

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

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 2848 of 2025

In the matter of:

Halima Yeasmin and others

.....Plaintiffs-Respondents

Petitioners

-Versus-

Jaheda Begum and others

...Defendants-Appellants

Opposite parties

Mr Md. Alamgir, Advocate

.....For the Petitioners

Mr Mohammad Eunos, with

Mr Md. Hasam, Advocate

...For the opposite parties

Date of Hearing: 16.7.2026, 27.7.2026, and 9.8.2026 A.D.

Date of Judgment: 03.09.2026 A.D., Thursday;

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JUDGMENT:

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been filed under Section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and order dated 22.04.2025 passed by learned Additional District Judge, Charfashion, Bhola in Miscellaneous Appeal No. 05 of 2023 allowing the appeal and reversing the judgment and order dated 09.02.2021 passed by the learned Senior Assistant Judge, Charfashion, Bhola in Miscellaneous Case No.03 of 2019 rejecting application for restoration under order-9, rule-13 read with Section 151 of the Code of Civil Procedure, 1908 [Sic] arising out of Title Suit No. 62 of 2009 decreeing [Sic] the suit on contest against the defendant Nos.3-5 and rest ex-parte on 25.11.2018, should not be set aside and/or pass such other further order or orders as to this Court may seem fit and proper."

Concomitantly, this Court was also pleased to call for the records and stay the operation of the judgment and decree dated 22.04.2025 passed by the learned Additional District Judge, Charfashion, Bhola in Miscellaneous Appeal No.05 of 2023 till disposal of the Rule. Subsequently, the opposite parties filed an application for *status quo*, and after hearing, this Court was pleased to allow the said application with a direction upon both parties to maintain **status quo** in respect of possession and position of the suit land for 1(one) year from the date.

The **material facts**, shorn of unnecessary details, are that Abdus Shohid was landless; he applied for a Kash land in settlement. In settlement case No. 2861/F/75-76, the Bangladesh Government registered 1.50 acres of land for him, recorded as deed Khatian No. 289, plot No. 391/1, District-Bakerganj, at present Bhola, Police Station- Charfashion, Mouza Dakshin Charr Aicha, and Shohid received the land after paying the rent. When Abdus Shahid died, his wife, two sons, and two daughters inherited the land and were in possession of it. When the survey was conducted, it was not

recorded in the plaintiffs' names but was erroneously recorded in the defendant's name. The defendants have no title to or possession of the land. Taking advantage of Abdus Shahid's death, the defendants made false records in collusion with each other. On 24.03.2009, the defendants threatened to evict the plaintiffs, and after hearing the details, the plaintiffs filed this suit seeking a decree.

But the other defendants contested the case and stated in their written statement that the plaintiffs' case is false, incorrect, and baseless and, as such, is liable to be dismissed. The land in dispute is SA Khatian No. 236; the recorded owner is Mahabbat Ali; the land is a 1.50-acre plot No. 319. Mohabbat Ali sold 1.10 acres of land to the defendant No. 1 by registry deed No. 1855 dated 05.03.1977. Taherul Islam the recorded owner of the other Mouza Dakkhin Aicha, SA Khatian No. 578 sold 1.50 acres of land in dag No. 318 to the defendant No. 1 in registered deed on 03.01.80, Mohabbat Ali again sold it to the defendant No. 2 in registered deed No. 1855 on 05.03.1977. The two defendants have received 3.00 acres of land by way of purchase and are in possession. In

Diara Survey, 12 decimals of the land were recorded, and 2-88 acres of land were recorded for defendant Nos. 1 and 2 in Diara 16 Khatian. In the land survey of Khatians No. SA 236/528, 2.88 acres of land was recorded in Plot No. 517, Khatian No. 16, and the plaintiffs have no possession or title to the said land.

Thereafter, the learned Senior Assistant Judge, Charfassion, Bhola, after examining the papers and witnesses of both parties and decreeing the suit against defendants 3, 4, and 5 on contest, and *ex parte* against the rest of the defendants, without cost, on the ground that the plaintiffs are in possession of the suit land.

