

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1450 of 2012

IN THE MATTER OF :

An application under section 115(4) of the
Code of Civil Procedure

-And-

In the Matter of:

Mst. Bul Bul Begum and others

...Plaintiff-Petitioners

Versus

Abdur Rashid being dead his heirs:-

1(ka) Gulap Miah and others

...Defendant-Opposite parties

None

Judgment on: 23.05.2024

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned order dated 05.06.2011 passed by the learned District Judge, Kishoregonj in Civil Revision No. 54 of 2010 rejecting the revision and affirming the order dated 19.07.2010 passed by the learned Senior Assistant Judge, Kuliarchar, Kishoregonj in Suit No. 57 of 2009 shall not be set aside and or such other or further order or orders should not be passed as to this court may seem fit and proper.

At the time of issuance of Rule all further proceedings of Suit No. 57 of 2009 was stayed for a period of 6 months and lastly the stay was extended on 12.12.1012 for a period of 01(one) year.

The petitioner being the plaintiff filed suit for perpetual injunction in the court of Assistant Judge,

Kuliarchar, Kishoreganj contending, *inter alia* that the suit land under Mouza Bathiar Kandi, P.S. Kuliarchar appertaining to S.A. Khatian No. 654, B.S. and R.S. plot No. 1176 and 1177 of homestead measuring an area of .12 acre out of .42 acre of land showing in the sketch map in the schedule of the suit have been owned and possessed by the plaintiffs by inheritance having paid rent to the Government.

The defendant opposite parties contested the suit by filing written statement denying all material facts and contended, *inter alia* that the suit land is vague and indefinite for which suit for permanent injunction is not maintainable and prayed for dismissal of the suit.

The plaintiff-petitioners filed an application for local investigation under order 26 Rule 9 and 10 of the Code of Civil Procedure for identification and measurement of the schedule land and the opposite parties filed written objection. After hearing, the learned judge was pleased to reject the prayer by his order dated 19.07.2010. The petitioners being aggrieved preferred Civil Revision No. 54 of 2010 before the District judge, Kishoregonj who was also pleased to reject the same by his judgment and order dated 05.06.2011.

Being aggrieved by and dissatisfied with the impugned judgment and order order dated 05.06.2011 passed by the District Judge, Kishoreganj the petitioners moved this Court and obtained Rule and order of stay as stated at the very outset.

No one appears to support or oppose the Rule when the matter was taken up for hearing.

The petitioners would submit that the defendant opposite parties in their written statement of paragraph Nos. 6 and 14 clearly denied the boundaries and measurement of the suit land and as such the petitioners filed an application for local investigation for proper identification and elucidating matter in dispute but the learned courts below committed gross error of law by rejecting the same holding that the land is sufficiently identified. Unless the suit land is identified by holding investigation through Advocate Commissioner for the purpose of elucidating and proper identification of the suit land, the suit would be infructuous.

In the instant revisional application the plaintiff-petitioners did not annex the plaint, written statements, the application praying for local investigation and the written objection filed by the defendant opposite parties. However, I have perused both the orders under challenged passed by the learned Senior Assistant Judge as well as the District Judge.

It appears from the order of the learned Senior Assistant Judge that he rejected the prayer for local investigation on the findings that the plaintiffs described the khatian number, plot number, measurement of the land along with its boundary in the plaint, which means the suit land is sufficiently identified. Thus the prayer for local investigation was rejected. It further appears from the judgment and order passed by the learned District Judge that he summarily rejected the revision on the finding that there is no need for local investigation as the points raised are to be determined by taking evidence.

The object of local investigation is to obtain evidence which from its very nature can only be obtained on the spot and to elucidate any point which is doubtful or cannot be determined by taking evidence by the Court. No local commissioner can be appointed for recording evidence which can be taken in Court. It is for the Court to decide whether local investigation is necessary in the case. It is in the discretion of the Court which should not be exercised fancifully. When an application for local investigation has been disposed of by the trial Court assigning reasons, ordinarily it should not be interfered with in revision. These are the principles settled by our higher courts. We have already noticed that the trial court rejected the prayer for local investigation by giving reasons, as such the revisional court rightly rejected the revision warrants no interference by this Court having no substance.

In the facts and circumstances of the case and the position of law, I find no merits in the Rule hence it is discharged.

Communicate the judgment at once.