

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

Present:

Mr Justice Abdur Rahman

Civil Revision No. 2051 of 2015

In the matter of:

Md. Bashir Howlader and others
.....Defendants-Petitioners
Petitioners

-Versus-

Abdul Khaleque Mridha and others
...Plaintiffs-Opposite Parties
Opposite parties

Mr A.K. Rashedul Huq, Counsel
.....*For the Petitioners*
Mr Rafiqul Islam (Hiru) with
Mr S.M. Jalal, Counsel
...*For the opposite party 1.*

Date of Hearing: 13.07.2026 A.D. and 17.07.2026 A.D

Date of Judgment: 21.07.2026 A.D. Tuesday;

[৬ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ]

JUDGMENT

Abdur Rahman, J:

This revisional application, at the instance of the petitioners, has been filed under section 115(4) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order, granting leave, was passed:

"Let the records of this case be called for and a Rule be issued for calling upon the opposite parties No. 1-9 to show cause as to why the impugned judgment and order dated 08.04.2015 passed by the learned Additional District Judge, Patuakhali in Civil Revision No.07 of 2014 rejecting the Civil Revision and thereby affirmed the judgment and order dated 05.02.2014 passed by the learned Joint District Judge, 2nd Court, Patuakhali in Title Suit No. 07 of 2002 whereby an application for Local Inspection filed by the petitioner was rejected should not be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper."

Concomitantly, this Court was also pleased to stay operation of further proceedings of Title Suit No.07 of 2007, now pending in the Court of Joint District Judge, 2nd Court, Patuakhali, for a period of 3 months from date. Subsequently, the said order of stay was not extended for any further period.

Chronicles of Facts in Brief:

The material facts, shorn of unnecessary details, are that the opposite party No.1, as plaintiff, instituted a suit for partition being Title Suit No.65 of 1996 in the Court of the learned Senior Assistant Judge, Patuakhali, seeking a preliminary decree in respect of the land described in Schedule 'Ka' to the plaint.

The defendant thereafter entered appearance before the learned trial Court and filed a written statement denying the material allegations made in the plaint. Upon completion of the necessary procedural formalities, the learned trial Court fixed the suit for peremptory hearing. The plaintiff adduced

oral evidence and produced documentary evidence in support of his case.

On the other hand, the defendant examined one witness, namely D.W.1. After completion of the evidence of D.W.1, the defendant filed an application seeking local inspection in respect of the following matters:

“১। জেলা পটুয়াখালী সাব-রেজিস্ট্রার, পটুয়াখালী অধীন পটুয়াখালী মৌজার এস.এ. ২২৯৮ নং খতিয়ানের হাল ৮৮৫ / ৮৮৬ / ৮৮৭ নং দাগের পশ্চিমাংশে অবস্থিত ৪৮ শতক সম্পত্তি, ার চৌহদ্দি—উত্তরে সুলতান হাজির জমি, দক্ষিণে আবদুল হাই খন্দকারের জমি, পূর্বে মহাসড়ক এবং পশ্চিমে মাইজ গ্রামের খাল। উক্ত চৌহদ্দিভুক্ত সম্পত্তি বর্তমানে কী অবস্থায় আছে, তার বিস্তারিত বিবরণসহ সরেজমিন প্রতিবেদন দাখিল করতে হবে।

২। জেলা সাব-রেজিস্ট্রার, মৌজা ও অধীন এস.এ. ২৩০০ নং খতিয়ানের ৮৭০ নং দাগের পূর্বাংশে অবস্থিত ১৮ শতক সম্পত্তি, ার চৌহদ্দি—উত্তরে আব্দুল জব্বারের জমি, পূর্বে আনোয়ার হোসেন মৃধার জমি, দক্ষিণে-পশ্চিমে কালিকাপুর সরকারি প্রাথমিক বিদ্যালয় এবং পশ্চিমে দাগের বাকি জমি। উক্ত সম্পত্তি বর্তমানে কী অবস্থায় আছে, তার বিস্তারিত বিবরণসহ সরেজমিন প্রতিবেদন দাখিল করতে হবে।“

Thereafter, the learned trial Court, upon hearing the said application, rejected the same vide order dated 05.02.2014. Being aggrieved thereby, the defendant preferred

Civil Revision No. 07 of 2014 before the learned District Judge, Patuakhali, which was subsequently transferred to the learned Additional District Judge, Patuakhali, for hearing and disposal. The learned Additional District Judge, upon hearing the parties, rejected the revisional application vide judgment and order dated 08.04.2015.

