

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

Civil Revision No. 2284 of 2023

In the matter of:

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

AND

In the matter of:

Md. Farid Alam

.... Plaintiff-appellant-petitioner

-Versus-

Adhinaik, 21 Ansar Battalian, Head Quarter of 31st

Boalkhali Mouza, Dighinala, Khagrachari

.... Defendant-respondent-Opposite-party

Mouza Prodhan and others

....Proforma defendant-respondent-opposite parties

Mr. Md. Osman Ghani Bhuiyan, Advocate

..... For the plaintiff-appellant-petitioner

Mr. Md. Abdur Rouf Sheikh, Advocate

.....For the opposite party No. 1

Mr. Goutam Kumar Roy, Advocate

..... For the opposite-party No. 2

Present:

Mr. Justice Md. Mozibur Rahman Miah

and

Mr. Justice Mohi Uddin Shamim

Heard on: 12.11.2023 and

Judgment on: 13.11.2023

Mohi Uddin Shamim, J.

This Rule was issued calling upon the opposite party no.1 to show cause as to why the order dated 28.03.2023 passed by the learned District

Judge, Khagrachhari in Civil Miscellaneous Appeal No. 06 of 2023 rejecting the same summarily by affirming the Order No.11 dated 06.02.2023, so far it relates to appointment of Commissioner to make local investigation to the Assistant Commissioner (Land), Khagrachhari and Order No.12 dated 20.03.2023 keeping the application with record without appointing an Advocate Commissioner for making local investigation passed by the Joint District Judge, Khagrachhari in Title Suit No.231 of 2021 should not set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court stayed all further proceedings of Title Suit No. 231 of 2021 for a period of 06 (six) months from date which will expire on 27.11.2023.

The short facts required for disposal of the instant revision application are that the present petitioner as plaintiff instituted a Title Suit being No. 231 of 2021 in the Court of Joint District Judge, Khagrachhari for declaration of title upon the suit land and recovery of khas possession. The learned Judge framed issues in the suit on 08.01.2023 and fixed the date for hearing on 06.02.2023 according to Rule 2 of Chittagong Hill Tracts Regulations, 1900.

The defendant Nos. 1 and 2 filed separate written statements and defendant No.3-6 filed joint statements to contest the suit denying all the materials averments made in the plaint.

On the day of framing of issues i.e. on 06.02.2023 the learned Joint District Judge, Khagrachari appointed an Assistant Commissioner (Land), Dighinala, Khagrachari for investigating the land locally and fixed the date on 20.03.2023 for submitting report. Thereafter, on 20.03.2023 the plaintiff filed an application under section 151 and Order XXVI, rule 9 of the Code of Civil Procedure to appoint an Advocate Commissioner to enquire into the matter and to submit report and to cancel the appointment of Assistant Commissioner (Land), Dighinala, Khagrachari. Thereafter, the learned Joint District Judge, Khagrachari upon hearing the application kept the same with the record which is tantamount to rejection of the application.

Being aggrieved by and dissatisfied with the order No. 11 dated 06.02.2023 so far as it concerns appointment of Assistant Commissioner (Land) to conduct local inspection and the order dated 20.03.2023 passed by the learned Joint District Judge, Khagrachari the plaintiff preferred a Civil Miscellaneous Appeal being No. 6 of 2023 in the Court of learned District Judge, Khagrachari under section 8(5) of the Chittagong Hill Tracts Regulation, 1900 (as amended in 2003). On admission hearing the learned Judge was pleased to reject the Miscellaneous Appeal summarily on 28.03.2023.

Being aggrieved by and dissatisfied with the said order dated 28.03.2023 passed by the learned District Judge, Khagrachari, the plaintiff as petitioner

filed this instant revisional application and obtained Rule and also an order of stay.

Mr. Md. Osman Ghani Bhuiyan, the learned counsel appearing for the plaintiff-petitioner upon taking us to the impugned judgment, revision application and all other connected documents appended therewith, at the very outset, submits that, since the Assistant Commissioner (Land), Dighinala, Khagrachari has been impleaded in the suit as defendant No.3 who is contesting the suit by filing written statement his appointment as Commissioner to inspect the suit land locally is illegal and the learned Joint District Judge, erred in law in appointing the Assistant Commissioner (Land), Dighinala, Khagrachari to make local inspection of the suit land. He also submits that, the lower appellate Court failed to appreciate this aspect and thereby rejected the appeal and affirming the order dated 06.02.2023 as such prays for making the Rule absolute.

