

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.3734 OF 2024

Md. Shohidul Islam Biddut and another
..... Defendant-*Petitioners*

-VERSUS-

Sultan Ahammod
..... Plaintiff-*Opposite Party*

Mr. Khandaker Aminul Haque, with
Mr. Muhammad Amir Hosen, Advocates
..... *For the petitioners.*

Mr. Md. Masudur Rahman Rana, Advocate
..... *For the Opposite party.*

Heard on 27.02.2025 and 15.05.2025

Judgment on 02.06.2025

By this Rule, the opposite party was called upon to show cause as to why the impugned Judgment and order dated 27.02.2024 passed by the learned Additional District Judge, Natore, in Civil Revision No.33 of 2022, disallowed the Civil Revision and thereby affirming the Judgment and order dated 28.07.2022 passed by the learned senior Assistant Judge, Sadar, Natore in Other Class Suit No. 247 of 2020 accepted the Advocate Commissioner's report should not be set aside and or pass such

other or further order or orders as to this court may seem fit and proper.

Facts in a nutshell, for disposal of the Rule is that the opposite party, as plaintiff, instituted Other Class Suit No. 247 of 2022 before the senior Assistant Judge, Sadar, Nator against the opposite parties, impleading them as defendants praying for permanent injunction in respect of the scheduled land as described in the schedule of the plaint.

The defendants contested the suit by filing a written statement denying all the material allegations made in the plaint.

During the pendency of the suit, the plaintiff-opposite party, on 26.11.2020, filed an application under Order 26, Rule 9 of the Code of Civil Procedure, praying for the appointment of an advocate commissioner to determine the dispute between the parties. Subsequently, the learned Senior Assistant Judge, Sadar, Nator, issued the writ for Advocate Commissioner in favor of Shamol Kumar Saha and also directed him to submit a commission report after conducting a local investigation.

Thereafter, Mr. Shemol Kumar Saha, the learned Advocate Commissioner, visited the disputed location and prepared a

sketch map and index of the disputed property. After the completion of the investigation, a report was submitted on 25.02.2021. The learned Advocate Commissioner, Mr. Shemol Kumar Saha, also examined as C.W.1, against which the defendants/petitioner filed a written objection. Subsequently, the learned trial court, by the order dated 28.07.2022, accepted the advocate commissioner report.

Being aggrieved, the defendant preferred Civil Revision No. 33 of 2022 before the learned District Judge, Nator. Eventually, the learned Additional District Judge, 3rd Court, Nator, rejected the Civil Revision by Judgment and Order dated 28.11. 2022, and affirmed the Judgment and order passed by the learned Senior Assistant Judge, Sadar, Nator.

Being aggrieved, the defendant, as petitioner, filed this Civil Revision under Section 115(4) of the Code of Civil Procedure before this court and obtained the present Rule and an order of stay extended from time to time.

Mr. Khandaker Aminul Haque, the learned advocate appearing on behalf of the petitioner, submits that in the application filed by the plaintiff opposite party for appointing an advocate commissioner, there is only one question regarding

encroachment between the Dag No. 7710 and 7711, but the learned Advocate Commissioner also mentioned the Dag No. 7712 which is out of Advocate Commission Writ and thus the same is misuse, colorable exercise of power but both the courts below failed to appreciate the same most illegally, arbitrarily accepted the Advocate Commissioner Report.

Mr. Md. Masudur Rahman Rana, the learned advocate appearing on behalf of the opposite party, submits that the court below justifiedly accepted the Advocate Commissioner's Report because, at the time of trial, the objection can be raised by the defendant.

I have anxiously considered the submission of the learned advocate for both parties and perused the impugned Judgment and order, Advocate commissioner's report (Annexure-C), and other materials on record. It appears that the opposite party, as the plaintiff, instituted the instant suit for a permanent injunction in respect of suit plot No. 7711. After filing the suit, the plaintiff filed an application under Order 26, Rule 9, for the appointment of an Advocate Commissioner. It manifests that the plaintiff puts the question for investigation that:-

“জেলা, উপজেলা ও থানা নাটোর সাবেক ২০৪ হাল ১৫১ নং মৌজা নাটোর মধ্যে হাল ৭৭১০ নং দাগে নির্মাণাধীন ভবনের “কোন অংশ” নালিশী হাল ৭৭১১ নং দাগের .০৩০৬ একর ভূমিতে প্রবেশ করিয়াছে কি না? করিলে তদসংক্রান্ত বিস্তারিত বর্ণনা।”