Thereafter, the defendant-petitioners filed a restoration application under Order-9, Rule-13, read with Section 151 of the Code of Civil Procedure, seeking to set aside an *ex parte* decree passed against the defendants-petitioners on 28.11.2018.

Thereafter, the learned trial court, after taking evidence in the said Miscellaneous Case No. 03 of 2019, was pleased to

reject the said Miscellaneous Case vide its judgment and order dated 9.2.2021.

Being aggrieved by and dissatisfied with the said judgment of the learned Senior Assistant Judge, Charfassion, Bhola, the said applicants, as appellants, filed a Miscellaneous Appeal No. 05 of 2023 before the learned District Judge, Bhola, who subsequently transmitted the said appeal to the learned Additional District Judge, Charfassion, Bhola for hearing and disposal.

Thereafter, the learned Appellate Court, after hearing, was pleased to allow the said appeal vide its judgment and order dated 22.4.2025. Hereinafter, the instant petitioners, being aggrieved by and dissatisfied with the said decision, invoke this revisional jurisdiction.

On the other hand, the opposite parties made appearance in the instant Rule and filed a counter affidavit, where they specifically contended that the present petitioners, as plaintiffs, instituted "the original suit for declaration being No. 62 of 2009. In the suit, the petitioner,

after getting summons, submitted a written statement and contested the suit. Due to the negligence of the Mahrar (Clerk) engaged in that suit, the information regarding the development of the suit was not obtained. And thus, failed to present witnesses and cross-examine the P.Ws; as such, they could not contest the suit, and the learned trial court ex-parte decreed the suit on 28.11.2018 against the defendant Nos. 1(a)-1(Nue) and 2; hence the present opposite party Nos. 1-10 as applicants filed Miscellaneous Case No. 3 of 2019. Thereafter, the learned trial court rejected the application under Order 9, Rule 13 of the Code of Civil Procedure, and on appeal, the same was reversed with a satisfactory explanation of the applicants' opposite party Nos. 1- 10's documents, that, "উক্তরূপ বক্তব্যের স্বপক্ষে প্রমান হিসেবে আপীলকারীপক্ষ তর্কিত দুই তারিখের হাজিরার সাথে পক্ষদের উকালতনামার স্বাক্ষর মিলিয়ে দেখার জন্য আদলতে অনুরোধ করেন। স্বাক্ষরসমূহ পর্যালোচনায় দেখা যায় যে, তর্কিত দুইটি তারিখে বিবাদীপক্ষে শহীদ নামীয় একজন হাজিরা প্রদান করেছেন। উক্ত শহীদ নামীয় স্বাক্ষরের সাথে উকালতনামার স্বাক্ষরের কোন মিল নাই।" So the order passed by the lower appellate Court has not committed an error of law; hence the Hon'ble Court may kindly allow the opposite parties No. 1-10 to contest the original suit for determining the real

controversy between the plaintiffs and the defendants of Original Suit No. 62 of 2009; otherwise the opposite party Nos. 1-10 shall suffer irreparable loss and injury. Thereafter, the opposite party Nos. 1-10 owning and possessing the 2.88 acres of land by way of Kabala deed dated 05.03.1977 from the recorded owner of S.A Khatian No. 236, namely Mahabbat Ali, and the predecessor of Opposite party Nos. 1-10 name has been recorded in Khatian No. 62 and lastly on the same was recorded in D.P Khatiann No. 16 so the Title and possession of the present opposite parties No. 1-10 are existence since in the year of 1977 to till now and they unbroken peaceful possessing the same hence the ex-party decree of Title Suit No. 62 of 2009 is liable to be set aside otherwise the present opposite Party Nos. 1-10 shall suffer irreparable loss and injury.

Mr Md. Alamgir, learned Advocate, on behalf of the petitioner submitted that both the Subordinate Courts, after considering the facts of the original suit and subsequent contention of the Miscellaneous case, concurrently found that

the original suit was properly decreed by the learned Senior Assistant Judge, Charfassion, Bhola.

