

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 67 of 2022

In the matter of:

Most. Aliya

... Plaintiff-Appellant

Petitioner

-Versus-

Md. Saidur Rahman

... Defendant/Respondent

Opposite party

Mr Md. Alamgir Mostafizur Rahman,
Advocate

.....*For the petitioner*

Mr. M.M. Shafiullah, assisted by

Mr. Md. Abdul Alim, Advocate

...*For the opposite party*

Date of Hearing: 22.6.2026, 23.6.2026, 24.6.2026,
22.07.2026, 26.07.2026, 27.7.2026, 28.07.2026
and 29.07.2026 A.D.

Date of Judgment: 09.08.2026 A.D., Sunday,

২৫ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ।

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioner under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

“Let a Rule be issued calling upon the opposite party to show cause as to why the judgment and decree dated 23.09.2021 (decree signed on 30.09.2021) passed by the learned Special District Judge, 1st Court, Rajshahi in Title Appeal No. 140 of 2018 dismissing the appeal and affirming the judgment and decree dated 31.05.2018 (decree signed 07.06.2018) passed by the learned Senior Assistant Judge, Poba, Rajshahi in Other Class Suit No. 84 of 2013 dismissing the suit should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper. ”

The crux of the facts is that the petitioner, as plaintiff, instituted the instant suit before the learned Senior Assistant Judge, Poba, Rajshahi, seeking declaration of title and

recovery of khas possession over the suit land. The plaintiff claimed that Islam Sheikh, the R.S. tenant of the "Ka" schedule land, executed an Osiyatnama, being Deed No. 46 of 1991, in favour of his five sons to avoid future disputes. After his death, the plaintiff claimed title to the "Ka" schedule land under the said Osiyatnama and took possession thereof. Subsequently, the defendant allegedly encroached upon the land, constructed a tin-shed house thereon and dispossessed plaintiff No. 1 from 4 decimals of land described in Schedule "Kha". During the pendency of the suit, the defendant allegedly made further construction. Plaintiff No. 1 further stated that he had gifted the "Ka" schedule land to plaintiff No. 2 in 2012 and, accordingly, instituted the suit.

The defendant contested the suit by filing a written statement, denying the material allegations and contending, inter alia, that the plaintiff had no *locus standi* and that the suit was barred by limitation. According to the defendant, the suit land belonged to his father, who had been in possession thereof along with other lands measuring 2.09 acres and had executed Osiyatnama Deed No. 46 of 1991 in favour of his five

sons. Under the said deed, the defendant acquired the disputed house land and subsequently purchased his brother Helal's interest by registered Sale Deed No. 6543 of 2011. He thereafter constructed his house and continued to lawfully possess and enjoy the land. The defendant denied forcibly dispossessing the plaintiff and contended that the hand-sketch map relied upon by the plaintiff was incorrect. He therefore prayed for dismissal of the suit with costs.

The learned trial Court completed all legal formalities to conclude the trial and, after analyzing all the evidence on record, dismissed the suit vide its judgment and order dated 31.5.2018 (decree drawn up thereunder and signed on 7.6.2018)

Being aggrieved by such judgment and decree of the learned trial court, the plaintiff petitioner preferred an Appeal No. 140 of 2018 before the learned District Judge, Rajshahi, who transferred the record to the learned Special District Judge, 1st Court, Rajshahi for hearing and disposal of the said appeal.

Thereafter, the learned Special District Judge, 1st Court, Rajshahi, after hearing the appeal, was pleased to disallow the appeal by its judgment and order dated 23.9.2021 (decree drawn up thereunder and signed on 30.9.2021), affirming the judgment and decree of the trial Court. Thereafter, the plaintiff appellant, being aggrieved by and dissatisfied with the aforesaid decision of the Subordinate Courts, preferred this revisional jurisdiction.

Mr Md. Alamgir Mostafizur Rahman, learned Counsel appearing for the petitioner, at the outset, assailed the impugned judgments and decrees passed by both the learned Subordinate Courts, contending that the said Courts had grossly misread, misconstrued and failed to properly appreciate the oral and documentary evidence available on record in its true and proper perspective. According to the learned Counsel, the findings arrived at by the Subordinate Courts were not founded upon a proper and judicious evaluation of the material evidence and the surrounding facts and circumstances of the case, thereby occasioning a manifest error of law resulting in a failure of justice.

Learned Counsel next submitted that the learned lower appellate Court, without independently discussing, considering and reassessing the evidence on record, mechanically affirmed the judgment and decree of the learned trial Court. Such an approach, according to him, is contrary to the mandatory requirements of Order XLI, Rule 31 of the Code of Civil Procedure, 1908, which obliges the appellate Court to independently determine the points for consideration and record its reasons for its decision. Consequently, the impugned judgment and decree of the learned lower appellate Court are liable to be set aside.

Learned Counsel further submitted that late Islam Sheikh, being the father of plaintiff No. 1 and the defendant, had five sons and, with a view to avoiding future disputes amongst them, executed a Will (Osiyotnama) in respect of his properties in favour of his five sons. The said Will specifically delineated and allotted the respective properties to each of his sons. It was contended that the defendant, in his written statement, unequivocally admitted the existence and material contents of the said Will. Despite such admission, both the

Subordinate Courts, by misreading and misconstruing the evidence and the admitted facts on record, arrived at findings contrary thereto and thereby committed errors of law occasioning a failure of justice.

Learned Counsel also submitted that, while the plaintiff was in possession of the suit property, he transferred the property described in the "Ka" schedule to his daughter, who is the present petitioner. During the pendency of the suit, the present petitioner filed an application dated 04.01.2016 seeking her addition as plaintiff No. 2. Subsequently, on 06.06.2017, an application was filed for striking out of the name of plaintiff No. 1, which was duly allowed, whereupon the present petitioner became the sole plaintiff in the suit. It was also argued that both the Subordinate Courts failed to take into consideration the aforesaid applications and the consequential orders passed thereon, and thereby arrived at their respective decisions upon an erroneous appreciation of the procedural and factual position of the case, resulting in an error of law and consequent failure of justice.