Feeling aggrieved by and dissatisfied with the said judgment and order, the petitioner has invoked the revisional jurisdiction of this Court.

Submissions on Behalf of the Petitioners:

Mr A.K. Rashedul Huq, learned Counsel appearing for the petitioners, submitted that the learned Additional District Judge totally misdirected himself in law and in fact in approaching the question involved in the Civil Revision and thereby committed a material error of law resulting in failure of justice.

It is submitted that the order dated 05.02.2014 passed by the learned trial Court was a wholly non-speaking order, inasmuch as the learned trial Court rejected the application

for local inspection without assigning any cogent, intelligible or legally sustainable reason. According to the learned Counsel, the learned Revisional Court, instead of correcting the said defect, mechanically affirmed the order and thereby perpetuated the illegality committed by the trial Court.

Learned Counsel further submitted that the learned Revisional Court was under a duty to examine whether the discretion exercised by the learned trial Court was judicially exercised, whether relevant considerations were taken into account, whether irrelevant considerations were relied upon, and whether the refusal to permit inspection had resulted in failure of justice.

It is further submitted that inspection of property by the Court is contemplated under Order XVIII Rule 18 of the Code of Civil Procedure, whereas local investigation by a commissioner is contemplated under Order XXVI Rule 9 of the Code and inspection of property or subject matter in dispute is also dealt with under Order XXXIX Rule 7. According to the learned Counsel, the petitioners had specifically sought local inspection and not local investigation, and therefore the

learned Courts below fell into error by treating the application as though it were solely an application for appointment of an Advocate Commissioner.

Learned Counsel further submitted that Order XVIII Rule 18 empowers the Court, at any stage of a suit, to inspect any property or thing concerning which a question may arise and, therefore, the mere fact that the suit had progressed to the stage of evidence could not, by itself, constitute a legal bar to such inspection.

It is also submitted that the learned Additional District Judge wrongly observed that the matters mentioned in the application could be established by oral evidence and, therefore, local inspection was unnecessary. According to the learned Counsel, there may be circumstances in which physical features, location, boundaries, existing structures and the present condition of property cannot be adequately appreciated merely from oral testimony and documentary evidence.

Learned Counsel lastly submitted that the impugned judgment suffers from an error of law resulting in failure of justice and, accordingly, the same is liable to be set aside.

Submissions on Behalf of the Opposite Party 1:

Conversely, Mr. Rafiqul Islam (Hiro), assisted by Mr. S.M. Jalal, learned Counsels appearing on behalf of opposite party No.1, submitted that the learned Courts below concurrently rejected the application upon consideration of the materials on record and, therefore, no interference is warranted in revisional jurisdiction.

Learned Counsel submitted that the matters sought to be ascertained through local inspection relate essentially to facts which can be established by competent oral and documentary evidence. The defendants, having already adduced evidence and having had sufficient opportunity to produce their witnesses, cannot invoke the discretionary jurisdiction of the Court for the purpose of filling up any deficiency or lacuna in their evidence.

It is further submitted that the power of inspection under Order XVIII Rule 18 and the power of local investigation under Order XXVI Rule 9 are discretionary powers and are intended to aid the Court in adjudicating the real controversy between the parties. Such powers cannot be claimed as a matter of right and cannot be employed as a device to enable a party to collect evidence which it was otherwise required to produce before the Court.

Learned Counsel further submitted that local inspection cannot be permitted where the proposed inspection would have the effect of introducing new evidence regarding disputed facts or substituting the evidence of witnesses by an observation of the Commissioner or the Court.

Finally, learned counsel refers to the decision reported in **28 DLR (1976) 344**, in the case of Gladstone Wyllie & Co. Ltd. Vs. A.B.M. Shayesta Khan and another, and submitted that the purpose of local inspection is to assist the Court in appreciating evidence already brought on record and not to provide a substitute for such evidence. He accordingly prays for discharge of the Rule.

