

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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 1594 of 2022

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Most. Zohora Khatun

... Defendant-Appellant-Petitioner.

-Versus-

Md. Aminur Rahman and others

... Plaintiff-Respondent-Opposite parties.

Mr. Sadananda Rana with

Mr. Md. Shibbir Ahmed, Advocates

...For the petitioners.

Mr. Md. Abdul Barik with

Mr. Mohammad Afirur Rahman and

Ms. Jarin Tasnim, Advocates

... For the Opposite Parties.

**Heard on 26.10.2025, 23.11.2025, 26.11.2025,
01.12.2025, 02.12.2025, 08.12.2025 and 11.12.2025**

Judgment on: 17.12.2025

Md. Bashir Ullah, J.

At the instance of the defendant in Other Class Suit No. 09 of
2011, this Rule was issued calling upon the opposite parties to show

cause as to why the judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 30 of 2012, dismissing the appeal and affirming the judgment and decree dated 26.02.2012 passed by the learned Senior Assistant Judge, Hatibandha, Lalmonirhat in Other Class Suit No. 09 of 2011, decreeing the suit in part 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, the operation of the impugned judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 30 of 2012 was stayed for a period of 06(six) months, which was lastly extended on 08.12.2022, for a further period of 01(one) year. No further step was taken thereafter to extend the said order of stay.

The facts, relevant for disposal of the Rule, in brief, are that the plaintiff instituted the suit seeking declaration of title, further declaration of cancellation of deed No. 5447 dated 12.09.1985 and decree for recovery of *khas* possession of 10 decimals of land. The prayer was as follows:

ক) নালিশী 'ক' তফশীলে বর্ণিত জোত জমিতে বাদীর পিতামহ
হইতে পদন্ত বিগত ৫/৩/৭৫ইং তারিখের ৬২০৮ নং দানপত্র

দলিল মুলে বিরাজমান স্বত্ব সাব্যস্ত ক্রমে বাদীকে দত্তা দেখাইয়া এবং ১নং মুল বিবাদী গ্রহীতা সাজিয়া পাটগ্রাম সাব রেজিষ্ট্রী অফিসে গত ১২/৯/৮৫ইং তারিখের ৫৪৪৭ নম্বরের যে দলিল খানি সৃষ্টি করিয়াছে উহা যোগ সাজসিক, সড়যন্ত্রমূলক, বাদীর মিথ্যা পরিচয়ের ব্যক্তি কর্তৃক সম্পাদিত, জাল, ভূয়া, পনবিহীন, পন্ড এবং অবৈধ হেতু উহা অকার্যকরী ঘোষণায় উক্ত দলিলখানি রদ রহিতে বাতিল ঘোষণার ডিক্রী দিতে,

খ) উক্ত জমির আনুমানিক ০.১০ একর জমির উপরে বাদীর অনুমতি সূত্রে নির্মিত ১/২নং বিবাদীর গৃহাদী ভঞ্জ ক্রমে বিবাদীদ্বয়কে উচ্ছেদান্তে বাদী বরাবর খোলাসা দখল প্রদানের ডিক্রী দিতে,

গ) বিজ্ঞ আদালত প্রদত্ত সময় সীমার মধ্যে ১/২নং বিবাদী আপোষে তাহাদের নির্মিত গৃহাদী ভাঞ্জিয়া লইতে গড়িমশি করিলে বিজ্ঞ আদালত মাধ্যমে ডিক্রী জারী করনের ডিক্রী দিতে,

ঘ) সমস্ত আদালত ব্যাদীর ডিক্রী ১/২নং বিবাদী বিরুদ্ধে দিতে,

ঙ) আইন ও ইকুইটি মতে বাদী আর যে যে প্রকার প্রতিকার সহ সংশোধিত, সংযোজিত, পরিবর্তিত কিংবা পরিবর্দ্ধিত প্রতিকার পাইতে হকদার হন তাহারও ডিক্রী দিয়া সুবিচার করিতে মর্জি হয়।

The case of the plaintiff, in substance, is that the suit land originally belonged to one Nipusa Mahmood, the grandfather of both the plaintiff and the defendant who gifted 80 decimals of land to his grandson Aminur Rahman by registered deed No. 6208/75.

