

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

Present:

Mr. Justice Md. Shohrwardi

Civil Revision No. 6643 of 2023

IN THE MATTER OF

An application under section 115(1) of the
Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Md. Toriqul Islam Tokon

... Petitioner

-Versus-

Md. Allek Ali and others

... Opposite parties

Mr. Hamidur Rahman, Advocate

.....For the petitioner

Mr. Pirjada Syed Abu Hanifa Ebna Jamal

Md. Alam, Advocate

...For the opposite party No.1

Heard on 16.07.2026

Judgment on: 21.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 16.08.2023 passed by District Judge, Kushtia in Miscellaneous Appeal No. 66 of 2022 rejecting the application filed by the petitioner praying for local investigation should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule is that the Opposite Party No. 1 as applicant filed Title Suit No. 402 of 2013 in the Court of Assistant Judge, Kushtia Sadar, Kushtia praying for decree of

partition of total 59 decimals of the land of RS Khatian No. 449, RS Dag No. 2461. He also filed Miscellaneous Case No. 96 of 2013 for “buy up” 5 decimals of land out of said 59 decimals of land impleading the petitioners as defendants.

During trial, both the plaintiff and defendants of the said suit adduced evidence to prove their respective cases and after concluding trial, the trial court decreed the Title Suit No. 402 of 2013 and also allowed the Miscellaneous Case No. 96 of 2013 by judgment and order dated 25.07.2022. Against the said judgment and order passed in Miscellaneous Case No. 96 of 2013 the opposite party filed Miscellaneous Appeal No. 66 of 2022 in the Court of District Judge, Kushtia. During pendency of the said appeal, the appellant filed an application under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 praying for appointment of the commission to hold local investigation to ascertain as to whether 5 decimals of land purchased by the appellant is demarcated by boundary or not. After hearing the parties, the appellate court rejected the said application holding that the local investigation is not necessary in the appeal stage to ascertain the possession of the appellant which can be decided considering the evidence adduced by the parties.

The learned Advocate Mr. Hamidur Rahman appearing on behalf of the petitioner submits that after purchasing 5 decimals of land, the petitioner constructed a house and boundary wall and now residing therein and to adjudicate the dispute between the parties it is required to appoint commission for investigation to adjudicate whether the suit land is the joint property of the undivided family. He prayed for making the Rule absolute.

The learned Advocate Mr. Pirjada Syed Abu Hanif Ebna Jamal Md. Alam appearing on behalf of the opposite party No. 1 submits that admittedly the petitioner after purchasing the land constructed the

house. Therefore, the subsequent construction of the house and boundary by the petitioner on the suit land is not relevant to adjudicate the real dispute between the parties. Therefore, he prayed for discharging the Rule.

On perusal of the records, it reveals that the opposite party No. 1 filed the suit for “buy up” of 5 decimals of land. Admittedly the petitioner purchased the land and constructed the house and boundary and now possessing the land. To determine whether the suit land is a joint property of the undivided family or not, the local investigation regarding the construction of the house after purchasing the land is not relevant at all. Therefore, I am of the view that the appellate court below rightly rejected the application holding that to ascertain the possession of the appellant, local investigation is not necessary.

I do not find any illegality in the impugned order passed by the appellate court below.

In the result, the Rule is discharged.

The appellate court below is directed to dispose of the appeal expeditiously preferably within 06 (six) months.

However, there will be no order as to costs.