Learned Counsel further contended that, by virtue of Will (Osiyotnama) No. 46 of 1991, the plaintiff acquired the land described in the "Ka" schedule, from which she was subsequently dispossessed by the defendant in respect of 4 decimals of land described in the "Kha" schedule. It was therefore argued that there was no legal impediment to granting the plaintiff the reliefs sought for, particularly when the defendant had admitted the plaintiff's right, title and interest in the suit property. According to the learned Counsel, both the Subordinate Courts failed to properly appreciate the governing principles relating to the declaration of title and the recovery of khas possession and, by misapplying the law to the facts and evidence on record, committed errors of law, occasioning a failure of justice.

Learned Counsel next submitted that the Will (Osiyotnama) had been admitted by both parties and that the boundaries of the land described therein correspond with the boundaries set out in the plaint. DW 1, according to the learned Counsel, also admitted the identity and boundaries of the suit property. Furthermore, an Advocate Commissioner

conducted a local investigation in the presence of the defendant and submitted a report, which was accepted by the learned trial Court without any objection from the defendant. The said commission report, it was argued, materially corroborated and established the plaintiff's claim regarding the identity and location of the suit property. In such circumstances, both the Subordinate Courts, by failing to appreciate the evidentiary value and legal effect of the commission report in the light of Order XXVI, Rule 10(2) of the Code of Civil Procedure, 1908, fell into an error of law in dismissing the suit.

Learned Counsel further submitted that the Will (Osiyotnama) clearly demarcated and allotted the respective properties amongst the five sons of Islam Sheikh and, on the basis thereof, the plaintiff acquired the land described in the "Ka" schedule. The plaintiff instituted the suit seeking declaration of title and recovery of khas possession in respect of the disputed land, with a clear description thereof in the schedule to the plaint and by reference to a sketch map and commission's report. In addition thereto, in view of these

materials, there was, according to the learned Counsel, no legitimate basis for holding that the suit property had not been sufficiently identified or properly demarcated. The Subordinate Courts, by overlooking the plaint, the schedule thereto, the sketch map and the commission report, misread and misconstrued the evidence and thereby committed errors of law resulting in a failure of justice.

Learned Counsel further argued that the plaintiff had specifically pleaded in the plaint that she was in possession of the suit property and that she was dispossessed therefrom on 07.05.2013. During the trial, the witnesses examined on behalf of the plaintiff duly testified regarding her possession and subsequent dispossession. According to the learned Counsel, the said oral evidence, read with the documentary materials and other evidence on record, sufficiently established the plaintiff's possession and subsequent dispossession. Nevertheless, both the Subordinate Courts, by misreading, misconstruing, and failing to properly appreciate the evidence on these material issues, arrived at findings that

are contrary to the record and thereby committed errors of law, occasioning a failure of justice.

Finally, learned Counsel referred to the decisions reported in **8 LM (AD) 102**, concerning amendment of plaint and the question of limitation; **42 DLR (AD) 110**, concerning Order VI, Rule 17 of the Code of Civil Procedure, 1908; **4 BLT (AD) 169**, concerning the consequence of a commission report and remand of a suit to the trial Court; **53 DLR (HC) 190**, concerning the legal consequence of accepting or rejecting a report of local investigation; and **13 ALR (AD) 33 (Vol. 2)**, concerning the scope and effect of Order XXVI, Rule 10(2) of the Code of Civil Procedure, 1908. On the strength of the aforesaid authorities, learned Counsel submitted that the impugned judgments and decrees, having been rendered upon misappreciation of the evidence, non-consideration of material evidence and erroneous application of the relevant provisions of law, cannot be sustained in law and are liable to be set aside.

Learned Counsel, in concluding his submissions, respectfully submitted that, even if this revisional Court is not

inclined to interfere with the impugned judgments and decrees in their entirety, the ends of justice would nevertheless be adequately served by remanding the suit to any of the competent subordinate Courts having jurisdiction. He contended that such remand would afford the parties a proper and effective opportunity to have the material evidence on record duly considered and appreciated in accordance with law and would enable the competent Court to determine the real controversy between the parties upon a proper assessment of the pleadings, oral and documentary evidence, commission report and other relevant materials. Learned Counsel, therefore, urged that, in the alternative and in the interest of substantial justice, this revisional Court may be pleased to set aside the impugned judgments and decrees and remand the suit to the appropriate subordinate Court having jurisdiction for fresh disposal in accordance with law, upon affording due opportunity of hearing to all concerned parties.

Conversely, **Mr M. M. Shafiullah**, the learned Counsel appearing on behalf of the opposite party, submitted that,

upon meticulous consideration and appreciation of the evidence and materials on record, both the learned Subordinate Courts concurrently dismissed the suit. According to him, where the findings of fact recorded by the Subordinate Courts are concurrent and based on proper appreciation of the evidence, the revisional Court, in exercise of its limited jurisdiction under section 115 of the Code of Civil Procedure, has very limited scope to interfere with such findings unless the same are shown to be perverse, illegal, or based on misreading or non-consideration of material evidence.

Learned Counsel further submitted that the plaintiff instituted the suit seeking a decree declaring title and recovery of Khas possession. In a suit of such nature, the plaintiff is required not only to establish her title to the suit property but also to prove her prior possession and subsequent dispossession by the defendant. According to him, the plaintiff was required to establish, by cogent and reliable evidence, the factum and date of her alleged dispossession. Since the plaintiff failed to prove either her previous

possession or the alleged subsequent dispossession in accordance with law, the learned Subordinate Courts rightly declined to grant the relief of recovery of Khas possession.

Learned Counsel further submitted that the plaintiff failed to furnish any specific boundary identifying the alleged 4 decimals of land from which she claimed to have been dispossessed. He contended that the sketch map annexed to the plaint does not correspond with the description of the property contained in the Wasiatnama. Consequently, the identity and location of the suit property remained uncertain and could not be precisely identified. In such circumstances, the learned Subordinate Courts rightly dismissed the suit.