On the other hand, Mr. Md. Abdur Rouf Sheikh, the learned counsel appearing on behalf of the opposite party No. 1 by filing counter affidavit taking us to the impugned order and all other connected materials available on record and submits that, the Assistant Commissioner (Land), Dighinala, Khagrachari is the defendant No.3 in the suit and the plaintiff made him a party in the suit as a pro-forma defendant and the plaintiff in his plaint very specifically stated that he is a pro-forma defendant having no interest in the

suit land and he also stated that, he did not claim any relief against the said pro-forma defendant rather he made them party in the case just because they keep records of the land and since the pro-forma defendant have no interest of the suit land the plaintiff has no case against them. So, both the courts below did not commit any error of law which may occasion the failure of justice. The learned counsel finally prays for discharging the Rule.

Mr. Goutom Kumar Roy, the learned counsel appearing on behalf of the opposite party No. 2 by filing counter affidavit adopted the submission of the learned counsel for the opposite party no. 1.

We have heard the learned counsel for the contending parties carefully considered the submissions so advanced by them, perused the revision application, the impugned order, all other documents appended therewith, the counter affidavits filed by the opposite party No. 1 and also the opposite party No. 2 separately and all other connected materials available on record.

It appears from the record that, the suit was filed for declaration of title and recovery of khas possession by evicting the possessor on the suit land. In the suit the Assistant Commissioner (Land), Dighinala, Khagrachari was made party as pro-forma defendant No.3. It also appears from the counter affidavit filed on behalf of the opposite party No.2 (page 6 paragraph 14) that the opposite party No. 3 Assistant Commissioner (Land), Dighinala, Khagrachari as defendant No. 3 in the Title Suit being No.231 of 2021. Thereafter, on

06.02.2023 on the day of framing of issues the learned Judge, after hearing the parties appointed the Assistant Commissioner (Land), Dighinala, Khagrachari as an investigator to investigate the land in question i. e. the suit land locally and to submit the detail report on the fixed date under Order XXVI rule 9 of the Code of Civil Procedure. On the very fixed day on 20.03.2023 the plaintiff filed an application praying for appointment of an Advocate Commission having knowledge of survey to investigate the suit land assigning some specific issue to be investigated by cancelling the earlier appointment of the Assistant Commissioner (Land), Dighinala, Khagrachari, who was one of the contesting party of the suit being No. 231 of 2021 which is evident from order No. 12 dated 20.03.2023 passed by the learned Joint District Judge, Dighinala, Khagrachari, but without considering the very aspect of the case the learned Joint District Judge, Dighinala, Khagrachari kept the application with the record without disposing of the same.

Challenging the said order dated 20.03.2023 plaintiff preferred Civil Miscellaneous Appeal No. 6 of 2023 before the learned District Judge, Khagrachari and ultimately on admission hearing the appeal was rejected summarily.

On perusal of Order XXVI, rule 9 of the Code of Civil Procedure it is clear that, the law provided authority to a Judge to appoint a Commission to make a local investigation whenever the Court thinks that, it is necessary for

proper elucidation of any matter in disputes the Court can do it *suo moto* but the Court should exercise its authority legally, reasonably and rationally, which cannot be arbitrary.

Here in this case, it is evident that the Assistant Commissioner (Land), Dighinala, Khagrachari was the pro-forma defendant No. 3 in the suit and he was evidently contesting the suit by filing written statements. So, there is a reasonable doubt about his neutrality and impartiality as being of the investigator of the subject matter of the said suit. The plaintiff has already raised the same question and filed an application to cancel the said appointment and to appoint an Advocate Commissioner to investigate the same. Therefore, for the ends of justice and for the sake of fair trial the learned Judge ought to have considered the said application filed by the plaintiff. Since the Assistant Commissioner (Land), Dighinala, Khagrachari as the pro-forma defendant No.3 is contesting the suit by filing written objection it may cast reasonable doubt that, the plaintiff may have been prejudiced. Moreover, appointing a person as investigator to investigate into the subject matter of the suit where he is one of the contesting parties of the suit is against the principle of natural justice. But both the Courts below failed to consider these very vital aspect of the case.

Considering the facts and circumstances of the case, and submissions so advanced by the contesting parties and discussions made hereinabove, we find merit in the Rule.

In the result, the Rule is made **absolute** without any order as to costs.

Accordingly, the order dated 28.03.2023 passed by the learned District Judge, Khagrachari in Civil Miscellaneous Appeal No.06 of 2023 arising out of order No. 11 dated 06.02.2023 and order No.12 dated 20.03.2023 passed by the learned Joint District Judge, Khagrachari in Title Suit No.231 of 2021 are hereby set aside.

The learned Judge of the trial Court is hereby directed to dispose of the application filed by the petitioner within 30 (thirty) days from the date of receipt of the copy of this judgment and order of this Court without any fail.

The order of stay granted at the time of issuance of the Rule, is hereby, recalled and vacated.

Let a copy of this judgment and order be communicated to the Court below forthwith.

Md. Mozibur Rahman Miah, J.

I agree.