In reply to the aforesaid question the learned Advocate commissioner reported that:-

“জেলা, উপজেলা ও থানা নাটোর সাবেক ২০৪ হাল ১৫১ নং মৌজা নাটোর মধ্যে হাল ৭৭১০ নং দাগের নির্মাণকৃত ভবনের পশ্চিমাংশের ০.০০৭৮ একর বা ৭৮ লিংক ভূমি নালিশী হাল ৭৭১১ নং দাগের .০৩০৬ একর ভূমির পূর্বাংশের ভূমিতে প্রবেশ করিয়াছে। উক্ত নির্মাণকৃত দোতলা বিল্ডিং এ জানালা, দরজা লাগানো হইয়াছে। সাদা রং করা আছে।

অপর দিকে উক্ত মৌজার হাল ৭৭১২ নং দাগের নির্মাণাধীন ভবনের উত্তরাংশে .০১৪১ একর ভূমি নালিশী হাল ৭৭১১ নং দাগের দক্ষিণাংশের ভূমিতে প্রবেশ করিয়াছে। যাহার নির্মাণ কাজ চলিতেছে।”

It appears from the report that the learned Advocate Commissioner beyond the question additionally replied that:-

“অপর দিকে উক্ত মৌজার হাল ৭৭১২ নং দাগের নির্মাণাধীন ভবনের উত্তরাংশে .০১৪১ একর ভূমি নালিশী হাল ৭৭১১ নং দাগের দক্ষিণাংশের ভূমিতে প্রবেশ করিয়াছে। যাহার নির্মাণ কাজ চলিতেছে।”

It appears that there is only one question in the application for local investigation regarding encroachment between plot No. 7710 and 7711, rather than the learned Advocate Commissioner

additionally including plot No. 7712, which is outside the scope of the Advocate Commissioner's Writ.

The settled proposition of law is that the Advocate Commissioner confined his inquiry to the points asked for and reported only without taking other work at the parties' request. This view gets support from the case of Md. Abial Quasem Vs. Md. Lutfur Rahman reported in (1984-85) 5 Bangladesh Supreme Court Digest, page 74, wherein their Lordship of the Appellate Division held:-

"Commissioner to confine his inquiry to the points asked for and report on them only without undertaking other work at the request of the parties-Court not at precluded from considering the Commissioner's report afresh again in the light of fresh materials-Brought in the record by the parties mere acceptance of report should not give apprehension in the mind of the litigant."

This view also gets support from the case of Jahanara Begum and others Vs. Azizul Islam (Kanchon) and others reported in 47 DLR (HCD) 587 wherein it was held that:-

"In the instant case the learned trial Court could not find whether any illegality or mistake was committed

by the Advocate Commissioner while relayment and local investigation was made in respect of the suit land and the trial Court has also not said that the Commissioner went beyond the writ endorsed to him. He has simply said that some irrelevant things have been stated in the report. In this view of the matter I am inclined to find that the Assistant Judge is not correct in rejecting the report of the Advocate Commissioner because the irrelevant things, if any, in the report could be deleted from the report which are not necessary for the purpose of deciding the issues in the suit."

In the instant case, neither of the courts below could determine whether the learned Advocate Commissioner committed any illegality or mistake during the relayment and local investigation of the suit land nor whether the Advocate Commissioner went beyond the writ endorsed to him.

Considering the above facts and circumstances, as well as the reasons stated above, it appears that justice would be best served if the Rule is disposed of with an order of expunge of the irrelevant materials from the Advocate Commissioner's Report,

which are not necessary for the purpose of deciding the issues in the suit, as per the Advocate Commissioner's Report.

Resultantly, the Rule is disposed of.

Let the irrelevant materials that "অপর দিকে উক্ত মৌজার হাল ৭৭১২ নং দাগের নির্মাণাধীন ভবনের উত্তরাংশে .০১৪১ একর ভূমি নালিশী হাল ৭৭১১ নং দাগের দক্ষিণাংশের ভূমিতে প্রবেশ করিয়াছে। যাহার নির্মাণ কাজ চলিতেছে।" are expunged from the Advocate Commissioner's Report those are not necessary for the purpose of deciding the issues in the suit as per the Advocate Commissioner's Report.

The order of stay passed by this court at the time of issuance of Rule stands vacated.

Communicate the Judgment at once.

.....
(Md. Salim, J).