Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 6168 of 2024

Mohammad Nur Nobi

..... Petitioner

-Versus-

Parvin Akhtar and others

..... Opposite-Parties

Mr. M.M. Shafiullah, Advocate with
Mr. Ashikur Rahman, Advocate
… For the Petitioner

Mr. Sayed Quamrul Hossain, Advocate with
Mr. Mohammed Khorshed Alam, Advocate
… For the Opposite Party No. 2

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Judgment on 13.07.2025

In this revision Rule was issued granting leave to revision at the instance of the petitioner calling upon the opposite parties to show cause as to why the impugned judgment and order dated 03.09.2024 passed by the learned District Judge, Noakhali in Civil Revision No. 17 of 2024 disallowing the appeal and thereby affirming the judgment and order dated 08.04.2024 passed by the learned 1st Additional Assistant Judge, Sadar, Noakhali in Title Suit No. 28 of 2008 rejecting the application for amendment of the plaint 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 relevant for disposal of this Revision, in short are that, the petitioners, as plaintiff, filed Title Suit No. 50 of 1999 in the court of

learned Sub Judge, 2nd Court, Chandpur, against the predecessor of the opposite parties namely Abul Kalam as defendant praying for a decree of declaration of title and recovery of khas possession in 0.0137 decimal land recorded in M.R.R. khatian No. 436 corresponding to plot No. 3024 which was shown in the 'kha' schedule to the plaint claiming his title through a registered deed of exchange No. 6588 dated 04.07.1996 with the owner of the property of Nur Nabi, son of Amin Ullah along with two shops erected on the exchanged property from through money receipt. The Plaintiff used to live in Saudi Arabia, after returning home on 07.06.1999, he found that the defendant had dismantled a shop owned by the plaintiff and constructing a one storied building covering 0.0137 decimal of land from southern part of M.R.R. plot No. 3024 in July, 1988. The plaintiff initially filed a case in the Village Court wherein the Village Court ordered the defendant to restore possession of the "kha" schedule property to the plaintiff, but they did not comply with the order. Then the plaintiff filed the suit for declaration of title and recovery of khas possession. The suit was transferred to the Court of Additional Assistant Judge, Sadar, Noakhali, wherein renumbered as Title Suit No. 28 of 2008.

The defendant contested the suit filing a written statement denying all the material allegations made in the plaint stating *inter alia,* that the plaintiff never possessed the entire property recorded in plot No. 3024. After the trial, the Court of Additional Assistant Judge, Sadar, Noakhali decreed the suit in favour of the plaintiff vide judgment and decree dated 15.02.2012. The defendant being aggrieved, preferred Title Appeal No. 44 of 2012 before the District Judge, Noakhali, which on transfer was heard by Joint District Judge, 2nd Court, Noakhali., who after hearing dismissed the appeal vide judgment dated 10.04.2013. The defendant then moved to the High Court Division filing Civil Revision No. 1933 of 2013. The High Court Division discharged the Rule on 27.02.2017. The defendant then moved to the Appellate Division filing Civil Petition for Leave to Appeal No. 3351 of 2017 which was also dismissed on 13.03.2023. The defendant's journey ended with filing an unsuccessful Review Petition No. 94 of 2023.

The Plaintiff being decree holder filed Title Execution Case No. 03 of 2013 for executing the judgment and decree dated 15.02.2012. Due to pendency of appeal/Revision etc. execution case could not proceed. After disposal of Civil Petition for Leave to Appeal, the execution case

proceeded writ of delivery of possession was issued to the bailiff, police force appointed and a date was fixed for effecting delivery of possession. However, the Nazir of the District Court, Noakhali raised his concern about the amount of property which in his view was very minimal and is not executable. In his view the amount of property mentioned in the decree and in the application of execution case is .0137 ding which means 5.96772 square feet, not capable of execution and returned the writ, although, decree holder claimed that the amount of property as mentioned in the decree and application of execution case stands as 596.772 square feet.

At that stage, the plaintiff filed two separate applications, one under Order 6 Rule 17 of the Code of Civil Procedure for amendment of plaint and another under Section 151 and 152 of the Code of Civil Procedure for correction of error made in the decree. Both the applications were opposed by the defendants by filing written objections.

The trial court after hearing by its order dated 08.04.2024, rejected the applications filed by the plaintiffs-petitioners holding that the plaintiff got ample opportunity to make the amendment during pendency of appeal in the higher court and the court does not have power to allow the

amendment after passing the judgment and decree, specifically the judgment which reached its finality upto Appellate Division.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the plaintiff filed Civil Revision No. 17 of 2024 before the District Judge, Noakhali who after hearing rejected, the Revision vide order dated 03.09.2024. At this juncture, the plaintiff petitioner moved this Court by filing this application under Section 115 (4) of the Code of Civil Procedure seeking leave to revisions and obtained the present rule.