Learned Counsel further submitted that the suit was initially instituted by Md. Alep seeking recovery of Khas possession in respect of 2 decimals of land described in the 'Kha' schedule to the plaint. Subsequently, by amendment of the plaint, the plaintiff enlarged the alleged area of dispossession from 2 decimals to 4 decimals; nevertheless, no corresponding amendment was made to the sketch map or the other identifying particulars of the suit property. Thus,

there remained a material discrepancy between the area claimed in the plaint and the property shown in the sketch map. Such vagueness and uncertainty rendered the suit property incapable of proper identification and, therefore, the plaint failed to satisfy the mandatory requirement contemplated by Order VII, Rule 3 of the Code of Civil Procedure. Accordingly, the concurrent dismissal of the suit by the learned Subordinate Courts, being founded upon appreciation of the facts and evidence on record, calls for no interference in revision.

Learned Counsel further submitted that, on perusal of the Wasiatnama, marked as Exhibit 'Ka', it appears that Alep acquired ownership of 20 decimals of land, the boundaries of which were described as: “উত্তরে—হেলালের ঘর, দক্ষিণে—নিজের ছাড়া রাস্তা, পূর্বে—সহিদুল, পশ্চিমে—ডহর; এই চৌহদ্দীর মধ্যে পশ্চিম ভিটার দক্ষিণের রুম।”, Subsequently, Alep purchased 10 decimals of land from Abdur Rezzaq by registered deed of sale No. 12516 dated 11.11.1997. The property of Abdur Rezzaq was bounded by: “উত্তরে—নিজের ছাড়া রাস্তা, দক্ষিণে—জালেপ, পূর্বে—ফাঁকা জমি, পশ্চিমে—আব্দুর রাজ্জাক; এই চৌহদ্দীর মধ্যে আব্দুর রেজ্জাকের বাড়ী, অবশিষ্ট জমি মাঠে পাইবে।”

Learned Counsel contended that the respective properties of Md. Alep and Abdur Rezzaq were situated on different sides of the self-made road running through Plot No. 345. However, while transferring 0.30125 acres of land to his daughters, Md. Alep purportedly described the transferred property as being situated at a single compact location. According to the learned Counsel, the entire dispute has arisen from such an erroneous and impermissible claim to take the property from one compact saham instead of recognizing the respective portions situated on both sides of the self-made road.

Learned Counsel further submitted that the plaintiff, while deposing as PW1, specifically stated in her cross-examination upon recall that she had been inducted into possession of the suit property by her father in 2012. At the same time, she admitted in cross-examination that her father had not discussed the institution of the suit with her. He further contended that the plaintiff herself had no personal knowledge of the alleged dispossession and that her knowledge regarding the occurrence of dispossession was

based on hearsay. Moreover, PW3 and PW4 failed to corroborate the alleged date of dispossession. Therefore, according to the learned Counsel, the plaintiff failed to establish the date and factum of her alleged dispossession by reliable and legally admissible evidence, which is a material fact requiring proof in a suit for recovery of Khas possession.

Learned Counsel further submitted that an Advocate Commissioner submitted his report on 14.10.2014, which was accepted for the time being by order No. 22 dated 29.07.2015. However, the Advocate Commissioner was not examined before the learned trial Court. According to the learned Counsel, a report of an Advocate Commissioner is not sacrosanct or conclusive evidence; rather, it constitutes only a piece of evidence which must be considered along with the other evidence on record and assessed in accordance with law.

Learned Counsel further submitted that the Advocate Commissioner merely ascertained an area of 2 decimals of land from which the plaintiff allegedly claimed to have been dispossessed. He contended that the purpose of local

investigation is to ascertain the physical features, nature, character, situation and other relevant aspects of the property, and, where permissible, matters such as market value, but not to conclusively determine the question of possession. The question of possession is essentially a matter for the parties to establish through legally admissible evidence. Therefore, even if the Commissioner's report is taken into consideration, it cannot by itself establish the plaintiff's possession or dispossession. The learned Counsel accordingly contended that the Commissioner had exceeded the permissible scope of local investigation by making observations regarding possession, and that such observations could not lawfully form the sole basis for deciding the question of possession.

Learned Counsel for the opposite party submitted that PW1, in her cross-examination, admitted that the heirs of Islam Sheikh were in ejmali possession of the suit property. PW2 also stated in his cross-examination that no partition deed had been executed amongst the five brothers and that they continued to remain in ejmali possession of the property.

In view of such admissions made by the plaintiff's own witnesses, the learned Counsel contended that a suit merely seeking declaration of title in respect of an undivided ejmali property, without seeking partition or consequential relief where necessary, was not maintainable in the form in which it had been instituted.

Learned Counsel further submitted that the plaintiff miserably failed to establish the identity and precise location of the suit property and also failed to prove the factum of her alleged dispossession by the defendant. He contended that the suit was improperly framed, the description of the suit property was vague and uncertain, and the report of the Advocate Commissioner was beyond the permissible scope of local investigation. On these grounds, according to him, the concurrent findings of the learned Subordinate Courts are based upon proper appreciation of the evidence and materials on record and do not suffer from any jurisdictional error warranting interference by this revisional Court. He, therefore, submitted that the Rule is liable to be discharged in the interest of justice.

In support of his submissions, learned Counsel referred to the decisions reported in 34 ALR (AD) 141 and 19 LM (AD) 85, both concerning the principles applicable to suits for declaration of title and recovery of Khas possession. He also relied upon the decision reported in 11 LM (AD) 26 with regard to the requirements of Order VII, Rule 3 of the Code of Civil Procedure, 1908.

