

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 402 of 2022**

**In the matter of:**

Jamrul Bahar and others

...Plaintiff-petitioners

-Versus-

Makhon Lal Das and others

...Defendant-opposite Parties

Mr. Mahmudul Mursalin, Advocate

...For the petitioners

Mr. Sudipta Arjun, Advocate

.....For the opposite parties

Heard on: 20.08.2024

Judgment on: 21.08.2024

**Zafar Ahmed, J.**

The instant revisional application filed under Section 115(4) of the Code of Civil Procedure (CPC) at the instance of the plaintiff petitioners, this Court on 08.02.2022 granted leave and issued a Rule calling upon the defendant-opposite parties to show cause as to why the judgment and order dated 21.09.2021 passed by the learned District Judge, Sylhet in Civil Revision No. 33 of 2020 rejecting the revisional application and affirming the order dated 13.09.2020 passed by the learned Assistant Judge, Beanibazar, Sylhet in Title Suit No. 03

of 2017 rejecting the plaintiffs' application under Order 26 rule 9 read with Section 151 of the CPC.

At the time of issuance of the Rule, this Court passed an interim order staying all further proceedings of Title Suit No. 03 of 2017 and further directed the parties to maintain status quo in respect of possession and position of the suit land.

The defendant-opposite party No. 2 Haji Md. Tutiur Rahman Khan has entered appearance in the Rule.

The present petitioners as plaintiffs filed Title Suit No. 3 of 2017 in the Court of Assistant Judge, Beanibazar, Sylhet impleading one Makhon Lal Das as sole defendant. Subsequently, the defendant Nos. 2-4 were added in the suit. In the said suit, the plaintiffs prayed for declaration of title simpliciter in respect of the property as described in the schedule of the plaint based on farog (ফারগ) issued in the name of the plaintiffs' predecessor.

The defendant Nos. 2-4 filed written statement in the suit. The plaintiffs filed an application for local investigation under Order 26 rule 9 read with Section 151 of the CPC. The trial Court, vide order dated 13.09.2020 rejected the said application for local investigation. Being aggrieved, the plaintiffs filed Civil Revision No. 33 of 2020 before the learned District Judge, Sylhet, who, vide order dated

21.09.2021 rejected the same, which has been challenged in the instant revision.

I have heard the learned Advocates of both sides and perused the materials on record.

The prayer portion of the application for local investigation filed by the plaintiffs is quoted below:

“অতএব বাদীপক্ষের প্রার্থনা যে, একজন সার্ভে জানা অ্যাডভোকেট কমিশনার মারফত নিম্ন প্রকরণে বর্ণিত দফা সমূহের আলোকে সরজমিনে তদন্ত করাইয়া একটি প্রতিবেদন দাখিলের নির্দেশ দিতে মর্জি হয়।

প্রকরণ

- ১। নালিশী ১ম তপশীলের অন্তর্গত ২য় তপশীলের ভূমি সরজমিনে চিহ্নিত করা।
- ২। নালিশী ১ম তপশীলের অন্তর্গত ২য় তপশীলের ভূমিতে বাদীগণের পাঁকা বাড়ী ঘর দোকান গৃহসহ স্থাপনা আছে কিনা এবং বাদীগণ তথায় বসবাস করেন কি না তাহা নিরূপন করা।
- ৩। ফিল্ড বুক, চিটা ও কেইছ নকশাসহ পূর্ণাঙ্গ প্রতিবেদন।

১ম তপশীল

জেলা-সিলেট, থানা-বিয়ানীবাজার, মৌজা-জলচুপ, জে.এল.নং-১৪২ ডিপি-খতিয়ান নং-১১৯ পরগনা বাহাদুরপুর, তৈজি নং-১৩১০৩, ১নং তালুক আলাদাদ সংক্রান্ত এস এ খতিয়ান নং-৪৭২ এস এ দাগ নং-৬১৪২ শ্রেণী-বরন্ডি পরিমাণ-০.৪৪ শতক ভূমি।

২য় তফসিল

(১ম তফসিলের অন্তর্গত)

জেলা-সিলেট, থানা-বিয়ানীবাজার, মৌজা-জলচুপ, জে.এল.নং-১৪২ ডিপি-খতিয়ান নং-১১৯ পরগনা বাহাদুরপুর, তৈজি নং-১৩১০৩, ১নং তালুক আলাদাদ সংক্রান্ত

এস এ খতিয়ান নং-৪৭২ এস এ দাগ নং-৬১৪২ বি.এস. খতিয়ান নং-৯৬৩ শ্রেণী-  
ভিট পরিমাণ-০.২২ শতক ভূমি।”

চতুঃসীমা

উত্তরে-তিতুউর রহমান দক্ষিণে-পাকা রাস্তা তৎদক্ষিণে বাজার পূর্বে-সরেয়াম পাকা  
রাস্তা, পশ্চিমে-পাকা রাস্তা ইহাতে মোয়াজী ০.২২ শতক ভূমি।

The learned Advocate appearing for the opposite party points out that in the schedule of the application for local investigation the plaintiffs travelled beyond the plaint which is apparent on the face of the record.

