

District-Bagerhat.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 684 of 2024.

Nikhil Chandra Biswas and another.

..... Defendant Nos. 20-21-Petitioners - Petitioners.

-Versus-

Shushil Biswas and others.

..... Plaintiffs-Opposite Parties-Opposite Parties.

Mr. Uzzal Bhowmick, Advocate

.....For the Defendant Nos.20-21-Petitioners-Petitioners.

Mr. M.A. Quddus Shaikh, Advocate

.....For the Plaintiffs-Opposite Parties-Opposite Parties.

Heard On: 25.06.2025, 29.06.2025 and 30.06.2025.

And

Judgment Delivered On: 1st Day of July 2025.

Md. Toufiq Inam, J.

Leave was granted under Section 115(4) of the Code of Civil Procedure (CPC), and a Rule was issued at the instance of defendant Nos. 20 and 21- petitioners, calling upon the opposite parties to show cause as to why the judgment and order dated 05.10.2023 passed by the learned Additional District Judge, 2nd Court, Bagerhat in Civil Revision No. 26 of 2022, affirming the judgment and order No. 60 dated 22.05.2022 passed by the learned Senior Assistant Judge, Mollahat, Bagerhat in Title Suit No. 103 of 2021 (formerly T.S. No. 68 of 2017), rejecting the petitioners' application for a second local investigation in a suit for partition and section 4 of the Partition Act, should not be set aside.

The relevant facts, briefly stated, are that the opposite parties-plaintiffs instituted Title Suit No. 68 of 2017 on 15.11.2017 seeking

partition together with prayer under section 4 of the Partition Act. In the course of proceedings, the trial court fixed 23.01.2018 as the next date. However, on 27.11.2017, an unscheduled date, the plaintiff moved an application seeking a local investigation, which was allowed. An Advocate Commissioner was appointed, who subsequently submitted his report on 18.01.2018. The report did not specifically mention the nature, existence, a valuation of any structure or building allegedly constructed by defendant Nos. 20 and 21 (petitioners herein) on the suit land. Aggrieved by this omission, the petitioners filed a written objection on 04.04.2018.

Subsequently, on 23.04.2018, the petitioners filed an application seeking a second local investigation on the ground that the report submitted by the first Commissioner failed to properly identify their permanent structure, which was central to their claim. Since the plaintiff had also invoked Section 4 of the Partition Act and sought to include the land on which the disputed structure allegedly stands, such omission carried significant consequences.

On 22.07.2018, the petitioners cross-examined the Advocate Commissioner and specifically suggested that a permanent structure existed on the suit land. The Commissioner denied the suggestion and reiterated the contents of his report, although he mentioned in the report that apart from other houses, a new house has been seen. During cross examination by the petitioners he acknowledged about a new house but did not state the nature of the house as the same is not asked in the writ. Thereafter, on 13.08.2018 (Order No. 17), the trial court accepted the report. Later, on 22.05.2022 (Order No. 60), the trial court rejected the application for second local investigation, which was affirmed by the revisional court on 05.10.2023. Being aggrieved by the same, the petitioners moved before this Court and obtained the present Rule.

Mr. Uzzal Bhowmick, the learned Advocate appearing for the petitioners, submits that the impugned orders have resulted in a failure of justice and have materially prejudiced the petitioners. He contends that the Commissioner's report is deficient as it omits to mention of a permanent structure or building constructed by the petitioners on the suit land, an issue crucial to a suit for partition coupled with relief under section 4 of the Partition Act.

He further argues that this omission was pointed out during cross-examination, but the Commissioner unjustifiably denied the suggestion. According to him, the failure to record or inquire into the existence of such a structure goes to the root of the matter, as proper valuation of the structure is essential to ensure equitable compensation once the suit for buy-up is decreed. He relies on the cases reported in AIR 1987 Ker 156 and 3 BLC (1998) 349 in support of his contentions.

In reply, Mr. M.A. Quddus Shaikh, learned Advocate appearing for the plaintiffs-opposite parties, submits that the petitioners fully participated in the first local investigation, cross-examined the Commissioner at length, and failed to produce any documentary or material evidence to establish the existence of the alleged permanent structure.

He further contends that the trial court, after considering objections, accepted the Commissioner's findings, which were subsequently upheld by the revisional court. He relies on the decision reported in 10 MLR (AD) 2005, page 25, wherein it was held that a defendant who fails to file objection or raise timely dispute is debarred from seeking another commission on the same issue. According to him, mere dissatisfaction with the Commissioner's report does not justify a second local investigation. Any dispute regarding the existence or valuation of the structure may be proved through evidence at trial. In

this context, he cites 10 MLR (AD) 2005, page 161. He argues that a second local investigation would only delay the proceedings unnecessarily.