Consideration and Findings:

I have heard the learned Counsels for the respective parties, perused the revisional application, the impugned judgment and order, the order passed by the learned trial Court, the pleadings and other materials available on record.

The principal question which falls for determination in the instant Rule is whether, in the facts and circumstances of the case, the learned subordinate Courts committed any error of law resulting in failure of justice in rejecting the petitioners' application for local inspection.

At the outset, it is necessary to appreciate the precise nature and scope of the power relating to inspection and local investigation.

Order XVIII Rule 18 of the Code of Civil Procedure empowers the Court, at any stage of a suit, to inspect any property or thing concerning which any question may arise. The provision, however, does not confer upon a party an absolute or indefeasible right to demand inspection. The power is vested in the Court to be exercised judicially

whenever, in the opinion of the Court, such inspection would assist it in understanding or appreciating the evidence or the subject matter of the dispute.

On the other hand, Order XXVI Rule 9 relates to local investigation by a commissioner where the Court considers such investigation requisite or proper for the purpose of elucidating any matter in dispute or for ascertaining the market value of property, the number of mesne profits or damages, or annual net profits.

Order XXXIX Rule 7 also confers power upon the Court, in appropriate circumstances, to make an order for the detention, preservation or inspection of property which is the subject matter of such suit or as to which any question may arise therein.

These provisions, though operating in somewhat different fields, share a common procedural objective: namely, to enable the Court to effectively adjudicate the real controversy between the parties. They are not intended to provide a litigant with an alternative method of proving facts

which are otherwise required to be established by admissible evidence.

Nature of Local Inspection:

The expression "local inspection" cannot be understood as synonymous with the collection of evidence.

The Court may inspect the property for the limited purpose of obtaining a better understanding of the evidence already adduced before it. Physical features, relative locations, boundaries, existing structures, access, topographical circumstances and other objective features may, in an appropriate case, assist the Court in comprehending the evidence of witnesses and appreciating documentary materials.

But the inspection itself cannot become an independent source of proof of disputed facts which are required to be established by the parties.

This distinction is fundamental.

A Court may look at the physical features of a property in order to understand what a witness has stated. It cannot, however, use its own inspection as a substitute for the testimony of that witness. Similarly, a commissioner appointed for local investigation cannot be permitted to decide disputed questions of title, possession, inheritance or other substantive rights merely on the basis of what he observes at the locality.

The evidentiary function remains with the Court on the basis of the materials legally brought on record.

Local Investigation is not a Substitute for Evidence:

The learned Counsel for the opposite party has rightly relied upon the decision reported in **28 DLR (1976) 344**, wherein the purpose and limitations of local inspection under Order XVIII Rule 18 were considered.

In that decision, it was observed, in substance, that the object of inspection is to assist the Court in understanding the evidence on record and not to bring fresh evidence on record. It was also recognized that the observations made upon

inspection cannot be substituted for the evidence of witnesses or made the sole foundation of the judgment.

The principle is salutary and deserves reiteration.

Local inspection is an aid to adjudication; it is not an instrument of evidence collection.

The Court must therefore be cautious to ensure that an application for inspection is not converted into a mechanism by which a party, having failed to establish a disputed fact through admissible evidence, seeks to obtain an evidentiary advantage through a later inspection.

Whether the Application was Necessary in the Present Case:

In the present case, the matters mentioned in the application relate principally to the existing physical condition and situation of certain portions of land, their boundaries and surrounding features.

The learned Revisional Court, after considering the application, recorded the following finding:

“উপর্যুক্ত পর্যালোচনায় দেখা যায় যে, ছয়ন মামলাটি ইং ২৩/০৫/১৯৯৬ তারিখে বন্টনের প্রাথমিক প্রক্রির প্রার্থনায় দায়ের হওয়ার পর ইং ০৮/০৪/২০১৩ তারিখ পর্যন্ত সর্বশেষ সি.এল্লিউ.-১-এর সাক্ষ্যগ্রহণ অবস্থায় রহিয়াছে। মামলাটি প্রকৃতপক্ষে লোকাল ইনস্পেকশন আবশ্যিক হইলে বিবাদীপক্ষ মামলাটি discovery and inspection পর্যায়ে দাখিল করিতে পারিতেন। কিন্তু বিবাদীপক্ষ উক্ত সঠিক সময়ে এবং মামলার সঠিক পর্যায়ে উক্ত লোকাল ইনস্পেকশনের আবেদন দাখিল করেন নাই। তাছাড়া, নালিশী ভূমিতে বিবাদীপক্ষের পূর্বপুরুষের আমল হইতে ঘর-দরজা নির্মাণ করিয়া দখলে আছেন কি না, তাহা সাক্ষ্য দ্বারা আদালত কর্তৃক নির্ধারণ করিবার বিষয়। ইহা অ্যাডভোকেট কমিশনারের মাধ্যমে নির্ধারণের কোনো অবকাশ নাই। ফলে নিম্ন আদালতে অ্যাডভোকেট কমিশনারের মাধ্যমে লোকাল ইনস্পেকশনের আবেদন নামঞ্জুর করিয়া কোনো আইনগত ভুল করা হয় নাই এবং ইহার দ্বারা বিচার নিষ্পত্তি বা বিচারের ব্যর্থতার কোনো কারণ সৃষ্টি হয় নাই।”

The above observation demonstrates that the Revisional Court did not reject the application merely on the ground that the power of inspection was unavailable to it in law. Rather, it examined the nature of the matters sought to be established and concluded that the relevant facts could be established through evidence.

I find no fundamental legal infirmity in such approach, as the instant suit is a partition one.

Stage of the Suit:

The stage at which an application for local inspection is filed is certainly a relevant circumstance, though it cannot by itself constitute an absolute statutory bar.

There is no proposition of law that an application under Order XVIII Rule 18 must necessarily be filed before evidence commences or that the Court becomes functus officio for the purpose of inspection once evidence has begun.

At the same time, the later the application is filed, the greater the necessity for the applicant to demonstrate why the inspection has become necessary at that particular stage and why the matter could not reasonably have been established by ordinary evidence.

In the instant case, the defendant had already adduced the evidence of D.W.1 and thereafter sought inspection regarding matters which, according to the learned Revisional Court, could be established by oral and documentary evidence.

The application, therefore, required a particularly convincing explanation as to why such evidence could not sufficiently establish the matters relied upon by the defendants.

No such compelling circumstance is apparent from the record.

Effect of the Alleged Non-Speaking Order:

I have also considered the submission that the order dated 05.02.2014 passed by the learned trial Court was non-speaking.

It is true that a judicial order, particularly an order deciding an application which may affect the procedural rights of a party, ought ordinarily to disclose the reasons which led the Court to its conclusion. Reasoned orders are an indispensable component of judicial administration because reasons demonstrate that discretion has been exercised upon relevant considerations rather than arbitrarily.

A non-speaking order is therefore ordinarily undesirable.

However, the revisional Court is not required to set aside every order merely because the subordinate Court has expressed its conclusion in brief terms. The decisive question is whether the ultimate decision is legally sustainable and whether the alleged deficiency in reasoning has resulted in failure of justice.

In the present case, although the order of the learned trial Court dated 05.02.2014 is undoubtedly brief and does not contain an elaborate discussion, the learned Revisional Court subsequently examined the matter in detail and recorded reasons for affirming the rejection of the application.

Therefore, the deficiency in the original order, standing by itself, does not warrant interference under section 115(4) of the Code where the Revisional Court has independently examined the relevant legal and factual aspects and no substantive prejudice has been demonstrated.

Scope of Revisional Jurisdiction:

It is equally necessary to bear in mind the limited scope of revisional jurisdiction.

A revision is not an appeal in disguise. The revisional jurisdiction is intended to correct jurisdictional errors, material irregularities or errors of law of the nature contemplated by section 115 of the Code resulting in failure of justice. The High Court, while exercising revisional jurisdiction, does not ordinarily substitute its own discretionary assessment merely because another view is possible.

Where the subordinate Courts have exercised a discretionary procedural power upon consideration of relevant circumstances, and their decisions do not suffer from jurisdictional error, perversity, misreading of material evidence or violation of a fundamental principle of law or procedure, interference is not justified merely because the High Court may have exercised the discretion differently had the matter been before it at the first instance.