Learned Counsel further referred to the decisions reported in 64 DLR (AD) 127 and 18 BLT (AD) 280, relating to the legal effect and evidentiary value of an Advocate Commissioner's report and the scope of local investigation. He also placed reliance upon the decisions reported in 20 BLC (AD) 75 and 43 DLR (AD) 87 in support of his submission that a suit seeking declaration of title in respect of ejmali property, without seeking partition where partition is necessary for effective adjudication of the parties' respective shares, is not maintainable.

Finally, learned Counsel submitted that, in the facts and circumstances of the case, there was no legal or factual justification for remanding the suit to the learned Subordinate

Courts. He accordingly prayed that the Rule be discharged and the judgments and decrees of the learned Subordinate Courts be allowed to stand.

I have carefully perused the revisional application, the materials annexed thereto, the judgments and decrees of the learned Subordinate Courts, the evidence adduced by the parties, and the submissions advanced by the learned Counsel appearing for both sides. Upon such consideration, it appears that the instant suit is essentially one for declaration of title and recovery of Khas possession of the suit land from the alleged illegal occupant. The learned Subordinate Courts, upon a concurrent appraisal of the oral and documentary evidence on record, dismissed the suit. The principal question, therefore, is whether such concurrent findings suffer from any error of law, misreading or non-consideration of material evidence, perversity, or any other jurisdictional infirmity warranting interference by this Court in its revisional jurisdiction.

On perusal of the judgment of the learned trial Court, it appears that the learned Court framed, inter alia, the material

issue as to whether the defendant had erected a structure on the land described in Schedule "Kha" to the plaint on 07.05.2013 and, thereby, dispossessed plaintiff Nos. 1 and 2 therefrom. Upon examination of the evidence, the learned trial Court found that P.W.1, who was plaintiff No. 2, had no direct or personal knowledge as to the date on which the defendant allegedly erected the structure and dispossessed the plaintiffs. Rather, his knowledge regarding the alleged occurrence was derived from what he had heard from his father, plaintiff No.1. Such evidence, being hearsay in nature, does not constitute direct oral evidence of the fact sought to be proved. In view of section 60 of the Evidence Act, 1872, oral evidence must, subject to the recognized exceptions, be direct; consequently, the evidence of P.W.1 regarding the date and manner of the alleged dispossession could not, in the circumstances of the case, furnish a reliable evidentiary foundation for granting a decree for recovery of khas possession.

The learned trial Court further found that the principal witness for the plaintiffs, namely P.W.2, did not state in his

examination-in-chief that the defendant had erected any structure upon the Schedule "Kha" land and thereby dispossessed the plaintiffs. Even in cross-examination, he was unable to state the date on which the alleged structure was erected or the plaintiffs were allegedly dispossessed. More significantly, although the suit was confined to 4 decimals of land, P.W.2 stated in cross-examination that the disputed land measured 20 decimals. Such material inconsistency goes to the very identity and extent of the property in dispute and substantially weakens the plaintiffs' case concerning the alleged dispossession of 4 decimals of land.

The learned trial Court thus rightly appreciated that in a suit founded upon alleged prior possession followed by unlawful dispossession, the plaintiff must establish, by cogent and credible evidence, the factum of his or her prior possession, the identity of the property from which possession was allegedly lost, and the fact and circumstances of the subsequent dispossession. A mere assertion of dispossession, unsupported by dependable evidence identifying the precise land and establishing the occurrence,

cannot ordinarily form the basis of a decree for recovery of Khas possession.

The findings of the learned Appellate Court are also significant. Upon examining the evidence of P.W.1, Mst Alia Khatun, the learned Appellate Court found that although she stated that she had been dispossessed from the suit land on 07.05.2013, her evidence regarding her prior possession was not satisfactorily corroborated. In cross-examination, she admitted that the heirs of Islam Sheikh were in joint possession of the suit property. Furthermore, Exhibit "Ka" disclosed that 20 decimals of land comprised in Plot No.345 had been allotted to her father, Alef Sheikh, with specified boundaries, namely Helal's house to the north, the road to the south, Saidul to the east and a dahar to the west. The learned Appellate Court, upon considering those boundaries, found that the property acquired by Alef Sheikh was situated at a particular location, whereas the plaintiff subsequently claimed a portion situated in the middle thereof. Such discrepancy was rightly considered material to the identification of the suit property.

The learned Appellate Court further found that, although the plaintiff claimed to have derived title to the suit land from her father, there was no satisfactory evidence demonstrating that Alef Sheikh had been in possession of the precise suit land before the alleged transfer in 2012. Equally, there was no convincing evidence that the plaintiff herself took possession of the specific suit land after the alleged transfer. No khatian, mutation record, rent receipt, or other contemporaneous documentary evidence was produced to demonstrate possession of the specific land in the plaintiff's name. Significantly, neither P.W.1 nor P.W.2 could identify the precise plot or khatian number of the alleged dispossessed land in their testimony.

The learned Appellate Court also noticed that P.W.1 and P.W.2 did not state that the police were present at the place of occurrence when the plaintiff was allegedly dispossessed. On the other hand, P.Ws. 3 and 4, despite being unable to state the date of the alleged occurrence, asserted that the police had arrived at the place of occurrence that very day. The learned Appellate Court considered such evidence to be

inherently doubtful and lacking in credibility. D.W.1, Md. Saidur Rahman stated that he had purchased Helal's share by registered Deed No. 6543 of 2011, marked as Exhibit "Kha". D.W.2, Helal, being the brother of both the defendant and Alef, stated that the defendant had not forcibly taken possession of the suit land. Thus, the evidence of the parties, taken as a whole, did not establish the alleged forcible dispossession with the degree of certainty required in law.

Upon an independent consideration of the materials on record, I find substantial force in the concurrent factual findings of the learned Subordinate Courts. It is further apparent from the record that, at the time of institution of the suit, Md. Alef was no longer the owner of the property, which he had previously transferred to his daughter by registered Heba Deed No. 13294 dated 05.09.2012. The materials on record indicate that possession was delivered pursuant to the said transfer. The instant suit was thereafter instituted on 10.06.2013. Although the petitioner was subsequently added as plaintiff No.2, the record does not disclose any satisfactory basis demonstrating that Md. Alef instituted or prosecuted

the suit under any authority derived from his daughter, nor does the plaint contain any clear averment explaining the legal basis upon which, after execution of the Heba deed, he continued to possess or litigate in respect of the property transferred to her.