Learned Advocate has further submitted that on 18.07.2017, the defendant, as petitioner, filed an application for withdrawal from the list of ex parte hearing, and on 19.03.2018 it was allowed; on 28.03.2018, it was fixed for Peremptory Hearing (P.H). Thereafter, on 08.05.2018, the deposition of PW-1 was recorded, but the defendant Nos. 1(Ka) to 1(Yan) and 2 did not cross-examine her, but the defendants Nos. 3-5 cross-examined PW-1, and for this very reason, an ex parte order was fixed for 23.05.2018. Further, on 09.07.2018, the defendants, as applicants, filed a petition for withdrawal, which was eventually allowed on 23.07.2018, and 08.08.2018 was fixed for Further Hearing (F.H). Further, on 12.11.2018, PW-1 deposed and was cross-examined by defendant No. 5, but the defendant Nos. 1(Ka) to 1(Yan) and 2 were absent again. There was gross negligence and laches on the part of the said defendants in the present suit, but the learned appellate Court did not consider these aspects; however, due to misreading and misconceiving the evidence

on record, it committed an error of law, resulting in an error in the decision and occasioning failure of justice.

Learned Advocate has further submitted that the learned Additional District Judge, Charfassion, Bhola did not discuss and consider the case of the respondents in Misc. Appeal and thus committed an error of law resulting in an error in the decision occasioning failure of justice.

Learned Advocate has further submitted that the learned Court below did not peruse the order of the trial court properly in passing the impugned order of restoration and as such committed an error of law resulting in an error in the decision occasioning the failure of justice.

Learned Advocate has further submitted that the learned trial court gave a very correct and just observation in this order as per the provisions of law, but the learned Judge applied all the facts to consider the same without applying his mind judicially, which is contrary to law, resulting in an error in the decision occasioning the failure of justice.

Conversely, learned Counsel Mr Mohammad Eunos, assisted by learned Advocate Mr Md. Hasan, appearing on behalf of the opposite party Nos. 1-10 submitted that the present petitioner as plaintiff instituted the original suit for declaration being No. 62 of 2009 and the defendant after getting summons submitted written statement and contested the suit due to the negligence of the Mahrar (Clerk) engage in that suit failed to get the information and thereby the trial was concluded but the learned court was pleased to decreeing the suit on contest and against defendant No. 3-5 and ex-parte against this opposite parties by its judgment and decree dated 25.11.2018, thereafter the instant opposite parties file a Miscellaneous case under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure and also produce cogent credible evidences before the learned trial Court, but due to misconceive on facts the learned trial Court was pleased to reject the said Miscellaneous Case which cannot be sustained in law.

Learned Counsel has further submitted that the learned Appellate Court, considering the facts and circumstances of

the original suit as well as the miscellaneous case and also being satisfied, was pleased to allow the appeal and accordingly there is no reason to interfere with the said decision by this revisional Court.

Learned Counsel has further submitted that the instant opposite parties have legal documents to sustain the claim as stated in the written statement, but they were not able to prove their own case due to the fault of the learned advocate of the Subordinate Courts as well as the venial activities of the clerk to that learned Advocate; thereby these opposite parties failed to get substantial justice in the original suit.

The learned Counsel finally posited that the defendant Nos. 1(Ka) to 1(Yan) and 2 are village illiterate persons and after the demise of defendant No.1 Amin Uddin, they became helpless, and dependent upon the advice of the learned Advocate of the trial Court. For the said reasons, they may have an opportunity to file an appeal with a direction for condonation of delay to obtain substantial justice.

The learned Counsel referred to a decision as contained in 20 BLT (AD) 47 in respect of Order 7 Rule 11 of the Code of Civil Procedure. He further referred to decisions as contained in 6 BLD (HC) 152 in respect of sufficient cause for setting aside an ex parte decree.

I have carefully perused the revisional application, the counter-affidavit filed thereto, and the documents annexed therewith. Upon examination of the materials on record, it appears that the present petitioners were the plaintiffs in the original Title Suit, which was decreed on contest against Defendant Nos. 3-5 and ex parte against the principal defendants, namely Defendant Nos. 1(Ka) to 1(Yan) and 2.

