

District-Barguna.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1871 of 2023.

Dokkhin Khajurtala Sarkari Prathomik Bidyaloy
----- Plaintiff-Petitioner.

-Versus-

Adhir Ranjan Chakravorty and others.
----- Defendants-Opposite Parties.

Mr. Mohammad Arshadur Rouf, Additional Attorney General
with
Ms. Syeda Nasrin, Advocate
----- For the Plaintiff-Petitioner.

Mr. Mintu Kumar Mondal, Advocate with
Mr. Kishore Kumar Mondal, Advocate
----- For the Defendants-Opposite Parties.

Heard On: 27.07.2025.

And

Judgment Delivered On: 12.08. 2025.

Md. Toufiq Inam, J.

Upon granting leave, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 05.03.2023 passed by the learned Additional District Judge, Barguna in Civil Revision No. 26 of 2021, rejecting the revisional application and thereby affirming the order dated 17.11.2021 passed by the learned Senior Assistant Judge, Barguna in Title Suit No. 96 of 2021 accepting the Commissioner's report, should not be set aside.

The petitioner, as plaintiff, instituted Title Suit No. 96 of 2021 before the Court of the learned Senior Assistant Judge, Barguna, seeking a decree for permanent injunction against the defendants-opposite parties.

The plaintiff's case, in short, is that land measuring 1.66 acres under then District Bakerganj (now Barguna), P.S. Barguna, Mouza Khajurtala, corresponding to SA Khatian No. 2 under Plot Nos. 1623/1640/3681/5203/5675/8083, is recorded in the name of the Ministry of Education, Barguna. The Khajurtala Government Primary School was constructed on Plot No. 5675. The plaintiff was a member of the School Managing Committee, while Defendant No. 1 is a former Chairman.

As the old school building had become dilapidated, a new structure named "Dokkhin Khajurtala Sarkari Prathomik Bidyaloy cum Cyclone Centre" was constructed. The plaintiff alleges that Defendant No. 1, along with others, illegally demolished the old school building and removed its construction materials to erect a private pucca building within the school premises. Despite intervention by government officials, education officers, the head teacher, members of the managing committee, and respected local citizens, the defendant continued his activities.

On 18.03.2021, the Managing Committee resolved to safeguard the government property, but on 20.03.2021, Defendant No. 1 again attempted forcible construction and threatened the plaintiff, prompting institution of the suit. The defendants contested by filing a written statement.

The plaintiff also filed an application for temporary injunction. By order dated 31.03.2021, the learned Senior Assistant Judge issued a seven days' show cause notice to the defendant-opposite party No. 1. Upon failure to respond, the court passed an order of status quo on 12.05.2021, restraining any change to the disputed land pending disposal of the injunction application.

To ascertain actual possession, the trial court, *suo motu*, by order dated 30.05.2021, appointed two Advocate Commissioners, directing both parties to deposit Tk. 3,000 each as fees, and framed three specific issues:

- ১। বাদী স্কুল বাস্তুবে কোন খতিয়ানের কোন কোন দাগের কতটুকু ভূমি ভোগ দখল করে?
- ২। ১নং বিবাদী বিরোধী ভূমির মধ্যে কোন খতিয়ানের কোন দাগের কতটুকু ভূমি ভোগ দখল করে?
- ৩। আরজির (ক) তফসিল বর্ণিত ২৮ শতাংশ ভূমির বাস্তুব অবস্থা কি এবং উক্ত ভূমিতে বর্তমানে কি আছে ?

The Commissioners inspected the land on 15.06.2021 and submitted their report on 16.06.2021, which was accepted on the same day.

Although 05.12.2021 was fixed for hearing objections, the plaintiff's objections to the report were never addressed on merit. Aggrieved, the plaintiff preferred Civil Revision No. 26 of 2021, which was rejected by the learned Additional District Judge by judgment dated 05.03.2023, affirming the trial court's order. Hence, the petitioner obtained the present Rule under section 115(4) CPC, which is now taken up for disposal.

Mr. Mohammad Arshadur Rouf, learned Additional Attorney General appearing for the petitioner, submits that the revisional court exceeded its jurisdiction by permitting the defendants to carry on construction work, despite the status quo order of 12.05.2021 having never been challenged or vacated. This, he contends, is contrary to law and amounts to exercising original jurisdiction in revision.