The significance of this aspect cannot be overlooked. A person seeking recovery of Khas possession must establish not merely an abstract title but also a legally enforceable right to recover possession of the specific property from the defendant. Where the alleged transferor has already parted with his title and possession, he cannot, in the absence of a legally sustainable authority or cause of action, maintain an action in respect of the transferred property merely by asserting a right which he had already divested himself of. The subsequent impleading of the transferee as a plaintiff does not, by itself, cure every foundational defect in the original cause of action or establish the necessary ingredients of prior possession and subsequent dispossession.

There is another and equally fundamental defect in the plaintiffs' case. It appears from the record that the suit was

initially instituted in respect of 2 decimals of land, whereas subsequently the plaintiffs introduced a claim concerning an additional 2 decimals, thereby enlarging the disputed area to 4 decimals. However, the corresponding identifying particulars and the sketch map were not brought into conformity with the enlarged claim. The precise identity, location and boundaries of the alleged dispossessed 4 decimals thus remained uncertain. This is not a mere technical irregularity. In a suit for recovery of possession, the property must be described with sufficient certainty so that it can be identified from the plaint and the decree, and the Court can effectively determine what particular property is claimed and from what property possession is sought to be recovered.

In this connection, the evidence of the witnesses assumes particular importance. On a careful reading of the depositions and cross-examinations of the P.Ws., it is apparent that their evidence does not materially corroborate one another on the essential ingredients of the alleged dispossession. Their evidence is inconsistent not only as to the date and circumstances of dispossession but also as to the

identity and extent of the land. Conversely, D.W.1 candidly stated that he had not dispossessed the plaintiff. Such admission, however, cannot by itself entitle the plaintiff to a decree unless the plaintiff first succeeds in establishing the foundational facts of title, prior possession, identity of the property and subsequent dispossession by admissible and credible evidence.

The question of joint property and specification of saham also assumes considerable importance in the facts of the present case. Although the Wasiatnama/Osijatnama records specific shares of the respective parties, the subsequent transactions relied upon by the parties appear to have altered the original arrangement and rendered the respective physical locations of the claimed portions uncertain. In such circumstances, unless the parties establish an amicable partition by metes and bounds or obtain an appropriate decree of partition from a competent Court, a claim for recovery of khas possession over a particular portion of an undivided joint property cannot ordinarily be maintained merely by referring to a fractional share, unless

the particular portion claimed is otherwise clearly identified and the plaintiff's exclusive possession thereof is established. A co-sharer's entitlement to a share in joint property is conceptually distinct from an immediate right to recover khas possession of a specifically located portion of that property as though the same had already been partitioned.

The learned Counsel for the petitioner placed considerable reliance upon the decisions reported in **4 BLT (AD) 169, 53 DLR (HC) 190**, and **13 ALR (AD) 33 (Vol. II)**, particularly with regard to the evidentiary effect of an Advocate Commissioner's report, the consequence of accepting or rejecting such report, and the scope and effect of Order XXVI, Rule 10(2) of the Code of Civil Procedure, 1908.

In **Abdun Noor and others Vs. Aziruddin and others**, reported in **13 ALR (AD) 33 (Vol. II)**, the Hon'ble Appellate Division explained the scope of Order XXVI, Rule 10(2) of the Code of Civil Procedure and observed:

"15. Sub-rule (2) of rule 10 consists of two parts. In the first part it has been stated that the report of the

Commissioner and the evidence taken by him (but not the evidence without the report) shall be ed evidence in the suit and shall form part of the record. Therefore, it appears that the report shall be evidence in the suit and shall also form part of the record. Before start of the second part of this Sub-rule there is a 'semi-colon' which signifies that the first part is disjunctive of the second part. The second part beginning with the word 'but' states that the Court or any of the parties to the suit may examine the Commissioner personally in open Court touching all the matters of the report and also as to the manner in which he has made the investigation. Having considered both the parts of Sub-section 2, in general, we find that examination of the Commissioner is not mandatory for admitting the report of the Advocate Commissioner in evidence, but if a party files objection against the report of the Advocate Commissioner and prays for examining him in Court, the Court should always allow such prayer. The evidentiary value of the report of the Advocate Commissioner may vary if the Advocate Commissioner is not examined in the Court

depending upon the facts and circumstances of a particular case. Therefore, the report of the Advocate Commissioner will go into evidence notwithstanding the non-examination of the Advocate Commissioner in open Court."

From the aforesaid decision it is palpable to understand, in substance, that the report of the Commissioner and the evidence taken by him constitute evidence in the suit and form part of the record; examination of the Commissioner is not mandatory merely for admitting the report in evidence, although where a party objects to the report and seeks to examine the Commissioner, such prayer should ordinarily be allowed. Their Lordships further made it clear that the evidentiary value of the report may vary according to the facts and circumstances of each particular case.

The aforesaid principle is undoubtedly well settled. Nevertheless, it does not advance the petitioner's case in the facts presently before this Court. The question is not whether an Advocate Commissioner's report can, in law, constitute evidence without the Commissioner's examination. The real

question is whether the particular report relied upon by the plaintiff is capable of establishing the identity of the precise land from which the plaintiff allegedly suffered dispossession. The answer, upon examination of the record, is clearly in the negative.