Upon coming to know of the aforesaid judgment and decree, Defendant Nos. 1(Ka) to 1(Yan) and 2 instituted Miscellaneous Case No. 03 of 2019 before the learned trial Court seeking appropriate relief under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908. After conclusion of the hearing of the said Miscellaneous Case, the

learned Senior Assistant Judge, by his judgment and order dated **09.02.2021**, was pleased to reject the same.

Being aggrieved by and dissatisfied with the aforesaid judgment and order, Defendant Nos. 1(Ka) to 1(Yan) and 2 preferred Miscellaneous Appeal No. 05 of 2023 before the learned Appellate Court. Upon hearing the appeal and considering the materials on record, the learned Appellate Court was pleased to allow the same by its judgment and order dated **22.04.2025**, thereby reversing the judgment and order of the learned trial Court.

It is against the aforesaid judgment and order dated 22.04.2025 that the present petitioners, being the plaintiffs of the original suit, have invoked the revisional jurisdiction of this Court, giving rise to the instant Civil Revision.

On perusal of the records of the instant civil revision it is found that earlier this opposite party after misconceived or by wrong advice of the learned Advocate preferred an application under Order 9 Rule 13 of the Code of Civil Procedure to set-aside a contesting decree instead of filing

appeal against the said judgment and decree dated 25.11.2018 (decree signed on 28.11.2018), thus both the Subordinate Courts without considering this vital and legal proposition conduct the Misc. case and Misc. appeal which was nothing but the abuse of the process of the Court as well as defendant Nos. defendant Nos. 1(Ka) to 1(Yan) and 2 invoked the wrong forum for getting substantial justice.

On perusal of the referred-to decision as reported in 20 BLT (AD) 47 in the case Kohinoor Chowdhury-Vs-Sree Kamada Ranjan Bhattacharja and others, where their Lordships opined that:

“As it appears the High Court Division discharged the Rule holding that admittedly the earlier suit was filed within time in a court of competent jurisdiction but since wrong relief was sought the suit ended unsuccessfully up to the Appellate Division and the plaintiff proceeded with the earlier suit *bona fide* with due diligence and in good faith and he under the advice of his lawyer instead of filing the suit for specific performance of contract wrongly filed the suit for

redemption of the suit land from usufructuary mortgage and that the plaintiff have categorically pleaded in his plaint that he proceeded with the earlier suit under the wrong advice of his learned Advocate and that though the learned Advocate for the defendant petitioner contended before the High Court Division that since the suit was not filed before a court of wrong jurisdiction the plaintiff was not entitled to get the benefit of section 14 of the Limitation Act, but the factual position is that the plaintiff filed the suit before a competent court of jurisdiction but praying wrong relief under the wrong advice of the learned Advocate for the petitioner and it is a settled principle of law that question of limitation is a mixed question of facts and law and needs to be settled only upon taking evidence and further in terms of the decisions of the superior courts, a litigant should not suffer for wrong advice of his learned lawyer and so the plaintiff is entitled to get benefit of section 14 of the Limitation Act for condonation of delay consumed due to wrong advise of his lawyer."

However, from the aforesaid case, it is evident that the party concerned invoked the wrong forum and thereby obtained the privilege of the provisions of section 14 of the Limitation Act, 1908.

On perusal of the other decisions as contained in 6 BLD (HC) 152 in the case of Surjalal Roy Karmakar –Vs- Iman Ali Pramanik and others, where their Lordships were pleased to hold that-

"9. In an application under Order 9 Rule 13, the Court has to satisfy itself (a), whether the summons has been duly served, or (b) whether the applicant has been prevented by sufficient cause from appearing and if either of these conditions is satisfied, the court is to set aside the expert decree. An expert decree may be set aside where there is sufficient cause for the non-appearance of the defendant on the date of hearing. In the instant case, the defendant-petitioner could not appear due to the fault of the Advocate's Mohorar. The peremptory date of hearing was fixed on 3-12-79, but Mohorar, through bona fide mistake, did not

incorporate the said date in his diary, and as a result he could not inform the petitioner as well as the Advocate of the said date. If an advocate is engaged in any court or if he could not appear in a suit or an appeal, it is the fault of the Advocate and not the fault of the party concerned. So, a party cannot suffer for the fault of the clerk or of his advocate."

