cause being shown, extend the time.]”

Order XXVI rule 10 deals with procedure of Commissioner.

The aforesaid rule is reproduced below:

“10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to

the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.”

The Case of *Shadaksharappa vs Kumari Vijaylaxmi*¹ the High Court of Karnataka dealt with appointment of Commissioner for local investigation.

At paragraph 20 the High Court of Karnataka summarized the broad guidelines to be followed while exercising power under Order XXVI rules 9 and 10 of the Code of Civil Procedure:

“a) The power of the court to appoint the Commissioner for local inspection or any other purpose provided in Order XXVI of the Code is discretionary. However, the said discretion is guided by not only Order XXVI Rules 9 and 10 of the Code but

¹ <https://indiankanoon.org/doc/14189640/>

also the provisions of the [Indian Evidence Act](#) dealing with relevancy, expert opinion, and the burden of proof.

b) The discretion to exercise the power under [Order XXVI](#) of the [Code of Civil Procedure](#) is not governed by the form of the suit. The Court can appoint the Commissioner in any kind of suit, provided a report of the Commissioner under Order XXVI of the Code is necessary for elucidating the matter in dispute.

c) The issue framed in the suit, or where the issue is not yet framed, the pleadings which give rise to issue/s and the documents placed on record would be a guide to ascertain the 'matter in dispute' referred in Order XXVI Rule 9 of the Code

d) The power to appoint the Commissioner for local inspection or scientific investigation/expert's opinion can be invoked even *suo motu* by the court, without there being an application by either of the parties, if the Court deems it appropriate to secure the report of the Commissioner. However, the appropriate reasons must precede the order appointing the Commissioner. And such orders are to be passed only after hearing the parties before it.

- e) The Commissioner can be appointed either before or after the commencement of the trial. However, having due regard to the nature of the controversy, if the report is essential for elucidating the matter in dispute, it is desirable to have the local inspection before the commencement of trial as it is likely to reduce the volume of oral evidence in a given case.
- f) In addition to the report, having regard to Order XXVI Rule 10 of the Code, the evidence taken by Commissioner reduced in writing can also be taken on record and examined by the court while considering the report.
- g) The report of the Commissioner is not conclusive proof of what is stated therein. The report is only a piece of evidence, that the Court has to examine based on the other materials on record.
- h) Report of the Commissioner need not be formally marked for being considered as evidence. Once submitted to the court, the report is part of the court record and can be looked into by the court.
- i) The court may in its discretion examine the Commissioner on any matter concerning the report.

There is no compulsion to examine the Commissioner. However, if the objection is filed to the report, and the party filing objection seeks to examine the Commissioner then the Commissioner should be examined. In either case, once the Commissioner is examined, the court having due regard to the evidence, may reject or accept the report in its entirety or in part, provided there are materials to justify such a finding on the report. In appropriate cases, the merit of the report can be considered at the final hearing. While considering the report at the final hearing, if the court finds that the report is erroneous and fresh commission is required, the court may pass appropriate order in this regard.

j) If the court is dissatisfied with the 'proceedings of the Commissioner' as found in Order XXVI Rule 10 (3), it may direct further inquiry depending on the facts. As a matter of caution, it is clarified that examination and order under order XXVI 10 (3) are only to verify if the Commissioner has followed the proper procedure while carrying out his task.

k) The person who has filed an objection to the report has the option of cross-examining the Commissioner to substantiate his

objections or even without cross-examination, it is open to establish that the report is inadmissible in evidence.”

At paragraph 23 the Karnataka High Court prescribed the following procedures to save the time of the court:

“a) The Court may fix the date and time for local inspection, directing the parties to be present at the disputed property, to avoid the process of issuance of notice to the parties by the Court Commissioner.

b) The court shall also fix the time frame for the parties to file a memo of instructions and shall scrutinize the instructions submitted and if need be reframe the instructions to focus the attention on the matters in dispute.

c) If the court feels that the Commissioner is required to submit a report on a particular matter or a question, the court shall also frame the specific question to be answered by the Commissioner.

d) It is desirable to specify in the order whether or not the parties are entitled to submit an additional memo of instructions to the Commissioner at the time of local inspection

- e) The time frame be fixed for submitting the report to the Court and while fixing the time, due regard must be had to the nature of the commission work and the urgency involved in the matter;
- f) If the survey of any land is ordered to be conducted by a head of the survey department or any other designated officer, the court having regard to the nature of the work may also specify in the order, whether the Commissioner appointed is authorized to delegate the work to some other person in the same department.
- g) Wherever practicable, the court shall direct the court Commissioner, to furnish a number of true copies of the report to the counsel representing the parties to the suit, while submitting the report to the court.
- h) Time schedule should also be fixed for filing objections to the report of the Commissioner if any.
- i) In all cases, where the report of the Commissioner is awaited, the court may if practicable proceed with the trial or other stages of the proceeding. Before ending, to put it in nutshell, the report under Order XXVI of the Code, in an appropriate case, is

an effective tool available to the court and the party to the proceeding. The party to the proceeding, may use this tool for proving his/her case and the court to unravel the mystery surrounding the case.”