The Advocate Commissioner was directed to identify 2 decimals of land, whereas the suit, as ultimately framed, related to 4 decimals. The report, therefore, did not correspond with the ultimate description of the suit property. Moreover, Exhibit "Ka", the Wasiatnama/Osiatnama, indicates that Alep acquired 20 decimals of land with definite boundaries, namely Helal's house to the north, a self-made road to the south, Sahidul to the east and a dahar to the west. Thereafter, Alep purchased another 10 decimals from Abdur Rezzaq by registered Sale Deed No.12516 dated 11.11.1997. The latter property was also described separately by definite boundaries, including the self-made road to the north, Jalep to the south, vacant land to the east, and Abdur Rajjak to the west. The evidence thus indicates that the two properties were not necessarily a single compact parcel but were

situated on different sides of the self-made road running through Plot No.345.

Despite this material feature, Md. Alep transferred 0.30125 acres to his daughter. Alep appears to have described the transferred land as one compact parcel. The Advocate Commissioner's report, instead of resolving this fundamental discrepancy by reference to the original title documents and the respective boundaries, proceeded upon an assumption of a single compact saham and identified 2 decimals in the middle thereof. Such identification, without reconciling the separate boundaries and locations disclosed by the title documents, could not conclusively establish that the particular 2 decimals so identified constituted the land from which the plaintiff had allegedly been dispossessed. The report, therefore, could not cure the fundamental defect in the plaintiffs' case concerning the identity of the suit property.

It must be remembered that an Advocate Commissioner's report is not a decree in itself, nor is it sacrosanct or conclusive upon the parties. It is a piece of evidence which must be tested against the pleadings, the

documentary evidence, the oral testimony and the surrounding circumstances. Where the report itself is inconsistent with the description of the property contained in the plaint and the title documents, or where the Commissioner identifies a different parcel from that specifically claimed by the plaintiff, the Court is fully competent to decline to act upon such report if, upon an overall assessment of the evidence, it finds the report unreliable or incapable of resolving the dispute.

The evidence of P.W.1 also materially undermines the plaintiffs' case. Although she claimed that her father delivered possession to her in 2012, her evidence did not satisfactorily establish her actual possession over the precise 4 decimals subsequently claimed in the suit. Her inability to identify the precise plot or Khatian number and the absence of supporting documentary evidence concerning possession are circumstances which cannot be ignored. Furthermore, to the extent that the evidence concerning the alleged date and manner of dispossession was derived from information supplied by others rather than from personal observation, the

same cannot be treated as reliable direct evidence of the occurrence. P.Ws.3 and 4 likewise failed to furnish consistent evidence concerning the date and circumstances of the alleged dispossession.

In contrast, the learned Counsel for the opposite party referred to many decisions to rely upon the established principle that the burden rests upon the plaintiff to prove the essential ingredients of a suit for recovery of possession. Particular reliance was placed upon the decision reported in **11 LM (AD) 26 (Vol. II)**, in **M. Delwar Hossain Vs. Mohammad Ali**, wherein the Hon'ble Appellate Division held,

“13. Thus, a mere look at the schedules to the plaint from where the plaintiffs were allegedly dispossessed, it is apparent that those were totally vague and unspecified and the description of the suit land did not fulfil the requirement of the mandatory provisions of Order VII, rule 3 of the Code of Civil Procedure and that being the state of the suit land, the plaintiffs were not entitled to get any relief in the suit, the High Court

Division rightly allowed the appeal and dismissed the suit."

This pivotal decision showed, in substance, that where the schedules to the plaint are vague and unspecified and fail to satisfy the mandatory requirement of Order VII, Rule 3 of the Code of Civil Procedure, the plaintiff cannot obtain relief in respect of such property.

The aforesaid principle squarely applies to the present case. Order VII, Rule 3 of the Code of Civil Procedure, 1908 embodies an important procedural safeguard requiring the plaint, where the subject matter of the suit is immovable property, to contain a description sufficient to identify the property. The object of the provision is not merely formal. It is intended to ensure that the defendant knows precisely what property is being sued for, that the Court can adjudicate upon the exact subject matter of the dispute, and that any decree ultimately passed can be executed without uncertainty or ambiguity.

In the present case, the plaintiff failed to furnish sufficiently definite particulars identifying the alleged 4 decimals from which she claimed to have been dispossessed. The sketch map annexed to the plaint did not correspond with the description emerging from the Wasiatnama/Osiatnama and other title documents. More importantly, the suit was initially instituted concerning 2 decimals, but the claim was subsequently enlarged to 4 decimals by amendment without a corresponding and adequate amendment of the sketch map and the other identifying particulars. Consequently, the property ultimately claimed remained uncertain and incapable of precise identification. Such defect strikes at the very foundation of a suit for recovery of Khas possession.

The documentary evidence further reinforces this conclusion. Exhibit "Ka" shows that Alep acquired 20 decimals of land with specified boundaries. His subsequent purchase of 10 decimals from Abdur Rezzaq by registered Sale Deed No.12516 dated 11.11.1997 also related to a separately bounded parcel. The respective properties were located on different sides of the self-made road traversing Plot No.345.

Nevertheless, the subsequent Heba transaction purportedly treated 0.30125 acres as one compact parcel. The plaintiffs were therefore required to establish, with precision, which particular portion comprised the 4 decimals allegedly transferred to the plaintiff and from which portion she was subsequently dispossessed. That burden has not been discharged.

It is equally significant that the plaintiffs failed to establish the essential link between title and possession. Even assuming, for the sake of argument, that the plaintiff acquired some interest through the Heba deed, such acquisition alone would not automatically establish that she was in actual possession of the precise 4 decimals claimed in the suit immediately prior to the alleged dispossession. In an action for recovery of possession based upon previous possession and subsequent dispossession, the factum of possession and the factum of dispossession must be established by evidence. The evidence in the present case falls short of that standard.

As regards the Advocate Commissioner's report dated 14.10.2014, which was provisionally accepted by order No.22

dated 29.07.2015, the mere acceptance of the report on the record does not render its findings binding or conclusive upon the Court. The Commissioner was not examined before the learned trial Court. More importantly, the report itself failed to satisfactorily reconcile the property identified by the Commissioner with the property described in the plaint, the amended claim, and the original title documents. The Court below was, therefore, justified in assessing the report along with the other evidence and declining to place decisive reliance upon it.

