

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 5796 of 2023**

**In the matter of:**

Amiyo Chandra Sarder and others

Petitioners

-Versus-

Md. Harun-Or-Rashid and others

Opposite parties

Ms. Shahida Khatoon, Advocate

...For the petitioners

Mr. Md. Rabiul Hasan (Romeo), with

Mr. Md. Mainul Islam, Advocates

... For the opposite party No. 1

Heard on: 07.01.2026, and 21.01.2026

Judgment on: 18.02.2026

The petitioners have filed this revisional application under Section 115 of the Code of Civil Procedure (CPC) challenging the judgment and decree dated 05.03.2023 (decree signed on 06.03.2023) passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Naogaon in Title Appeal No. 207 of 2022 allowing the appeal and thereby reversing the judgment and decree dated 25.08.2022 (decree signed on 30.08.2022) passed by the learned Assistant Judge, Mahadebpur, Naogaon in Other Class Suit No. 126 of 2018 dismissing the suit.

The opposite party No. 1 as the sole plaintiff filed the suit for declaration of title and recovery of khas possession. The defendants

filed written statement but neither cross-examined the PWs nor adduced any evidence. The trial Court dismissed the suit. The appellate Court below allowed the appeal and decreed the suit.

Admittedly, Anil and Subal jointly owned and possessed 29 decimals of land in two adjacent plot Nos. 190 and 191 in equal share. Anil sold total 17 decimals of land, which was more than his share *i.e.* 14.5 decimals, to Taher and Hajera (plaintiff's parents) in 1974, 1980 and 1982 respectively, vide exhibit Nos. 2-4. Out of 17 decimals, Taher sold 11.5 decimals of land to a 3rd party. The sale deed was not exhibited before the trial Court but this fact is not disputed. Thereafter, in 2009 and 2016 respectively, Taher and Hajera transferred total 6.25 decimals of land to their son (plaintiff), vide exhibit Nos. 6 and 7. Plaintiff's specific case is that meanwhile Subal, who was the owner of 14.5 decimals of land, transferred his entire share to his brother Anil and Anil's son Antim (defendant No. 3) in 1998, vide exhibit No. 5. On perusal of exhibit-5, it appears that Anil and Antim got equal share in the land *i.e.* 7.25 decimals each. Mr. Md. Mainul Islam, learned Advocate appearing for the plaintiff-opposite party submits that the transfer of 7.25 decimals of land in favour of Anil in 1998 attracts Section 43 of the Transfer of Property Act, 1882 in that the plaintiff's predecessors' title in the suit land was subsequently acquired by applying the principle of feeding the grant by estoppel embodied in Section 43. If Section 43 is applied, Anil

became the owner of  $(14.5+7.25) = 21.75$  decimals of land out of 29 decimals in the suit plots. Out of 21.75 decimals, Anil transferred total 17 decimals of land to the plaintiff's parents. Anil's son Antim remained the owner of 7.25 decimals of land. After death of Anil, his three defendant sons including Antim became the owner of the rest 4.75 decimals of land in equal share.

In respect of dispossession, which gave rise to the prayer for recovery of khas possession, the plaintiff's case is that the defendants, who are three in number and all sons of Anil, had illegally dispossessed and occupied 3 decimals of land owned by the plaintiff.

As I mentioned earlier, the trial Court dismissed the suit but the appellate Court below decreed the suit. Ms. Shahida Khatoon, learned Advocate appearing for the defendant-petitioners, found it difficult to argue on Section 43 of the Transfer of Property Act so far as title of the plaintiff is concerned. She argued only one point that the suit land *i.e.* 3 decimals, which the plaintiff prays for recovery of khas possession, is not specifically described and identified as per requirement of Order VII, rule 3 of the CPC.

The description of the suit land given in para 7 of the plaint is as follows:

Corner of north-west:- home of Yeasin  
East:- home of Shamsul and Khalian  
West:- home of Antim and Hamidul

South end of home of Yeasin and Hamidul:- suit land

In para 7 of the plaint, the suit land is described as 2 decimals which the appellate Court below considered as typographical mistake for the reason that in the rest of the plaint the suit land is described as consisting of 3 decimals. I endorse the view of the appellate Court.

Now, I turn to the sketch map given in the schedule of the plaint. According to the said sketch map, the boundary of the suit land is as follows:

North:- home of Antim

South:- Harun-Or-Rashid (plaintiff)

East:- Road

West:- Harun-Or-Rashid (plaintiff)

PW1 (plaintiff) in his deposition, identified the suit land as follows:

Corner of north-west:- home of Yeasin

East:- home of Shamsul

West:- home of Antim and Hamidul

The description of the suit land (3 decimals) as given in para 7 of the plaint, in the sketch and in the deposition of the PW1 gives the clear impression that the suit land has not been described properly and is not identifiable. Had it been the plaintiff's case that the plaintiff was the owner of the entire 29 decimals of land in the suit plots, the apparent inconsistency in describing the suit land (3 decimals) may

not have mattered or had not a bearing upon the plaintiff's case of dispossession. According to the plaint case, different persons, including the plaintiff and the defendants, own and possess the land in the suit plots in different shares. Mr. Md. Mainul Islam, learned Advocate appearing for the plaintiff frankly concedes that 6.25 decimals of land, which was transferred to the plaintiff by his parents, vide registered deeds (exhibit Nos. 6 and 7) were not fully described and identified by giving metes and bounds in the deeds in question. Moreover, the plaintiff admits that Antim (one of the defendants) has home adjacent to the suit land situated at the north according to the sketch map but according to PW1, Antim's home is situated to the west of the suit land.

Ms. Shahida Khatoon rightly submits that Order 7 rule 3 of the CPC is relevant in the case, which is reproduced below:

“R.3 Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers, and where the area is mentioned, such description shall further state the area according to the notation used in the record of settlement or survey, with or without, at the option of the party, the same area in terms of the local measurement”.

Rule 3 provides that where the subject matter of a suit is immovable property, its description must be sufficient to identify it and must not be vague or unspecified [2007 BLD (AD) 8, 13 MLR 193]. A Court of law cannot pass a decree in respect of unspecified immovable property [(2013) 18 BLC (AD) 144, 2007 BLD (AD) 8]. A plaintiff failing to give specification of the suit land is not entitled to a decree even if he proves his title (10 BLC 767).

In the case in hand, the appellate Court below has failed to consider the material facts in proper perspective of law contained in Order VII, rule 3 of the CPC and thus, committed an error of law resulting in an erroneous decision occasioning failure of justice in allowing the appeal. Hence, the Rule succeeds.

In the result, the Rule is made absolute. The judgment and decree passed by the appellate Court below is set aside. The judgment and decree of the trial Court is upheld. The suit is dismissed.

Send down the L.C.R.