

**District-Pabna.**

**In the Supreme Court of Bangladesh**

**High Court Division,**

**(Civil Revisional Jurisdiction)**

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 365 of 2006.**

Md. Ashraf Hossain (Bablu)

..... Plaintiff- Petitioner.

-Versus-

Md. Mojaffar Hossain being dead his heirs Mosammat Nurjahan Khatun and others.

..... Defendant-Opposite Parties.

Mr. Syed Mizanur Rahman, Advocate with

Mr. S.M. Zahurul Islam, Advocate.

..... For the Plaintiff- Petitioner.

No one appears.

..... For the Defendant-Opposite Party.

**Heard On 25.06.2025**

**and**

**Judgment Delivered On: 29.06.2025.**

**Md. Toufiq Inam, J.**

Leave was granted under Section 115(4) of the Code of Civil Procedure (CPC), and a Rule was issued at the instance of the petitioner, calling upon the opposite party to show cause as to why the impugned order dated 04.10.2005, passed by the learned Special District Judge, Pabna in Civil Revision No. 04 of 2005, affirming the rejection of the plaintiff-petitioner's application for local investigation in Other Class Suit No. 118 of 2002, should not be set aside.

The plaintiff-petitioner instituted Other Class Suit No. 118 of 2002 seeking a declaration of title over the suit land described in the schedule to the plaint. It is pertinent to note that the plaint does not contain any prayer for recovery of possession or for a permanent injunction.

In the written statement, the defendant-opposite party denied the plaintiff's title and asserted possession over the suit land, further alleging that the plaintiff had previously removed certain structures built thereon. However, the defendant did not raise any specific dispute regarding the boundaries, identity, or location of the suit land.

During the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 of the CPC, seeking appointment of a commission to conduct a local investigation, primarily to ascertain the physical features of the land, existing structures, and the presence of any electricity lines. The learned trial court rejected the application, and the appellate court affirmed the rejection. Aggrieved by these concurrent findings, the plaintiff filed the present revisional application.

Mr. Syed Mizanur Rahman, with Mr. S.M. Zahurul Islam, the learned Advocates for the petitioner, submits that since the defendant has raised a disputed question of possession, a local investigation is necessary for the just and proper adjudication of the suit. He contends that the physical condition and status of possession can best be verified by a neutral third party through local inspection. He further submits that both courts below failed to appreciate the necessity and relevance of such investigation, and summarily rejected the prayer.

However, no one appears on behalf of the opposite party to contest the Rule.

The suit in question is one for declaration of title only, not for recovery of possession. Therefore, the burden lies on the plaintiff to prove his title through admissible legal evidence. A commissioner's report cannot substitute for proof of title or ownership. Furthermore, as per the written statement, there is no dispute regarding the boundary, identity, or location of the suit land.

It is now well settled that in a suit for declaration of title, local investigation is not a matter of right. Such investigation may only be permitted when it is shown to be essential for resolving specific factual controversies which cannot otherwise be effectively adjudicated through standard modes of evidence.

The purpose of local investigation under Order XXVI Rule 9 CPC is primarily to ascertain the physical features, character, or market value of the property. It is not a tool to determine possession, which can only be established through oral and documentary evidence adduced at trial.

In the present case, this Court notes the following:

- (i) The plaintiff has not sought recovery of possession, and hence, the issue of possession is not directly in question;
- (ii) The defendant has not raised any dispute regarding the boundaries, identity, or location of the suit land;
- (iii) The question of possession or the alleged removal of structures involves factual disputes that can and should be addressed during trial through appropriate evidence;
- (iv) A declaration of title depends on proof of ownership; mere possession without title is insufficient for obtaining declaratory relief, although it may support a claim for injunction in an appropriate case.

This Court is also of the considered view that an application for local investigation should not be entertained as a matter of course. The power under Order XXVI Rule 9 CPC must be exercised cautiously and judiciously, and only when such investigation is shown to be necessary for fair and effective adjudication. A commission cannot be allowed to serve as a substitute for legal proof or to shift the burden of proof from the party responsible for establishing their claim.

In a suit for declaration of title only, where there is no prayer for recovery of possession and no dispute regarding the boundary, identity, or location of the suit land, local investigation under Order XXVI Rule 9 CPC is not necessary and should not be allowed. Such investigation is not a matter of right and may be permitted only when it is essential for resolving specific factual issues that cannot be adjudicated effectively through standard legal evidence. The purpose of local investigation is not to determine possession, which must be proved by oral and documentary evidence at trial.

The revisional jurisdiction under Section 115 CPC is limited to correcting jurisdictional errors or material irregularities in the exercise of discretion by subordinate courts. In the absence of any such infirmity in the concurrent decisions of the courts below, no interference is warranted by this Court.

Accordingly, **the Rule is discharged.**

The judgment and order dated 04.10.2005 passed by the learned Special District Judge, Pabna in Civil Revision No. 04 of 2005, affirming the rejection of the plaintiff-petitioner's application for local investigation in Other Class Suit No. 118 of 2002, is hereby upheld.

The trial court is directed to proceed with the suit in accordance with law and to dispose of the same expeditiously.

There shall be no order as to costs.

Let a copy of this judgment be sent to the court below at once for information and necessary action.

**Justice Md. Toufiq Inam**