Order No.33 dated 30.06.2015 passed by the learned Joint District Judge, 2nd Court, Bogura it is evident that the trial court rejected the Advocate Commissioner’s report. Relevant portion of the order of the trial court is reproduced below:

“বাদীপক্ষ লিখিত আপত্তিতে বলেছেন যে, নালিশী দলিলের চৌহদ্দির পরিমান $1\frac{1}{2}$ বিঘা অথচ নালিশী সি. এস ৪নং খতিয়া[ন]র ১২০০ দাগ[গ] জমির পরিমান ৭৩ শতক বিধায় উভয় জমির মধ্যে কোন মিল নাই। অথচ বিজ্ঞ এ্যাডঃ কমিশনার তার রিপোর্টে ৪নং সি, এস খতিয়ানের ১২০০ দাগ[গ] জমি পরিমান ৭৩ শতক এবং নালিশী দলিল[ল] জমির পরিমান $1\frac{1}{2}$ বিঘা বা ৪৯ শতক উল্লিখ করল[ল]ও উভয় জমি এক ও অভিন্ন বলে প্রতিবেদন দাখিল করেছেন। বিজ্ঞ এ্যাডঃ কমিশনার তার জেরাত্রি স্থীকার করাত্রিন যে, ৩৩ শতক[ক] ১ বিঘা হল[ল] ৪৯ শতক[ক] $1\frac{1}{2}$ বিঘা হয়। এমতাবস্থায় উপরোক্ত আলোচনা থেকে দেখা যায় নালিশী দলিল[ল]র $1\frac{1}{2}$ বিঘা বা ৪৯ শতক হওয়ায় ভাওড়ানোর নিমিত্ত ৪নং সি, এস খতিয়া[ন]র ১২০০ দাগ[গ]র জমির পরিমান ৭৩ শতক হওয়ায় উভয় জমি অভিন্ন হওয়ার কোনরূপ সূটিগ নাই। অথচ বিজ্ঞ এ্যাডঃ কমিশনার উভয় জমি অভিন্ন বল[ল] প্রতি[ব]দন দাখিল করাত্রিন যাহা

যথাযথ বা সঠিক হয় নাই, বিধায় বিজ্ঞ এ্যাডঃ কমিশনারের প্রতিবেদন
মনগড়া প্রতীয়মান হওয়ায় বাতিল করা হল।”

From order dated 18.04.2022 passed by the Rivilisional Court below (Additional District Judge, 2nd Court), Bogura affirmed the order of the trial court. Relevant portion of the order is reproduced below:

“অর্থ্যাঃ এ্যাড[ভা]ক্ট কমিশনা[র] স্বীকৃত ম[ত]ই দেকা যাচ্ছ নালিশী
দলিলের সম্পত্তি আর সি.এস. ১২০০ নং দাগের সম্পত্তি এ ও অভিন্ন
(Identical) নহে। এক কথায় বিজ্ঞ এ্যাডভোকেট কমিশনারের
রিপোর্ট এবং এ্যাডভোকেট কমিশনারের জেরার স্বীকারোভিজ্মূলক
বক্তব্য এবং তর্কিত খতিয়ান ও দলিল পাশাপাশি পর্যালোচনা করিয়া
নিয় আদালত তর্কিত আদ[ন]শ মূল এ্যাড[ভা]ক্ট কমিশনার রিপ্রার্ট
বাতিল করিয়া আইনগত ও পদ্ধতিগত কোন ত্রুটি করেন নাই বলিয়া
অত্র আদালত মনে করেন। সঙ্গত কারনেই নিয় আদালতের তর্কিত
আদেশে হস্তক্ষেপ করিবার যুক্তিসংগত কোন কারণ না থাকায়
রিভিশনটি না মঞ্জুর করিবার সিদ্ধান্ত গৃহিত হইল এবং একই সাথে
বিবেচ্য বিষয়টি প্রার্থক পক্ষের প্রতিকূলে নিষ্পত্তি করা হইল।

অতএব,

আদ[ন]শ হয় যে,

এই সিভিল রিভিশনটি দোতরফা শুনানী অন্তে নামঞ্জুর করা হইল।

এতদ্বারা নিম্ন আদালত এর ০৬/২০০৫ বন্টন মোকদ্দমার বিগত ৩০/০৬/২০১৫ খ্রিঃ তারিখের তর্কিত আদৃশ বহাল ও বলবৎ রাখা হইল। নিম্ন আদালতকে মূল মোকদ্দমায় অগ্রসর হইয়া উহা দ্রুত নিষ্পত্তি করিবার নির্দেশ প্রদান করা হইল।”

In the case of *Abdun Noor Vs Aziruddin* [64 DLR (AD)(2012) 127)] it was held:

“The report of the Advocate Commissioner shall go into evidence even if the Commissioner is not examined in Court and that the evidentiary value of the report of the Advocate Commissioner may vary depending upon the facts and circumstances of a particular case. The Advocate Commission’s report is not sacrosanct but it is only a piece of evidence which is to be considered along with other evidence. The Court may or may not rely on such evidence notwithstanding the fact that it has been admitted in evidence.”

The Commissioner’s report is certainly a report relating to facts. Therefore, both the courts below having concurrently held that the Commissioner’s report cannot be relied upon because the amount of land mentioned in the C.S. Khatian and quantum of land mentioned in the impugned Kabla deed No.1023 dated 10.01.1921 are identical, this finding of fact cannot be interfered with by the High Court Division in revisional jurisdiction.

Be that as it may, since the original suit was filed in the year 2005 the parties are directed to take necessary steps for hearing of this matter. However, parties shall be at liberty to make necessary application for fresh report if so required.

However, parties are cautioned not to drag this matter and take unnecessary adjournment. The trial court is directed to dispose of this matter as expeditiously as possible and preferably within a period of 06(six) months from the date of receipt of a copy of this judgment and order.

Accordingly, the Rule is discharged with the above observation and direction.

Interim order of stay is hereby recalled and vacated.

There is no order as to cost.

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

(Kazi Zinat Hoque, J