Mr. M.M. Shafiullah, learned Advocate appearing for the petitioner at the very outset candidly submits that the dispute arose up between the parties in respect of Plot No. 3024 measuring 4 sataks of land out of which the plaintiff filed the suit for declaration of title and recovery of possession claiming only 1.37 decimals of land out of 4 decimals as mentioned in schedule ‘Kha’ to the plaint.

He submits that upto the Appellate Division the decree passed by the trial court for recovery of possession was upheld and is settled by the court that the defendant judgment debtor has no right, title and interest in Plot No. 3024 measuring 4 sataks. Therefore, the decree holder has no scope to go beyond the property covered by Plot No. 3024 measuring 4

sataks only, but in writing 4 sataks or decimals, the deed writer and learned Advocate for the plaintiff has written ০.০৪শতক in the plaint as well as in the written statement and some of the khatian marked as exhibit-1 which is a customary error prevailing in the disputed area.

From the statement made in the plaint and the written statement, if it is considered in their entirety, it would be clear that the dispute between the parties is relating to a single plot measuring .4 sataks out of which plaintiff prayed for recovery of possession for 1.37 sataks, but when writing the quantum of land inadvertently a point (দশমিক) has been placed before 04 sataks and before 0137 mentioning decimal instead of acre. It is merely an error on the face of the plaint and decree which created confusion between the parties whether the suit property is measuring 5.96772 square feet or 0596.772 square feet.

He submits that from ordinary prudence it can be construed that a plaintiff would not have fought upto the Appellate Division with a litigation for recovery of only 6 square feet land, but because of placing a point before the quantum of land and writing ding in place of acre confusion arose whether the property actually more or less 6 square feet or it is 596 square feet.

From the facts and circumstances available in record it is established that the quantum of land sought to be recovered is actually .0137 acre or 1.37 sataks. To remove confusion, the plaintiff filed an application seeking amendment of said error in the plaint by inserting only word acre in place of decimal, similarly filed another application under Sections 151 and 152 of the Code for correction of the decree. The trial court rejected the application only holding that after passing judgment and drawing up decree thereto the court has become functus officio and it has no jurisdiction to amend the plaint or correct the decree, as such, it has committed illegality in law. Referring to the case of ***Sree Narayan Chandra Panda vs. Md. Mahbub Ali and others*** reported in ***9 BLT (AD) 197***. Mr. Shafiullah submits that in the said case Plot No. 4314 was written in the plaint and decree as Plot No. 4313, the court allowed the application and corrected the same which was upheld upto the Appellate Division, holding that it was an accidental slip like the present case. ***Chand Mia and others vs. M.A. Rajput Ghosh Bahadur and others*** reported in ***22 BLD (SCD) 220,*** similarly, Plot No. 313 was wrongly written in place of Plot No. 331 in both plaint and decree and the said application was filed after 35 years of passing the decree it was allowed

relying on the decision in ***Ibrahim Sk. and others vs. Janab Sk. and others*** reported in ***29 DLR, 81.***

Madras High Court, in the case of ***B. Dheenadhayabaran Vs. Rathna Vel*** allowed correction of quantum of land in place of '2 jadiyadi' replacing the same '22 jadiyadi' after passing the decree. In the case of ***Niyamat Ali Molla vs. Sonargaon Housing Co-operative Society Ltd. and others*** reported in ***AIR 2008 (SC) 225*** Indian Supreme Court changed the quantum of land by inserting 2.09 acres in place 1.39 acres and by inserting a new plot by way of correction after passing decree finding that the statement made in the plaint reflect that said plot was inadvertently left out from the schedule. Therefore, mere correction of word decimal by replacing the acre nothing will change by the said correction. The trial court as well as the revisional court ought to have allowed the application for ends of justice, but failing which both the courts below committed illegality and error of law in the decision occasioning failure of justice.

Mr. Sayed Quamrul Hossain, learned Advocate appearing for the opposite party No. 2 submits that there is big difference in acre and decimal referring plaint, decree and the document. He submits that the plaintiff prayed for recovery of possession of .0137 decimal of land

measuring 5.966772 square feet only. When the Nazir went to the suit land for effecting delivery of possession to the plaintiff, it was found that the suit property is only 5.966772 square feet not capable of delivery of possession and to that effect furnished a report to the executing court. The decree holder then came with an application for amendment of plaint and correction of the decree passed by the court for correction of the quantum of land by deleting word “decimal” replacing the same by “acre” which the plaintiff cannot do.

He submits that in Noakhali District satak used to write as 04 sataks only. .04 sataks is $\frac{4}{100}$ satak not 4 satak, similarly, the property claimed by the plaintiff for recovery of possession measuring .0137 decimal or 5.966772 square feet. Under the garb of a decree, the decree holder subsequently by filing application for amendment or correction of the plaint and decree wanted to claim 596.772 square feet land for which the decree was not passed.