He further submits that the Commission's mandate was limited to ascertaining possession and the factual condition of the land. The Commissioners, however, made observations touching upon title and ownership, which were wholly beyond their terms of reference. Yet, both courts below failed to address this fundamental illegality.

He stresses that the property in question is a government primary school. Protection of public property, especially educational infrastructure, is a matter of significant public interest. Any

unauthorized occupation or construction on such property adversely impacts students, the institution, and the wider community. Courts must remain vigilant in safeguarding such assets from private encroachment. By allowing construction, the revisional court has undermined the very purpose of the pending injunction application.

In reply, Mr. Mintu Kumar Mondal, learned Advocate for the opposite parties, supports the impugned judgment, contending that the report was prepared lawfully in the presence of both parties, and that the Commissioners' findings show the school is occupying more land than it is entitled to.

Upon hearing both sides and examining the records, it is clear that the trial court's appointment of Advocate Commissioners was to obtain factual assistance in relation to possession for the limited purpose of deciding the injunction matter. The Commissioners were bound to confine their report strictly to the three framed issues.

More importantly, the trial court accepted the report on the very day of its submission, without affording the petitioner any meaningful opportunity to contest it. Although a later date was fixed for hearing objections, those objections were never adjudicated. This omission strikes at the root of procedural fairness.

The learned Additional District Judge, while exercising revisional jurisdiction, was duty-bound to examine the legality and propriety of the trial court's order. Instead, the revisional court exceeded the permissible scope of revision by allowing the defendants to proceed with construction, thereby effectively nullifying the subsisting and unchallenged order of status quo dated 12.05.2021. Such an order could only have been passed upon a proper application and adjudication in the injunction proceedings, not in a revision arising out of the acceptance of a Commission report.

A revisional court cannot assume the mantle of original jurisdiction nor modify an unchallenged order of the trial court. In the present case, the revisional court's action was not only without jurisdiction but also resulted in a manifest miscarriage of justice. In a suit for permanent injunction, the court must exercise great caution in granting any ad-interim relief in favour of the defendants, particularly where such relief permits them to alter the nature or character of the suit property, such as by commencing or continuing construction, pending adjudication. Any such order, if made without a proper application, notice, and hearing, risks prejudging the dispute, rendering the final relief infructuous, and causing irreparable harm to the plaintiff.

From the Commission's report dated 16.06.2021, it appears that although the Commissioners purported to address the three specific questions framed by the trial court, their findings were expressed in general and imprecise terms, lacking the specificity required to assist the court in determining the real issues in controversy. The very object of appointing a commission under Order XXVI of the Code of Civil Procedure is to obtain clear, factual answers to the matters referred, here, the exact extent and location of the land in possession of the plaintiff school, the defendants, and the present physical condition of the suit land.

Rather than providing definite measurements, clear demarcations, and unambiguous factual descriptions, the report contained broad observations, some of which strayed into commenting on title and ownership, matters not referred to the Commissioners and clearly beyond the permissible scope of a local investigation. Such vague and inconclusive findings defeat the very purpose of a commission, which is to equip the court with reliable, concrete, and objective data upon which a judicial determination can be made. In the absence of precise and issue-focused findings, the report fails to provide the evidentiary clarity needed to decide the injunction application, rendering it legally deficient and of little probative value.

In the present case, both the procedural irregularity in accepting the Commission's report without hearing objections and the substantive illegality of the revisional court's order warrant interference under Section 115 of the Code of Civil Procedure.

For the reasons stated above, **the Rule is made absolute.**

The judgment and order dated 05.03.2023 passed by the learned Additional District Judge, Barguna in Civil Revision No. 26 of 2021 affirming the order of the trial court dated 17.11.2021 accepting the Commissioner's report are hereby set aside, and the said report stands rejected.

The trial court is directed to proceed with Title Suit No. 96 of 2021 and dispose of the same expeditiously, preferably within 1 (one) year from receipt of this judgment, in accordance with law and after affording due opportunity to both parties.

Let this judgment be communicated at once.

(Justice Md. Toufiq Inam)