

District-Jhenaidah.**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)****Present:****Mr. Justice Md. Toufiq Inam****Civil Revision No. 1456 of 2024.**

Basudeb Biswas and others.

----Contesting Added Defendant-Respondent
Nos. 11 to 13 and 8 heirs of 9 and 10.

-Versus-

Mosa. Hasina Jahan and others.

---- Opposite Parties.

Mr. Shasti Sarker, Advocate

----For the Contesting Added Defendant-Respondent
Nos. 11 to 13 and 8 heirs of 9 and 10.

Mr. Mr. Hossain Al Amin, Advocate

----For the Plaintiffs-Opposite Party No. 3.

Heard On: 21.08.2025, 29.10.2025.

And

Date of Judgment: 11th Day of November 2025.**Md. Toufiq Inam, J.**

By issuance of this Rule, the opposite parties were called upon to show cause as to why the judgment and decree dated 03.04.2019 (decree signed on 10.04.2019) passed by the learned District Judge, Jhenaidah, in Title Appeal No. 60 of 2016, allowing the appeal and decreeing the suit for partition preliminarily and thereby reversing the judgment and decree dated 30.06.2016 (decree signed on 16.07.2016) passed by the learned Senior Assistant Judge, Shailkupa, Jhenaidah, in Title Suit No. 67 of 2003, should not be set aside and/or such other or

further order or orders be passed as to this Court may seem fit and proper.

The opposite parties, as plaintiffs, instituted Title Suit No. 67 of 2003 seeking partition of the scheduled properties, impleading the present petitioners as defendants. The suit was contested; both parties adduced oral and documentary evidence, and upon hearing, the learned trial Court dismissed the suit on contest by judgment and decree dated 30.06.2016.

Being aggrieved, the plaintiffs preferred Title Appeal No. 60 of 2016 before the learned District Judge, Jhenaidah. Upon contested hearing, the learned appellate Court reversed the trial Court's decision and decreed the suit preliminarily by judgment and decree dated 30.04.2019. Being dissatisfied with the said preliminary decree, the defendants–petitioners filed the instant revisional application under Section 115 of the Code of Civil Procedure with a delay of 1699 days, whereupon the Rule was issued. The Rule is now taken up for final hearing.

Mr. Shasti Sarker, learned Advocate for the petitioners, submits that the learned appellate Court committed a gross error of law in reversing a well-reasoned judgment of the trial Court without properly appreciating the evidence on record. He contends that the defendants had duly objected to the Advocate Commissioner's report and never

accepted the preliminary decree. Since the preliminary decree was passed for the first time by the appellate Court, the petitioners, being aggrieved thereby, had no statutory forum of appeal, and therefore rightly invoked the revisional jurisdiction of this Court; accordingly, the present revision is not barred by Section 97 of the Code of Civil Procedure. He further argues that the appellate Court acted mechanically and failed to determine the specific shares of the parties or to ascertain their respective title and possession. Thus, according to him, the impugned judgment and preliminary decree are perverse, arbitrary, and contrary to law, and as such are liable to be set aside.

Per contra, Mr. Hossain Al Amin, learned Advocate for the plaintiff-opposite party No.3, at the very outset, questions the maintainability of the revisional application. He submits that the preliminary decree was passed on 30.04.2019, and thereafter the final decree was duly prepared and signed on 01.12.2022 by the Appellate Court upon the Advocate Commissioner's report dated 21.08.2019, in presence of the present petitioners. Once a final decree is drawn up, the preliminary decree merges with it. Therefore, in view of Section 97 of the Code of Civil Procedure, the preliminary decree cannot be challenged separately by way of a revision.

He further submits that the petitioners, having participated in the final decree proceedings, are estopped from questioning the preliminary decree at this belated stage. He contends that the revisional

application was filed with an inordinate delay of 1699 days without disclosing the fact of final decree, which amounts to suppression of material facts disentitling the petitioners from equitable relief.