However, the aforesaid decisions relied upon by the learned Advocate for the contesting defendants, it appears, upon a careful examination, to have been rendered in cases where the suits had been decreed **wholly and exclusively ex parte**. The factual and procedural matrix of those cases is, therefore, materially distinguishable from that of the case at hand. In the instant case, the suit was not decreed wholly ex parte. Rather, the learned trial Court, after permitting the contesting defendants, namely Defendant Nos. 3-5, to contest the suit, and after recording their evidence and permitting them to cross-examine the plaintiffs' witnesses, ultimately decreed the suit on contest against Defendant Nos. 3-5 and ex

parte against the remaining defendants, including Defendant Nos. 1(Ka) to 1(Yan) and 2.

It is of considerable significance that Defendant Nos. 1(Ka) to 1(Yan) and 2 had originally entered appearance in the suit, filed their written statements and thereby disclosed a substantive and positive defence to the claim of the plaintiffs. Notwithstanding such participation, they were admittedly absent at the stage when the suit proceeded towards hearing and final adjudication. Subsequently, instead of availing themselves of the statutory remedy of appeal against the judgment and decree dated 25.11.2018 passed by the learned Senior Assistant Judge in Title Suit No. 62 of 2009, they invoked the jurisdiction of the learned trial Court by filing Miscellaneous Case No. 03 of 2019 under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908.

The distinction between an **ex parte decree simpliciter** and a decree which is **partly on contest and partly ex parte** assumes decisive importance in determining the appropriate remedy available to an aggrieved party. The mere fact that a particular defendant was absent on the date of hearing does

not, by itself, convert the entire adjudication into an ex parte decree in respect of all parties. Where some defendants have contested the suit, adduced evidence and participated in cross-examination, the adjudication made upon such contest retains its character as a contested adjudication and cannot, merely at the instance of another absent defendant, be reopened under Order IX Rule 13 of the Code in a manner which would unsettle the rights already adjudicated upon between the contesting parties.

In this regard, it must also be borne in mind that the provisions of Order IX Rule 13 are directed against an ex parte decree passed against the defendant invoking that provision. The said provision cannot ordinarily be employed as a substitute for an appeal against findings rendered on contest, nor can it be utilised as a procedural device for reopening the entire suit when the decree sought to be challenged contains a component which was passed after contest and upon consideration of evidence.

Upon consideration of the statutory scheme, I am of the considered view that once a Court has proceeded to

adjudicate the rights of the contesting parties upon evidence, including evidence tested by cross-examination, the resulting adjudication cannot be characterised as an ex parte adjudication merely because some other defendants remained absent. The decree, insofar as it concerns the contesting defendants, is necessarily a **decree on contest** and the appropriate statutory remedy against such adjudication is an appeal under Section 96 of the Code of Civil Procedure, 1908.

Correspondingly, a party against whom a decree has been passed on contest cannot acquire a right to invoke Order IX Rule 13 merely by asserting that he was absent at the final stage of hearing. The substance and character of the adjudication, rather than the mere absence of a particular defendant on a particular date, must determine the remedy.

It is equally well settled that the right of appeal under Section 96 of the Code is the ordinary statutory remedy available to a party aggrieved by a decree. In an appeal, the appellate Court possesses the requisite jurisdiction to examine the legality, correctness and propriety of the

judgment and decree under challenge and, where warranted by law, to reappraise the evidence and consider the rival claims of the parties. Thus, where the grievance of Defendant Nos. 1(Ka) to 1(Yan) and 2 substantially concerns the merits of the decree and their asserted title and possession over the suit land, such grievances are matters appropriately amenable to appellate scrutiny.