This Court, having granted leave under section 115(4) CPC, is required to determine whether the concurrent decisions of the courts below rejecting the petitioners' application for a second local investigation have occasioned a failure of justice or caused material prejudice to the petitioners. The scope of interference in revision is limited, and such intervention is permissible only where the courts below have committed jurisdictional error, failed to exercise jurisdiction vested in them, or acted illegally or with material irregularity.

In a suit for partition coupled with relief under section 4 of the Partition Act, the existence and valuation of structures on the suit land, especially those allegedly constructed by one of the co-sharers or defendants, are significant for equitable consideration of the buy-up claim. Therefore, an accurate and comprehensive local investigation plays a critical role in identifying the physical status of the property, including any permanent structures, which may directly influence the adjudication of valuation and equitable division.

The petitioners' contention that the Advocate Commissioner's report failed to specifically identify or comment on a permanent structure allegedly constructed by them, although such a structure was directly relevant to the relief claimed under section 4, raises a legitimate concern. While the Commissioner acknowledged seeing a new house, he did not classify or describe it further. In cross-examination, the Commissioner reiterated the report's findings but admitted he did not verify the nature of the new house as he was not directed to do so in the writ of commission. This apparent omission casts doubt on the adequacy and completeness of the report.

It is true that the petitioners participated in the first local investigation and filed a written objection raising the issue of the omission. They also cross-examined the Commissioner to highlight the inadequacy of the report. The trial court accepted the report despite these objections. However, the record does not suggest that the court addressed the petitioners' grievance regarding the structure's omission with the level of scrutiny required in a partition suit involving buy-up relief.

While it is settled law that mere dissatisfaction with a commissioner's report does not entitle a party to a second local investigation, a second commission may be warranted where the first report is manifestly deficient or fails to address a central issue. In the present case, the alleged permanent structure, if established, would have a direct bearing on the buy-up claim under section 4 of the Partition Act. The petitioners have not introduced new claims or evidence but have sought clarification on a material factual issue inadequately addressed earlier. The precedents cited by the petitioners, particularly *AIR 1987 Ker 156* and *3 BLC (1998) 349*, support the principle that if a local investigation is essential to adjudicate a key factual issue, and if the earlier report is ambiguous or incomplete, a second investigation may be allowed to prevent miscarriage of justice.

On behalf of the opposite parties, it has been rightly argued that the courts should be cautious in permitting duplication of proceedings and avoid unnecessary delay. However, where the factual foundation essential for invoking Section 4 of the Partition Act appears to be incomplete or potentially inaccurate, the principle of efficiency must yield to the imperative of fairness. The reliance placed on *10 MLR (AD) 2005* is distinguishable; in that case, the party failed to raise objections in a timely manner, thereby acquiescing to the report. In contrast, the present petitioners promptly raised objections and participated in cross-examination, demonstrating an active and timely challenge rather than passive acceptance.

In view of the foregoing analysis, this Court finds that the trial court and the revisional court below erred in law in rejecting the prayer for second local investigation without adequately addressing the material deficiency pointed out in the first report. The omission to properly record and verify the existence and nature of a permanent structure potentially undermines the just adjudication of the suit.

In the result, **the Rule is made absolute.**

Accordingly, the impugned judgment and order dated 05.10.2023 passed by the learned Additional District Judge, 2nd Court, Bagerhat in Civil Revision No. 26 of 2022, as well as the judgment and order dated 22.05.2022 passed by the learned Senior Assistant Judge, Mollahat, Bagerhat in Title Suit No. 103 of 2021 (formerly Title Suit No. 68 of 2017), rejecting the application for second local investigation, are hereby set aside.

The learned trial court is directed to allow a second local investigation by appointing a fresh Advocate Commissioner, with specific terms of reference and within a fixed timeframe, to inspect the suit land and to record and report on the existence, nature, and valuation of any permanent structures, particularly those claimed to have been constructed by defendant Nos. 20 and 21.

The trial court shall ensure that notice is issued to all parties, directing them to appear before the Advocate Commissioner. The Commission shall also notify the parties of the date, time, and place of the local investigation.

Upon receipt of the report, the trial court shall proceed with the suit expeditiously, in accordance with law.

(Justice Md. Toufiq Inam)