Upon a cumulative consideration of the entire evidence, I find that the learned Subordinate Courts did not reject the plaintiffs' case merely on a technical ground. Rather, they concurrently found that the plaintiffs had failed to establish the essential factual foundation of their claim. The deficiencies relate to the identity and extent of the suit land, prior possession, the factum and date of alleged dispossession, the authority of the original plaintiff to maintain the suit after the Heba transaction, the inconsistency among the witnesses, and the inability of the Advocate

Commissioner's report to identify the alleged dispossessed land with certainty. These are substantive defects going to the root of the plaintiffs' claim.

It is a settled principle governing revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908, that a revisional Court does not ordinarily reappraise the evidence as a Court of first appeal merely because another view of the facts may be possible. Where the Subordinate Courts have concurrently recorded findings of fact upon proper consideration of the evidence, interference is warranted only where such findings are shown to have been founded upon a material misdirection in law, non-consideration or misreading of material evidence, perversity, jurisdictional error, or other manifest illegality resulting in failure of justice. A concurrent finding cannot be disturbed merely because the revisional Court might have arrived at a different factual conclusion upon a fresh appreciation of the evidence.

In the present case, I find no such jurisdictional or legal infirmity in the judgments of the learned Subordinate Courts. The findings are supported by the evidence on record and are

neither demonstrably perverse nor founded upon any material misreading of the evidence. On the contrary, the learned Subordinate Courts have considered the material oral and documentary evidence and have given cogent reasons for disbelieving the plaintiffs' case. The plaintiffs' failure to identify the alleged 4 decimals with certainty, coupled with the absence of reliable evidence of prior possession and subsequent dispossession, provides a sufficient basis for dismissal of the suit.

The authorities cited on behalf of the petitioner regarding the evidentiary status of an Advocate Commissioner's report do not alter the position. Those decisions establish the legal character and evidentiary treatment of such a report; they do not lay down that a Commissioner's report must invariably prevail over inconsistent title documents, pleadings and oral evidence, nor do they dispense with the plaintiff's primary burden of establishing the precise identity of the property and the foundational facts necessary for the relief claimed. The report in the present case, for the reasons already discussed, was

incapable of resolving the fundamental discrepancy between the property described in the plaint and the property identified upon commission.

I am, therefore, of the considered view that the plaintiffs failed to prove, by cogent, consistent and legally admissible evidence, that they were in possession of the specific 4 decimals of land described in the suit immediately before 07.05.2013 and that the defendant thereafter unlawfully dispossessed them therefrom. The plaintiffs further failed to satisfy the mandatory requirement of Order VII, Rule 3 of the Code of Civil Procedure by furnishing a sufficiently definite description of the property capable of precise identification. The subsequent enlargement of the claim from 2 decimals to 4 decimals, without corresponding and adequate identifying particulars, materially aggravated that defect. The Advocate Commissioner's report did not cure the deficiency; rather, its identification of only 2 decimals, without reconciling the separate boundaries and locations appearing from the title documents, rendered it insufficient to establish the plaintiffs' case.

So far as the question of **remand** is concerned, learned Counsel appearing for the petitioner, with commendable candour, has submitted that, in the alternative and in the interest of substantial justice, the impugned judgments and decrees may be set aside and the suit may be remanded to any competent subordinate Court having jurisdiction for fresh disposal in accordance with law. The submission, however, requires careful examination in the light of the settled principles governing the exercise of revisional jurisdiction and the limited circumstances in which a remand may properly be ordered.

It is a fundamental principle of civil adjudication that a remand is not to be directed merely because one of the parties is dissatisfied with the findings recorded by the Courts below or seeks an opportunity to improve, supplement or restructure his case. **In civil suits, remand is an exceptional judicial remedy and not a device for providing a litigant with a second opportunity to fill up lacunae in his pleadings or evidence.** At the same time, where the adjudication by the subordinate Courts suffers from such a material infirmity that

the real controversy between the parties has not been effectively determined, or where material evidence and legally relevant circumstances have not been properly considered and appreciated, the revisional Court, in the interest of substantial justice, may exercise its jurisdiction to set aside the impugned decision and remit the matter for fresh adjudication by the competent Court.

It is a peremptory principle that judicial determinations on settled questions of law ought ordinarily to be followed so as to maintain consistency, certainty and predictability in the administration of justice; equally, it requires that a Court exercising revisional jurisdiction should act within the well-recognized parameters governing remand. The code does not, however, operate as an impediment to correcting an adjudication which has been rendered contrary to settled legal principles or without proper consideration of material evidence. Rather, **the decision requires adherence to the settled rule that remand must be founded upon a demonstrable necessity for a lawful and effective**

adjudication and cannot be ordered routinely or mechanically.

In this regard, the settled judicial principle may appropriately be stated thus: **where the record discloses that the controversy has been fully and effectively adjudicated upon by the Subordinate Courts, and no material issue remains unresolved, a remand merely to enable a party to relitigate the matter would ordinarily be unwarranted; conversely, where a material issue has not been determined, material evidence has been overlooked, or the adjudication is otherwise vitiated by a substantial procedural or legal infirmity affecting the decision, and which cannot be cured by revisional jurisdiction, then the remand may become necessary to secure the ends of justice.**

Applying the aforesaid principle to the case in hand, it is necessary to ascertain whether there remains any genuine and material issue which could not be satisfactorily resolved on the basis of the pleadings, oral and documentary evidence, the commission report and other materials already brought on record. **A remand cannot be justified merely on the**

ground that a different view might reasonably have been taken on the evidence. Nor can the revisional jurisdiction be converted into an appellate jurisdiction for the purpose of directing a *de novo* consideration of matters which have already been conclusively dealt with by the competent Courts below.