In support, he relies upon the decision reported in *11 BLT (HCD) 508*, wherein it was held that once a final decree in a partition suit is drawn up pursuant to the Commissioner's report, the preliminary decree cannot be reopened by way of a separate revisional application. Accordingly, he prays that the Rule be discharged with costs.

Having considered the submissions of the learned Advocates for both sides and upon perusal of the record, it appears that the preliminary decree passed in Title Appeal No. 60 of 2016 was followed by preparation of a final decree dated 01.12.2022 upon confirmation of the Commissioner's report dated 21.08.2019. It further appears that the present petitioners participated in the final decree proceedings and raised no independent challenge against the final decree by way of appeal or revision.

This Court finds that the present revisional application suffers from a fundamental defect relating to maintainability. It is an admitted fact that the preliminary decree in the instant partition suit was passed by the learned District Judge on 30.04.2019 and that, thereafter, the Advocate Commissioner submitted his report on 21.08.2019. On the basis of that report, the Appellate Court duly prepared and signed the

final decree on 01.12.2022. The record further reflects that the petitioners participated in the final-decree proceedings, filed objections before the Commissioner, and were fully cognizant of the progress of the matter.

Notwithstanding such active participation, the petitioners have preferred the present revision only against the preliminary decree, without disclosing the subsequent final decree. This deliberate suppression of material facts seriously undermines the bona fides of the petitioners and disentitles them from any discretionary or equitable relief under Section 115 of the Code of Civil Procedure. More importantly, by operation of law, the preliminary decree has merged into the final decree, and the rights of the parties now stand conclusively determined in the final decree proceedings.

In these circumstances, Section 97 of the Code of Civil Procedure squarely applies. The statutory mandate is explicit: a party who has not challenged a preliminary decree at the appropriate stage is barred from disputing its correctness in any proceeding directed against the final decree. Here, they participated through the final-decree stage. The revisional application filed after an unexplained delay of 1699 days, and filed only after the final decree has attained finality, is clearly a device to circumvent the bar created by Section 97 CPC.

The reliance placed by the opposite party on the decision reported in 11 BLT (HCD) 508 is well-founded. In that case, this Division categorically held that once a final decree is drawn up in a partition suit in pursuance of the Commissioner's report, the preliminary decree cannot be reopened or revised separately, as the entire cause of action culminates in the final decree. This ratio applies with full force to the present case. Far from supporting the petitioners, the principle in 11 BLT (HCD) 508 operates directly against their attempt to revive the preliminary decree long after it has merged into the final adjudication. Therefore, this Court finds that the present revision, filed after the drawing up of the final decree, and filed without any challenge to that final decree, is wholly misconceived, barred by law, and not maintainable. The petitioners cannot be permitted to indirectly unsettle a final decree through a belated challenge to the preliminary decree, particularly after suppressing material facts and participating in the final-decree proceedings.

This Court also holds that even where a preliminary decree is passed for the first time by the appellate Court, it does not lose its character as a preliminary decree within the meaning of Section 2(2) CPC, and therefore the bar under Section 97 CPC applies with equal force. Once the Advocate Commissioner's report is accepted and the final decree is duly prepared and signed, the preliminary decree, irrespective of the forum that rendered it, merges into the final decree and cannot thereafter be reopened or challenged independently. After the drawing

up of the final decree, no separate revision lies against the preliminary decree, particularly where the party participated in the final-decree proceedings and allowed rights to crystallize. Thus, the present revisional application, directed solely against the preliminary decree after an inordinate delay and suppressing the existence of the final decree, is barred by Section 97 CPC, hit by the doctrine of merger, and not maintainable in law.

Accordingly, this Court is of the view that no interference is warranted in the impugned judgment and decree in exercise of revisional jurisdiction under Section 115 CPC. The Rule is, therefore, liable to be discharged.

Accordingly, **the Rule is discharged, being not maintainable.**

However, there shall be no order as to costs.

Let the lower Court records be sent down together with this judgment at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.