Since the execution of the gift deed, the donee had been in possession of the suit land and his name was duly recorded in DP khatian No. 1474. The plaintiff further stated that the defendant, being his cousin sought permission to construct a dwelling house on a portion of the suit land due to family difficulties after her marriage, assuring that she would vacate the land whenever the plaintiff asks. Subsequently, disputes arose and upon being asked to vacate the suit land on 5.01.2011 she disclosed the existence of deed No. 5447 of 1985, claiming that the plaintiff had sold .47 acres of the suit land to the defendant, the plaintiff alleged that at the relevant time he was a minor aged about 13 years and he did not take any consideration money. The plaintiff alleged that the deed was executed by impersonation and fraud. Upon discovery of the said deed, the plaintiff filed the suit.

The defendant contested the suit by filing written statement admitting the plaintiff's title but asserting that the plaintiff after acquiring title sold .47 acres of the land to the defendant and since then she has been in possession thereof. The defendant further alleged that the plaintiff has brought the suit with false and vexatious statement which is liable to be dismissed.

In order to dispose of the suit, the trial Court framed as many as 05(five) different issues. To support the case, the plaintiff

examined 03(three) witnesses and while the defendant examined 02(two) witnesses. The plaintiff produced documentary evidence which was marked as Exhibit-1 to 3. While the defendant produced the certified copy of the deed No. 5447/85 in order to prove their respective cases.

Upon hearing, the learned Senior Assistant Judge, Hatibandha, Lalmonirhat decreed the suit by its judgment and decree dated 26.02.2012.

Challenging the said judgment and decree, the defendant as appellant filed Other Class Appeal No. 30 of 2012 before the learned District Judge, Lalmonirhat and upon transfer, the learned Additional District Judge; Lalmonirhat after hearing the parties dismissed the appeal by judgment and decree dated 25.03.2021.

Being aggrieved by and dissatisfied with the Judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 30 of 2012 the defendant-appellant as petitioner preferred this revisional application and obtained the Rule along with an order of stay.

Mr. Sadananda Rana, learned Advocate assisted by Mr. Md. Shibir Ahmed, learned Advocate appearing on behalf of the petitioner contends that the plaintiffs sought for recovery of *khas* possession but in this respect no issue was framed by the trial Court.

He further submits that the defendant produced certified copy of deed No. 5447 of 1985 before the trial Court which was duly admitted and no objection was raised by the plaintiff.

He next submits that the trial Court neither declared title expressly nor passed any direction for eviction.

He further contends that, schedule 'ka'-1,2 and 3 is totally vague, unspecified and undemarcated rendering the suit not maintainable in view of Order 7, Rule 3 of the Code of Civil Procedure, as settled in 19 BLT(AD)118.

In support of his contention the learned counsel referred to the cases of *Amanalullah Vs. Ali Mohammad Bhuiyan*, reported in 2 BLC(AD)134, *Amulla Kumar and others Vs. China Ramjan Biswas and others*, reported in 19 BLT(AD)118, *Ershad Ali Howlader Vs. Santi Rani Dhupi*, reported in 12 BCR(AD)36 and *Jabbar Jute Mills Ltd. Vs. Abul Kashem and another*, reported in 25 BLD(AD)235. With those submissions the learned counsel finally prays for making the Rule absolute.

Per contra, Md. Abdul Barik learned Advocate assisted by Mr. Mohammad Arifur Rahman, learned Advocate appearing on behalf of the opposite parties submits that the alleged deed was required to be registered at Hatibandha Sub-registry office, Lalmonirhat whereas it was registered at Patgram Sub-registry

Office, rendering the deed void and the deed writer was not examined to prove execution of the deed and as such the deed is illegal.