The schedule of the plaint runs as follows-

“তপশীল

জেলা-সিলেট, থানা/উপজেলা-বিয়ানীবাজার, মৌজা-জলচূপ, জে.এল.নং-১৪২  
এস.এ. খতিয়ান নং-৪৭২, বুজারত খতিয়ান নং-৩৩১৯, বুজারত খতিয়ান নং-  
৯৬৩, পরিমাণ-০.২২ একর ভিট রকম ভূমি।

চৌহান্দী- পূর্বে-পাকা রাস্তা, পশ্চিমে-পাকা রাস্তা, উত্তরে-তিতুউর রহমান, দক্ষিণে-  
রাস্তা, তৎদক্ষিণে-বাজার।”

It appears that the words “ডিপি-খতিয়ান নং-১১৯ পরগনা বাহাদুরপুর, তৈজি  
নং-১৩১০৩, ১নং তালুক আলাদাদ সংক্রান্ত এস এ দাগ নং-৬১৪২” appearing in the  
schedule of the application for local investigation are absent in the  
schedule of the plaint.

It is stated in paragraph No. 4 of the application for local  
investigation, “অত্রাবস্থায় ন্যায় ও সুবিচারের স্বার্থে নিম্ন ১ম তপশীলের অন্তর্গত ২য়  
তপশীলের ভূমিতে বাদীগণের পাঁকা বাড়ী ঘর এবং দোকান কোটা আছে সহ কোন স্থাপনা আছে

কি না তাহা নিরূপনের জন্য সরজমিনে তদন্ত হওয়া একান্ত আবশ্যিক। অন্যথায় বাদীপক্ষের অপূরণীয় ক্ষতি হইবে।”

Order 26 rule 9 of the CPC runs as follows:

**“R. 9 Commissions to make local investigation-** 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 of 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.

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

The object of local investigation is to obtain evidence which from its very nature can only be obtained on the spot and to elucidate any point which is left doubtful on evidence taken before the Court. Where plot number and khatian number are not mentioned in the sale deed executed before settlement operation local investigation is necessary, but where the identity of the suit land is not challenged in the written statement, question of holding local investigation for identification of the suit land does not arise (2 BLC 195).

It is held in *Lakshmi Bazar Shahi Masjid Committee and another vs. St Francis Xavier's Girls High School*, 51 DLR(1999) 557,

“In this context it is to be borne in mind that generally local investigation by an Advocate Commissioner is allowed to relay any land or property in order to determine the location of the suit property but not in a case where the plaintiff described his land by giving full description with well defined boundary. In the case in hand defendants stated in their written statement that the property claimed by the plaintiff are quite different from the property claimed by them. In such a case local investigation is absolutely unnecessary.

Another aspect of the matter must not be overlooked. On a careful perusal of the written statement it reveals that the identity of the suit property had not been at all challenged by the defendants. It is well recognised that if identity of the suit property is not challenged by the other side, the question of holding local investigation relaying the property does not arise at all”.

It is held in *Noor Islam Bayati and others vs. Aayanal @ Anwer Sheikh and others*, 2017(2) LNJ (AD) 104,

“Therefore, we do not see any scope and necessity to appoint any Advocate Commissioner to ascertain the possession of either of the party. Further, possession is a question of fact and that has to be proved by producing evidence and that cannot be decided by holding local investigation.”

The learned Advocate appearing for the opposite party referred to the above mentioned decided cases and submitted that the above decisions squarely apply to the facts and circumstances of the case in hand.

The learned Advocate appearing for the petitioner, on the other hand, submits that the main purpose for holding local investigation in the instant case is to relay the suit land as per touzi No. 13103 and the farog (ফারগ) in question which is necessary to elucidate the matter in dispute.

It is already noted that the touzi No. 13103 was not mentioned in the schedule of the plaint. Moreover, the trial Court categorically observed that the plaintiff did not submit any document before it to relay the suit land based on the touzi in question. The suit land has been described in the schedule of the plaint by giving full description along with specific boundary. I note that the identity of the suit land has not been challenged in the written statement. Another purpose for holding local investigation as prayed for by the plaintiffs is to ascertain whether the pucca houses and shops erected by them situate on the suit land and whether the plaintiffs reside there. The issue is essentially a question of fact and can be decided on taking evidence. It is settled principle of law that the Court cannot delegate its judicial function of giving a decision on a point to a Commissioner under Order 26 rule 9. Hence, I have no hesitation to hold that the plaintiffs

failed to make out a case for holding local investigation under Order 26 rule 9 of the CPC. Accordingly, I find no reason to interfere with the impugned judgment and order.

In the result, the Rule is discharged.