The power of remand, therefore, must be exercised with circumspection and only where the circumstances of the case demonstrate that a fresh adjudication is indispensable for arriving at a just and lawful conclusion. The Court must be satisfied that the defect in the earlier adjudication is of such a nature that it cannot appropriately be cured within the existing proceedings and that the interests of justice would genuinely be advanced by sending the matter back to the competent subordinate Court.

In the present case, upon a careful consideration of the revisional application, the materials appended thereto, the submissions advanced by the learned Counsel for the respective parties and, in particular, the judgments and decrees passed by the learned Subordinate Courts, **I do not**

find any unresolved issue, unanswered question of fact or law, or outstanding controversy which remained pending at either the trial or appellate stage and which, by its very nature, necessitates a remand. The parties had already been afforded an adequate opportunity to place their respective cases before the competent Courts, and the controversy was adjudicated on the basis of the materials, the parties chose to bring on record.

It is equally important to bear in mind that **the revisional jurisdiction under section 115 of the Code of Civil Procedure is supervisory and corrective in character and is not intended to afford a litigant a further opportunity to re-agitate the entire dispute as though the revisional Court were a Court of first appeal.** Therefore, unless the petitioner is able to demonstrate that the findings of the Subordinate Courts have been arrived at in disregard of a material piece of evidence, upon a misapplication of a settled principle of law, or in such manner as to occasion a failure of justice, an order of remand would not ordinarily be justified.

Indeed, the very object of litigation is to bring a dispute to a final and lawful determination. **Judicial economy also endorses that the finality of litigation is itself an important facet of the administration of justice.** A remand, if ordered without a compelling reason, would unnecessarily prolong the litigation, reopen matters already adjudicated upon and expose the parties to further delay and expense. Such an approach would be inconsistent with the principle that procedural powers must ultimately serve, rather than frustrate, the attainment of substantial justice.

At the same time, this Court is not oblivious to the settled proposition that procedural technicalities should not be permitted to defeat substantive justice. If, upon scrutiny of the entire record, it were found that the learned Subordinate Courts had failed to consider material evidence, had omitted to determine an essential issue, had proceeded upon an erroneous legal premise, or had otherwise failed to adjudicate the real controversy between the parties, this Court would undoubtedly be competent, within the parameters of its

revisional jurisdiction, to interfere and, where necessary, to remit the matter for fresh consideration.

The decisive consideration, therefore, is not whether a remand is **possible**, but whether it is **legally necessary**. The petitioner must demonstrate an adjudicatory defect which materially affects the ultimate determination of the dispute. A mere possibility that, upon reconsideration, a different conclusion may emerge cannot, by itself, furnish a sufficient foundation for an order of remand.

Accordingly, having regard to the pleadings of the parties, the evidence adduced by them, the findings recorded by the learned subordinate Courts, the commission report and the other materials available on record, I find no such fundamental omission, unresolved issue or miscarriage of justice as would render a fresh trial or rehearing indispensable. The petitioner has also failed to demonstrate that any material question was left undecided or that the Subordinate Courts refused to consider any legally relevant matter which, if considered, could have materially altered the result of the suit.

Thus, the plea for remand, though advanced in the alternative in the interest of justice, does not disclose any legally sustainable ground for exercise of the extraordinary power of remand. The Court cannot order a remand merely to provide a further opportunity to a party to substantiate a case which has already been adjudicated upon on the evidence placed before the competent Courts. Such a course would not advance the cause of justice; rather, it would tend to prolong the litigation without any corresponding legal necessity.

It is, therefore, the considered view of this Court that, unless a substantial failure of justice is demonstrated or an essential issue remains unadjudicated, the settled principles of judicial finality, procedural discipline and stare decisis militate against ordering a remand. On the materials available before this Court, the present case does not fall within that exceptional category.

Consequently, I do not find any ground in the petitioner's case that remained unresolved either at the trial stage or at the appellate stage, nor do I find any material

question or query requiring determination by remand of the suit. The prayer for remand, therefore, does not merit acceptance. The impugned judgments and decrees cannot be set aside merely for the purpose of enabling a fresh consideration in the absence of any demonstrated legal or procedural infirmity warranting such a course.

In the ultimate analysis, the governing principle is that **remand is a means to secure justice, not an end in itself; it may be ordered where necessary to cure a substantial adjudicatory defect, but it should not be employed to reopen a matter which has already been properly and effectively adjudicated.** To order remand in the absence of such necessity would be contrary to the settled principles governing revisional jurisdiction and inconsistent with the requirement that litigation must, at an appropriate stage, attain finality.

Accordingly, **the alternative prayer for remand is rejected**, as there is no sufficient legal or factual foundation to hold that a fresh adjudication by any competent subordinate Court is necessary in the ends of justice.

In such circumstances, the concurrent dismissal of the suit by the learned Subordinate Courts cannot be characterized as the result of any error of law occasioning failure of justice. Rather, the impugned judgments represent a proper and lawful appreciation of the evidence and application of the relevant principles of law. This Court, in exercise of its revisional jurisdiction, finds no compelling ground to substitute its own factual assessment for that of the Subordinate Courts.

For the reasons stated above, I find no merit in the Rule. The Rule is accordingly **discharged without any order as to costs.**

Consequently, the judgment and order dated **23.09.2021**, together with the decree drawn up thereunder and signed on **30.09.2021**, passed by the learned **Special District Judge, 1st Court, Rajshahi**, in **Title Appeal No.140 of 2018**, dismissing the appeal and affirming the judgment and order dated **31.05.2018**, together with the decree drawn up thereunder and signed on **07.06.2018**, passed by the learned **Senior Assistant Judge, Paba, Rajshahi**, in **Other Class Suit**

No.84 of 2013, dismissing the suit, are hereby **affirmed and upheld**.

The office is directed to send down the **Subordinate Court Records (SCR)**, together with a copy of this judgment, forthwith.

Before parting with the case, this Court places on record its appreciation for the assistance rendered and the persuasive submissions advanced by the learned Counsel appearing for both parties.

Order accordingly.

(Abdur Rahman, J)