Having regard to the entire factual background, I am of the view that where a suit is decreed ex parte against the defendant wholly, the defendant against whom such decree is passed may, subject to the statutory requirements and limitation, avail himself of the remedies available under Order IX Rule 13 and/or Section 96 of the Code, as the case may be. The legal position, however, is materially different where the suit has been adjudicated partly on contest and partly ex parte.

In the case at hand, Defendant Nos. 1(Ka) to 1(Yan) and 2 had filed written statements and had thereby joined issue with the plaintiffs. More importantly, the record discloses that the suit had proceeded with the participation of Defendant

Nos. 3-5, who contested the claim and cross-examined PW-1. Thus, the learned trial Judge was required to determine the rights and liabilities of the contesting parties upon the evidence adduced before the Court. Once such adjudication had been completed, the Court could not, merely by reason of the subsequent application of the absent defendants under Order IX Rule 13, erase or nullify the decree made on contest between the parties who had actually participated in the trial.

Indeed, if the decree passed on contest against Defendant Nos. 3-5 is set aside in a proceeding instituted by Defendant Nos. 1(Ka) to 1(Yan) and 2 under Order IX Rule 13, a serious procedural anomaly would necessarily arise. What would then be the legal position of those defendants who had already appeared, contested the suit, adduced evidence and cross-examined the witnesses? Their participation in the trial cannot simply be rendered nugatory at the instance of defendants who did not participate in the relevant stage of adjudication.

The procedural law cannot be interpreted in a manner which produces such an incongruous result. The Court must

preserve the distinction between the rights of a defendant against whom an ex parte decree has actually been passed and the rights of a defendant against whom a decree has been passed after contest.

There is another significant aspect of the matter which cannot be overlooked. Upon perusal of Annexure-B, it appears that Defendant Nos. 1 and 2 have disclosed a substantive and specific case in respect of the suit land. Their case, as set out in their written statement, is that the recorded owner of S.A. Khatian No. 236, namely Mahabbat Ali, was the owner of 1.50 acres of land comprised in Dag No. 319 and that Mahabbat Ali transferred 1.10 acres thereof in favour of Defendant No. 1 by registered Kabala No. 1855 dated 05.03.1977.

It has further been asserted that, in Mouza Dakshin Aicha, the recorded owner of S.A. Khatian No. 578, namely Taher Islam, transferred 1.50 acres of land comprised in plot Nos. 318/379/384/386 in favour of Defendant No. 1 by a registered Kabala dated 03.01.1981. It has also been stated that Mahabbat Ali transferred land in favour of Defendant No. 2 by registered Kabala No. 1855 dated 05.03.1977. According

to the defendants, by virtue of the aforesaid transactions, Defendant Nos. 1 and 2 acquired an aggregate area of 3.00 acres of land and have since been possessing and enjoying the same.

It is further their case that, upon reduction of 12 decimals of land in the Diara Survey, an area of 2.88 acres was recorded in the names of Defendant Nos. 1 and 2 in Diara Khatian No. 16. The lands corresponding to S.A. Khatian Nos. 236 and 578 were subsequently recorded in the Diara Survey under Diara Khatian No. 16 and Dag No. 517, measuring 2.88 acres.

The defendants have thus raised a positive case founded upon registered instruments, a record of rights, and alleged possession. Whether such case is ultimately sustainable in law and on facts is a matter which requires adjudication upon evidence. I express no final opinion on the merits of that substantive claim at this stage. Nevertheless, the existence of such a pleaded case is relevant for determining the proper procedural remedy available to them.

Upon a comprehensive consideration of the revisional application, documents and submissions of the learned Advocates, I find that Defendant Nos. 1(Ka) to 1(Yan) and 2 have disclosed, at least *prima facie*, a substantial defence which they are entitled to place before the competent appellate forum. The learned Appellate Court, while disposing of Miscellaneous Appeal No. 05 of 2023, also noticed the nature of their claim as disclosed in the written statement.

In my considered opinion, however, the existence of a substantial defence does not determine the question of **forum**. A party may possess a meritorious claim and yet be required by law to pursue that claim before the appropriate forum and in accordance with the appropriate statutory procedure. The maxim that a party ought not to be deprived of justice merely on account of procedural error cannot be extended to authorize a Court to exercise a jurisdiction which the statute does not confer upon it.

