

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 3966 of 2022

In the matter of:

Arzu Rahman Bhuiyan

Petitioner

-Versus-

Mst. Monowara Begum @ Bhulu being dead
her legal heirs A.S.M. Sayem and others

Opposite parties

Mr. Sadananda Rana, with
Mr. Mahmudul Haque Osmain, Advocates

...For the petitioner

Mr. Moteen Uddin Anwar, Advocate

... For the opposite party

Heard on: 09.07.2025, 19.01.2026 and
08.02.2026

Judgment on: 08.02.2026

The petitioner has filed this revisional application under Section 115 of the Code of Civil Procedure (CPC) challenging the judgment and decree dated 30.05.2022 passed by the learned Senior Assistant Judge, 4th Court, Narayangonj in Small Cause Court (S.C.C.) Suit No. 14 of 2018 dismissing the same. The suit was filed for eviction of the monthly tenant.

During the course of hearing of the Rule, the plaintiff-petitioner filed an application under Order 23 rule 1 of the CPC for permission for withdrawal of the suit with liberty to institute a fresh suit on the ground that the suit shall fail for a formal defect. The defendant-opposite party filed a counter affidavit against the said application.

The plaintiff filed the S.C.C. suit in 2011 which was subsequently renumbered in 2018 for eviction of the defendant from the suit property claiming that the defendant is the monthly tenant under the plaintiff. The defendant contested the suit.

The trial Court dismissed the suit holding that the defendant was not the monthly tenant under the plaintiff. Mr. Sadananda Rana, the learned Advocate appearing for the plaintiff, in support of the application for withdrawal of the suit with permission to sue a fresh, at the outset, points out to the schedule of the plaint which described the suit property. The said schedule is reproduced below:

“তফসিল

জেলা, থানা ও পৌরসভা- নারায়ণগঞ্জ অধীন নারায়ণগঞ্জ শহরের আমলাপাড়া (কালিরবাজার)স্থিত জাতীয় পার্টির অফিসের পেছনে ৪/১, নং কে.সি. নাগ রোড, আমলাপাড়া, ওয়ার্ড নং- ৪, নারায়ণগঞ্জ। যাহার উত্তরে- চেয়ারম্যান বাড়ী, দক্ষিণে-

পৌরসভার রাস্তা, পূর্বে- উজির ভূইয়ার টিনসেড ঘর, পশ্চিমে- নাজিম উদ্দিনের বাড়ী
এই চৌহদ্দির মধ্যে নালিশা প্রিমিসেস অবস্থিত।”

Mr. Sadananda Rana submits that the schedule has not complied with the requirements of Order 7 rule 3 of the CPC. Order 7 rule 3 is reproduced below:

“R.3 Where the subject-matter of the suit is immovable property- 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).

It is observed in the text book 'The Law of Civil Procedure' by Shaukat Mahmood and Nadeem Shaukat, 11th revised and enlarged edition, 2019 vol. III, at page 2752 that a suit framed under the provisions of the CPC if not arranged in accordance with O. VI, rr. 1, 2, 3, 4, 14, 15 or O. VII, rr. 1 to 7, CPC would be deemed to be suffering from formal defect (2001 SCMR 148=PLJ 2000 SC 1831).

The trial Court accepted that the suit property and other properties were owned by the plaintiff's father who formed a trust in respect of those properties including the suit property. The trial Court, however, observed that the plaintiff had failed to prove his case that subsequently the trust was dissolved with the consent of the trustees and that the successors of the properties executed a partition deed and that the plaintiff obtained the suit property and became owner of the same. The trial Court further observed that the relevant C.S. Khatian, S.A. Khatian, R.S. Khatian, Mutation Khatian and D.C.R. tendered in evidence by the plaintiff do not conclusively establish the ownership and possession of the suit property by the plaintiff.

It is apparent that the suit property has not been described in accordance with the provisions of Order VII, rule 3 of the CPC. I am surprised as to how the trial Court came to conclusion that the relevant khatians and the D.C.R. do not

establish the plaintiff's ownership in the suit property when the schedule of the same given in the plaint, *ex facie*, is given in such a manner that it is practically impossible to identify the suit property with reference to those khatians and the D.C.R.

It is unfortunate that this point was not noticed by the parties as well as by the trial Court. It is obvious that the suit would have failed for this formal defect. There is another aspect of the case. The trial Court raised a question as to the title of the plaintiff in the suit property. Under Section 23 of the Small Cause Courts Act, 1887, the Court has to return the plaint if the suit involves questions of title. Therefore, the trial Court was wrong in dismissing the suit on merit doubting the plaintiff's title in the suit property.

Mr. Moteen Uddin Anwar, learned Advocate appearing for the defendant-opposite party submits that after a full-fledged trial, the plaintiff should not be given an opportunity to withdraw the suit rather the plaintiff should be given an opportunity to amend the plaint. In my view, it is plaintiff's choice to select whether the plaint should be amended at revisional stage or would withdraw the suit under O. 23 r. 1 with permission of the Court to sue a fresh. The plaintiff has opted for withdrawal of the suit. I find no difficulty to allow the same for the reasons discussed above.

Accordingly, the application for withdrawal of the S.C.C. Suit No. 14 of 2018 (earlier S.C.C. Suit No. 01 of 2011) is allowed for the formal defect as mentioned above with permission to sue a fresh in accordance with law. The judgment and decree passed by the trial Court is set aside. The Rule is disposed of accordingly.

Send down the L.C.R.