He submits that after passing decree and disposal of the suit, the Court has become functus officio, it cannot sit over the plaint and decree again. This correction could have been done by the plaintiff, at the appellate stage before the appellate court and upto the Appellate Division,

but they did not take any step in this regard, therefore, the trial court has not committed any illegality in rejecting the application as well as the revisional court also rightly rejected the revision finding that the court has no jurisdiction to amend the plaint where the suit has been disposed of and the said decree upheld upto the Appellate Division, as such, both the courts below committed no illegality and error of law in the decision occasioning failure of justice.

It was argued that Plot No. 3023 belonged to the judgment debtor. If the amendment or correction is allowed, the decree holder will execute the decree traveling Plot No. 3024 and encroaching the property under Plot No. 3023 belonging to the judgment debtor and for such attempt the decree holder filed the application for correction of the decree.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(4) of the Code of Civil Procedure, plaint in suit, written statement, all the exhibits, evidences of P.Ws and D.Ws and application for amendment and correction of the plaint and decree and the impugned judgment and order passed of both the courts below.

There is no dispute between the parties that the suit is relating to Plot No. 3024 measuring only 4 sataks of land out of which the decree holder plaintiff claimed that he has been dispossessed by the defendant from 1.37 decimal or .0137 acre land. From trial court upto the Appellate Division, the decree has been maintained holding that Plot No. 3024 contains in total 4 sataks of land, but in the plaint as well as in the written statement and the evidences recorded by the court below 4 sataks has been written as .04 decimals and decree for recovery of possession sought for in respect of .0137 decimal.

The question now before us, whether the plaintiff claimed recovery of possession of .0137 decimal or 1.37 decimal or .0137 acre. A point (দশমিক) normally used before the figure or quantum of land mentioning said quantum as acre not decimal or satak. In the instant case, I find that in all the places 4 sataks has been written .04 decimals instead of writing the same acre. Similarly, 1.37 decimal has been written as .0137 decimal instead of acre which is in my opinion is an accidental slip and customary error established in the Noakhali area, however, from the evidences, plaint, written statement and judgment of all the courts it is established that Plot No. 3024 contains 4 sataks of land belonging to the decree holder

plaintiff and others and settled by the court that defendant judgment debtor has had no title in Plot No. 3024 measuring 4 sataks. If it is so, the decree holder is entitled to get recovery of possession out of 4 sataks under Plot No. 3024 not from any other plot besides the said plot or belonging to the judgment debtor. Therefore, in executing the decree and making delivery of possession to the decree holder, the court will appoint a survey knowing Advocate Commissioner who will at first demarcate Plot No. 3024 and then deliver possession of the property from which the decree holder was dispossessed by the judgment debtor. There is no question to encroach any property of the judgment debtor under Plot No. 3023 or any other plot except disputed Plot No. 3024. Therefore, for customary error in writing quantum of land placing a point (দশমিক) before 0137 mentioning decimal in place of acre is not at all fatal for the judgment debtor and for correction of the quantum of land by deleting a point (দশমিক) or by placing acre deleting word decimal will not in a anyway cause injustice or occur any failure of justice.

The cases referred by the learned Advocate for the petitioner find support that even after long time the court can amend plaint and correct the decree if it appears from the face of the record that the error was

occurred accidentally. Some and substance of the dispute supports that the quantum of land wrongly mentioned, the court can correct and amend the schedule to the plaint and the decree. The trial court only on the findings that the court has become functus officio is not a ground for refusing the application, as Sections 151 and 152 of the Code of Civil Procedure empowers the court to correct any error or omission finding substance of that correction even after long time of passing decree and disposal of the suit.

In the instant case, the trial court as well as the revisional court failed to appreciate the fact that placement of a point before quantum of land is a customary error/accidental slip/clerical mistake which was occurred through inadvertence and the amendment and correction sought for will not change the quantum of land or affect any part of the decree to be executed and it will not change the relief given in favour of the decree holder causing injustice to the judgment debtor as the decree is relating to Plot No. 3024 in which the judgment debtor has no title as decided by the court. Therefore, because of deleting a point (দশমিক) or adding acre at the end of the quantum, the nature and the substantial relief given to the decree holder will not increase or any part of the property owned by the

judgment debtor will decrease, therefore, both the courts below ought to have allowed the application and correct the decree as prayed for but they failed to do so.

In view of the above, I find merit in the rule as well as in the submissions of the leaned Advocate for the petitioner calling for interference.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and order of both the courts below are hereby set aside. Application under order 6 Rule 17 for amendment of plaint and application under Sections 151 and 152 of the Code of Civil Procedure for correction of the decree, as prayed for, are allowed.

The trial court is hereby directed to note the amendment in the plaint and correct the decree by inserting word acre in place of decimal at the end of quantum of land 0137.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and sent down the lower court judgment at once.