The proper course available to Defendant Nos. 1(Ka) to 1(Yan) and 2 was to challenge the judgment and decree dated 25.11.2018 before the competent appellate Court under

Section 96 of the Code. The appellate Court, being the continuation of the proceedings, possesses jurisdiction to examine the judgment and decree and, subject to the provisions of law, to consider the evidence and determine the rights of the parties, even by taking additional evidence.

It is a settled principle of procedural jurisprudence that **an appeal is a continuation of the original proceeding.** Consequently, the appellate forum is not merely a forum for correcting an arithmetical or technical error; rather, within the limits prescribed by law, it is empowered to examine the correctness of the judgment and decree rendered by the Court of first instance. Therefore, the defendants' substantive grievances concerning title, possession, the effect of their registered deeds and the evidence relating thereto are matters which can properly be examined in an appeal.

In the instant case, Defendant Nos. 1(Ka) to 1(Yan) and 2, being parties who had filed written statements and whose case had a substantive foundation, invoked Order IX Rule 13 read with Section 151 of the Code before the learned trial Court. The learned trial Court, upon consideration, rejected

the miscellaneous case. Thereafter, the learned Appellate Court, in Miscellaneous Appeal No. 05 of 2023, reversed the said order and restored the original suit to its original file and number.

The difficulty with the approach adopted by the learned Appellate Court is that, in doing so, it failed to sufficiently appreciate the legal consequence of the decree which had already been passed on contest against Defendant Nos. 3-5. There was no allegation, at least as noticed from the materials placed before this Court, that the decree had been procured by practising fraud upon the Court or by fraud of such a nature as would attract the exceptional principle contemplated under Section 44 of the Evidence Act, 1872.

In the absence of such an exceptional circumstance, the ordinary statutory remedy against a decree passed on contest is by way of appeal. The jurisdiction under Order IX Rule 13 cannot be enlarged to encompass a challenge which, in substance, is directed against the merits of a contested decree.

The consequence of the learned Appellate Court's order would be that the decree passed against the contesting defendants would stand disturbed at the instance of defendants who were not present at the relevant stage of hearing. Such a course would seriously prejudice the rights of the contesting defendants, who had already participated in the trial and exercised their right of cross-examination. Their evidence and participation cannot, in my view, be legally disregarded without affording them the procedural safeguards contemplated by law.

In the circumstances, I am constrained to hold that the learned Appellate Court committed an error of law as well as an error of appreciation of the procedural character of the decree in allowing Miscellaneous Appeal No. 05 of 2023 and restoring the original suit in its entirety.

The learned Appellate Court ought to have considered that the applicants before it had an efficacious and appropriate statutory remedy by way of appeal against the judgment and decree dated 25.11.2018. Their substantive claim, however genuine or arguable it may be, could not

confer jurisdiction upon the Court to entertain an application under Order IX Rule 13 against the decree insofar as it was passed on contest.

Accordingly, the impugned judgment and order passed by the learned Appellate Court cannot be sustained in law.

Nevertheless, while exercising revisional jurisdiction, the Court cannot remain oblivious to the peculiar circumstances of the case. It has been submitted on behalf of the opposite parties that Defendant Nos. 1(Ka) to 1(Yan) and 2 are village residents and persons of limited educational attainment and that, following the death of Defendant No. 1, Amin Uddin, they were left without adequate guidance and acted upon the advice of the learned Advocate who had represented them before the trial Court. Thereby, no person can be deprived of equitable consideration and opportunity to get justice.

Although such circumstances cannot create jurisdiction where none exists, they may, in an appropriate case, be taken into consideration for securing the ends of justice, particularly where the party has demonstrated a substantive claim and

has pursued a remedy before a forum which, though inappropriate, was pursued *bona fide*.

In the peculiar facts and circumstances of the case, I am therefore of the considered view that the ends of justice would be adequately served if Defendant Nos. 1(Ka) to 1(Yan) and 2 are afforded an opportunity to prefer an appeal against the judgment and decree dated 25.11.2018 passed in Title Suit No. 62 of 2009.