He next submits that the suit land was properly described in the schedule with red marking and that both the Courts below concurrently found the deed to be forged and void.

He next submits that the plaintiff proved their case and there is no illegality or infirmity in the judgment and decree passed by both Courts and as such the Rule is liable to be discharged.

In support of his contention the learned counsel referred to the cases of *Shah Afzal Arafin Abu Shafiq and others Vs. Fazle Elahi Md. Asaduzzaman Khalif (Makhan) and others*, reported in 9BLT(HCD) 359, *Managing Committee N.M.C. Model High School and others Vs. Obaidur Rahman Chowdhury and others*, reported in 31 DLR(AD)(1979)133, *Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Dhaka and others Vs. Md. Bazlul Karim and others*, reported in 9 ADC(2012)345, *Abdul Motaleb Vs. Md. Ershad Ali and others*, reported in 18 BLD(AD)(1998)121, *Shahjadpur Central Co-operative Bank Ltd. Vs. Majibur Rahman and others*, reported in 50 DLR(AD)(1998)86, *Naresh Chandra*

Das and others Vs. Nirmal Chandra Das and others, reported in AIR 1989 ORISSA 248.

In the same vein, Ms. Jarin Tasnim, the learned Advocate appearing for the opposite party admits that both the trial Court and the Appellate Court committed material irregularity by failing to frame and decide the issue of recovery of *khas* possession of 10 decimals of land, despite a specific prayer made in the plaint.

She further contends that although the Courts concurrently held that the impugned deed to be forged and void, but the Court did not frame any issue relating to the prayer for recovery of *khas* possession and they did not discuss or decide the consequential relief. After finding a deed forged, the Court must resolve the question of possession. But it was not done. As a result, the petitioner has been left without adjudication on a material and consequential relief.

She also admits that such omission amounts to failure of justice and that this Court may either decide the issue itself or remand back the case for limited purpose.

In support of her contention the learned Advocate referred to the cases of *Belayet Hossain Vs. Nurul Alam Mir and others*,

reported in 42 DLR(AD)(1990)20, *Khaleda Rahman and another Vs. Intergrated Services Limited and others*, reported in 53 DLR(2001)161, *Mohori Bibee and others Vs. Dharmodas Ghose*, reported in 7 CWN 441 and *Kazem Sheik and others Vs. Danesh Sheik*, reported in 1 CWN 574.

With those submissions the learned Advocate finally prays for discharging the Rule.

I have considered the submissions so advanced by the learned counsels at length, perused the impugned judgments and decrees and other materials on record.

It appears from the plaint that the suit was instituted for declaration of title, cancellation of deed No. 5447 dated 12.09.1985; and recovery of *khas* possession but the trial Court failed to frame any issue relating to recovery of possession. Non framing of a material issue arising out of the pleadings constitutes a material irregularity within the meaning of Order XIV, Rule 1 of the Code of Civil Procedure. The Court is under mandatory obligation to frame and decide all issues necessary for adjudication of the real controversy between the parties. Failure to do so amounts to non exercise of jurisdiction and results in miscarriage of justice.

If proper issues are not framed, it is an irregularity which may or may not be a material one. But if such omission affects the disposal of the case on the merits it will be a ground for remanding the case for a fresh trial. This view has been held in *Daulat Ahmed and others Vs. Md. Mosharaf Hossain and others*, reported in 3 BLC (1998) 43. Earlier similar view was taken in *Abdul Hamid Shaikh Vs. Sree Sree Ram Krishna Dev and others*, reported in 48 DLR (1996) 367 wherein this Court Held:

“I am of the view that the learned Munsif (now Assistant Judge) wrongly decided the question of maintainability of the suit without framing proper issues and allowing the parties to lead evidence and the learned Subordinate Judge in appeal has rightly set aside the disputed judgment and decree of the trial Court and sent the suit back on remand to the Court of the learned Assistant Judge for regular trial of the suit on merit after allowing some amendment of the schedule of land by the plaintiff framing proper issues and further evidence if any from both the sides in accordance with law.”

