

District-Bogura.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3543 of 2022.

Mst. Eliza Yeasmin and another.

----- Plaintiffs-Opposite Parties-Petitioners.

-Versus-

Md. Shamsul Alam and others.

----- Defendants-Petitioners-Opposite Parties.

Mr. Md. Saidul Alam Khan, with

Mr. Md. Asadur Rahman, Advocates

----- For the Plaintiffs-Opposite Parties-Petitioners.

Mr. Ala Uddin Ahmed, Advocate

----- For the Defendants-Petitioners-Opposite Parties.

Heard On: 10.07.2025; 16.07.2025.

And

Date of Judgment: 22nd Day Of July 2025.

Md. Toufiq Inam, J.

This Rule, at the instance of the plaintiff, was issued calling upon the opposite parties to show cause as to why the judgment and order dated 01.06.2022, passed by the learned Senior District Judge, Bogura in Civil Revision No. 20 of 2022. allowing the revision in respect of local investigation and thereby setting aside the order dated 03.03.2022 passed by the learned Senior Assistant Judge, 1st Court, Bogura in Other Class Suit No. 228 of 2016 (Eviction), allowing the plaintiff's application for local investigation, should not be set aside, or such other order passed as to this Court may seem fit and proper.

Briefly stated, the plaintiff instituted a suit for declaration of title and recovery of *khas* possession in respect of the land described in the schedule to the plaint. During the pendency of the suit, the plaintiff

filed two applications, one under Order VI Rule 17 of the Code of Civil Procedure (CPC) for amendment of the plaint, and the other under Order XXVI Rule 9 CPC for appointment of a local commissioner to measure the suit land and ascertain the existence of structures allegedly erected by the defendants.

Upon hearing both parties, the trial court allowed both applications by a single order dated 03.03.2022. The defendants challenged the said order, insofar as it allowed local investigation, by filing a civil revision before the learned District Judge, who, by the impugned judgment, allowed the revision and set aside the trial court's order. Aggrieved by the said decision, the plaintiff moved this Court under Section 115(4) of the CPC and obtained the present Rule.

Mr. Md. Saidul Alam Khan, learned Advocate for the plaintiff-petitioner, submits that the trial court rightly exercised its discretion in allowing the application for local investigation. In a suit involving allegations of illegal occupation and unauthorized construction, a local investigation is indispensable to determine the actual physical status of the suit land, including its measurements, boundaries, and existing structures. Although the defendant is admittedly in possession, the extent and boundaries of such possession remain disputed. As the plaintiff seeks recovery of *khas* possession of a specific area, accurate measurement and site inspection are essential. The learned revisional court, in setting aside the discretionary and interlocutory order of the trial court, acted without jurisdiction and failed to identify any perversity, legal infirmity, or failure to exercise jurisdiction by the trial court.

Mr. Ala Uddin Ahmed, learned Advocate for the defendant-opposite parties, submits that the trial court committed a serious error in passing a composite and cryptic order allowing the application without independently considering the merit. He argues that local

investigation is unwarranted in this case since possession is admitted and the dispute primarily concerns title. The issues can be resolved on the basis of evidence adduced in court and do not require the appointment of a commissioner. Allowing both applications at a later stage of the trial will unduly delay proceedings and prejudice the defendants. The impugned trial court order reflects a mechanical application of mind, lacking independent reasoning, and was therefore rightly interfered with by the revisional court.

Having heard the learned Advocates for both sides and upon perusal of the judgment and orders of the courts below, as well as the materials on record, this Court proceeds to render its decision.

While the defendant's possession is admitted, the precise boundaries, extent, and nature of such possession remain in dispute, especially in view of the amended pleadings clarifying the specific land claimed by the plaintiff. The plaintiff also alleges that the defendants have raised unauthorized constructions on the suit land. Determination of these physical facts requires a local investigation, which cannot be properly evaluated in court without an on-site investigation. Such investigation would not only assist in adjudicating the real controversy but also aid in framing and executing any decree that may be passed.

It is well settled that in suits involving land disputes, particularly those alleging encroachment or unauthorized construction, local investigation is often essential to ascertain ground realities, including measurements, boundaries, and the existence and location of structures. In the present case, since the plaintiff seeks recovery of *khas* possession and the boundaries and extent of possession are contested, a local investigation is justified.

The revisional court, in interfering with the trial court's discretionary order, exceeded its jurisdiction. No perversity, error of law, or failure

to exercise jurisdiction was identified in the trial court's order. It is trite law that interlocutory orders based on discretion should not ordinarily be disturbed in revision unless shown to be manifestly illegal or perverse. The discretion exercised by the trial court in allowing local investigation was both reasonable and appropriate in the context of the pleadings and the relief sought.

Furthermore, the application for local investigation is a procedural step aimed at facilitating a fair and effective trial. The impugned order does not decide the rights of the parties finally and is purely interlocutory. It neither confers nor curtails any rights of the parties. The lower revisional court appears to have overlooked the limited scope of its jurisdiction under Section 115 CPC in such matters.

In view of the above, the judgment and order dated 01.06.2022 passed by the learned Senior District Judge, Bogura in Civil Revision No. 20 of 2022, cannot be sustained and is liable to be set aside.

In the result, **the Rule is made absolute.**

The judgment and order dated 01.06.2022 passed by the learned Senior District Judge, Bogura in Civil Revision No. 20 of 2022 is hereby set aside.

The order dated 03.03.2022 passed by the learned Senior Assistant Judge, 1st Court, Bogura in Other Class Suit No. 228 of 2016 (Eviction), allowing the plaintiff's application for local investigation, is restored.

There shall be no order as to costs.

Let a copy of this judgment be transmitted to the court below at once.

(Justice Md. Toufiq Inam)