Accordingly, this Court is of the considered view that Defendant Nos. 1(Ka) to 1(Yan) and 2 may prefer an appeal against the said judgment and decree within **30 (thirty) days from the date of receipt of a copy of this judgment by the learned Court concerned**. If such an appeal is preferred within the aforesaid period, the learned appellate Court shall consider the question of limitation in accordance with law, including the applicability of Section 14 of the Limitation Act, 1908, upon being satisfied as to the statutory requirements thereof.

It is made clear that the question of limitation and exclusion of time under Section 14 of the Limitation Act shall be determined by the competent appellate Court in accordance with law and upon consideration of the facts and circumstances relating to the prosecution of the proceeding before the wrong forum. Nothing contained herein shall be construed as an automatic or unconditional condonation of delay.

However, if an appeal is duly preferred and is otherwise maintainable, the learned appellate Court shall endeavour to dispose of the same expeditiously, preferably within the shortest possible time, after affording due opportunity to all concerned parties to present their respective cases through proper evidence in accordance with law.

The appellate Court shall also be at liberty to exercise all powers available to it under the Code of Civil Procedure, including the power to call for the records, examine the evidence already on record and, where permissible in law, permit the parties to adduce or produce such evidence as may lawfully be received, so that the substantive rights of the

parties may ultimately be determined upon a proper adjudication.

For the reasons stated above, I am of the considered view that the initiation of the proceeding under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908, was misconceived insofar as the applicants sought to disturb a decree which had been passed on contest against Defendant Nos. 3-5. The appropriate remedy available to Defendant Nos. 1(Ka) to 1(Yan) and 2 was to prefer an appeal under Section 96 of the Code against the judgment and decree dated 25.11.2018.

The learned Appellate Court, therefore, erred in law in allowing Miscellaneous Appeal No. 05 of 2023 and restoring the original suit to its original file and number, without properly appreciating the distinction between a wholly ex parte decree and a decree partly passed on contest and partly ex parte.

Furthermore, the impugned order, if allowed to stand, would have the effect of unsettling the adjudication made

against the contesting Defendant Nos. 3-5, who had already participated in the trial, adduced evidence and cross-examined the witnesses. Such a consequence is not legally sustainable merely at the instance of defendants who remained absent at the relevant stage of hearing.

Accordingly, the judgment and order dated 22.04.2025 passed by the learned Additional District Judge, Charfashion, Bhola, in Miscellaneous Appeal No. 05 of 2023, allowing the appeal and reversing the judgment and order dated 09.02.2021 passed by the learned Senior Assistant Judge, Charfashion, Bhola, in Miscellaneous Case No. 03 of 2019 under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908, are hereby **set aside**.

Consequently, the judgment and order dated 25.11.2018 passed by the learned Senior Assistant Judge, Charfashion, Bhola, in Title Suit No. 62 of 2009, whereby the suit was decreed on contest against Defendant Nos. 3-5 and ex parte against the remaining defendants, the decree having been drawn up and signed on 28.11.2018, shall stand **restored**, subject, however, to the liberty granted herein to

Defendant Nos. 1(Ka) to 1(Yan) and 2 to prefer an appeal against the said judgment and decree within 30 (thirty) days from the date of receipt of a copy of this judgment by the learned Court concerned.

If Defendant Nos. 1(Ka) to 1(Yan) and 2 fail to prefer such appeal within the aforesaid period, the judgment and decree dated 25.11.2018, as drawn up and signed on 28.11.2018, shall operate in accordance with law.

If an appeal is preferred within the stipulated period, the learned appellate Court shall consider the matter in accordance with law and in the light of the observations made herein, without being unnecessarily influenced by any observation touching upon the ultimate merits of the parties' respective claims.

For the reasons aforesaid, the Rule is **disposed of with the above observations and directions.**

There shall be **no order as to costs.**

Let the **Subordinate Court Records (SCR)** be transmitted forthwith to the Court concerned along with a copy of this judgment.

Order accordingly.

(Abdur Rahman, J)