It further appears that in the operative portion of the judgment, the trial Court neither expressly declared plaintiff's title nor passed any direction regarding recovery of possession. Consequently, the judgments passed by the trial Court and appellate Court below suffer from legal infirmity and incompleteness. A declaratory decree without consequential relief, when such relief is specifically sought, is not sustainable in law.

It appears that the plaintiff failed to provide boundaries in the schedule of the plaint which is violation of Order 7, Rule 3 of the Code of Civil Procedure. In this connection in *Amulla Kumar Bairagi and others Vs. Chitta Ranjan Biswas and others* reported in 19 BLT (AD) 118, the Apex Court held that since the lower appellate Court has passed a decree over unspecified and undemarcated suit land which is not executable.

During hearing of this instant revisional application the opposite party filed an application under Order VI, Rule 17 of the Code of Civil Procedure for amendment of the plaint stating *inter alia* that the proposed amendment seeks only to supply missing particulars regarding boundaries and schedule for *khas* possession, which were already pleaded in substance. It is further stated that

such amendment is purely procedural, does not change the nature and character of the suit and does not prejudice the parties.

In *Kazem Sheikh Vs. Danesh Sheikh*, reported in 1 CWN 574 it appears that the Court of first instance gave the plaintiffs a decree. The lower appellate Court has reversed the decree passed by the Munsif, and has dismissed the plaintiff's suit, because the learned Subordinate Judge says, that the plaintiff have not given in their plaint sufficient particulars by which the land in dispute can be identified, and that, therefore the decree rendered by the Munsif, as given to them, is incapable of execution. Upon hearing the then Calcutta High Court held:

“Finally, the last contention of the appellant appears to be correct, that is, that the plea, that the land was not capable of identification was not taken in the Court below or in the grounds of appeal to the lower appellate Court and under the circumstances, I must find that the learned Subordinate Judge was not justified in dismissing the suit. In the circumstances, I set aside the finding of the learned Subordinate Judge and remand the case to him for disposal upon the

merits and if he finds, after further consideration, that it is desirable he can have a proper map of the disputed property drawn up, if the judgment of the Court of first instance is affirmed, then the map can be made part of the decree.”

It is to be noted that due to defective pleadings the proceedings deem to be flawed. In the case in hand, amendment of plaint was indispensable for determining the real question in controversy. But Courts below failed to address this core issue for effective and proper adjudication of the controversy between the parties. It appears from the totality of facts that amendment of plaint shall not deprive the other side of rights.

In view of the above, I am of the considered opinion that justice would be best served if the suit is remanded to the trial Court for rehearing with liberty to the plaintiff to seek amendment of the plaint and for framing the issue on recovery of *khas* possession after taking additional evidence if so desired by the parties.

Accordingly, the Rule is disposed of, however, without any order as to costs.

The judgment and decree dated 25.03.2021 passed by the learned Additional District Judge, Lalmonirhat in Other Class Appeal No. 30 of 2012 and the judgment and decree dated 26-02-2012 passed by the learned Senior Assistant Judge, Hatibandha, Lalmonirhat in Other Class Suit No. 09 of 2011 are hereby set aside.

The suit is sent back on remand to the trial Court for fresh disposal in accordance with law, after considering the application for amendment of the plaint if filed framing and deciding the issue relating to recovery of *khas* possession and passing a complete and reasoned judgment.

The trial Court is further directed to hear the suit analogously with Other Class Suit No. 04 of 2011 pending before the learned Senior Judge, Hatibandha, Lalmonirhat since the subject matter of the suit and the parties are same and the cause of action also arose out of the same properties.

The orders of stay earlier granted by this Court is hereby recalled and vacated.

Let a copy of this Judgment along with Lower Court's Record be communicated to the concerned Court forthwith.