In the present case, I do not find that the learned trial Court acted without jurisdiction. Nor do I find that the learned Revisional Court acted beyond jurisdiction in affirming the order of rejection.

The petitioners have also failed to demonstrate that refusal of local inspection has occasioned such prejudice as would amount to a failure of justice within the meaning of the revisional jurisdiction.

Whether the Application was Intended to Fill up a Lacuna:

There is another important aspect which cannot be overlooked.

A party cannot invoke the discretionary power of local inspection as a means of repairing an evidentiary deficiency after the trial has substantially progressed.

The Court must distinguish between a genuine requirement of inspection and an attempt to fill up a lacuna.

Where the physical characteristics of the property are genuinely necessary for understanding the evidence, inspection may be justified. But where the applicant seeks, through inspection, to establish possession, title, historical occupation, identity of ownership, or other disputed matters

which are capable of proof through witnesses and documents, the Court must be slow to permit such procedure.

The application in the present case, as understood from the materials on record, seeks ascertainment of the present condition and surrounding features of specified portions of land. Such matters may, in an appropriate case, justify inspection. But the broader controversy regarding possession and the asserted occupation of the land by the defendants or their predecessors is a matter to be established through evidence and cannot be delegated to an Advocate Commissioner or established solely through inspection.

Thus, the learned Revisional Court was justified in observing that such disputed matters could be determined on the basis of evidence.

No Absolute Bar Against Future Assistance by Inspection

However, one aspect requires clarification.

The rejection of the present application does not mean that the learned trial Court is permanently precluded from

exercising its statutory power under Order XVIII Rule 18 or, where legally applicable, from considering an application under Order XXVI Rule 9.

If, during the course of trial, the learned trial Court finds that a particular physical feature or aspect of the property cannot adequately be appreciated from the evidence already brought on record and that inspection or local investigation is genuinely requisite for elucidating a matter in dispute, the Court may exercise its statutory discretion in accordance with law.

Such power must, however, be exercised judicially, for a legitimate adjudicatory purpose and not for the purpose of collecting fresh evidence for either party.

This distinction is important because procedural law is intended to facilitate the discovery of truth and the just disposal of litigation, but it cannot be permitted to become an instrument for altering the evidentiary burden of the parties.

Application of the Principles to the Present Case:

Applying the aforesaid principles to the facts of the present case, it appears that the defendant-petitioner had already participated in the trial and had adduced evidence through D.W.1. The application for local inspection was thereafter filed.

The matters sought to be established through the proposed inspection were not shown to be matters incapable of proof through competent oral or documentary evidence. Nor has the petitioner been able to demonstrate any exceptional circumstance showing that refusal of inspection would render the adjudication of the suit impossible or substantially defective.

The learned Additional District Judge being a Revisional Court considered the stage of the proceeding, the nature of the matters sought to be inspected, and the availability of ordinary modes of proof. It thereafter concluded that no legal error had been committed by the learned trial Court in rejecting the application.

I find the approach of the learned Revisional Court to be legally permissible.

The Court cannot direct an inspection merely because a party requests it. The applicant must demonstrate that inspection is relevant, necessary or expedient for the proper adjudication of a matter in dispute. The discretionary jurisdiction must be exercised on the basis of necessity and judicial utility, not on the basis of mere convenience or the desire of a litigant to obtain additional factual material.

It is equally important that a litigant should not be allowed to transform a procedural application into an instrument for introducing evidence which otherwise ought to have been produced during the ordinary course of trial.

Failure of Justice:

The jurisdiction under section 115(4) is ultimately concerned with whether the impugned decision has occasioned a failure of justice.

In the instant case, the petitioner has not been deprived of the opportunity to adduce evidence. The defendants had

the opportunity to produce witnesses, documents and other admissible materials in support of their case. The mere refusal of an application for local inspection, in the circumstances of the present case, does not establish that the petitioner was denied a reasonable opportunity of being heard or of proving his case.

There is, therefore, no demonstrated failure of justice warranting interference by this Court.

The learned Revisional Court also directed the learned trial Court to dispose of the suit expeditiously. Such direction is consistent with the overarching principle that litigation should not be unnecessarily prolonged by interlocutory applications which do not materially assist in determining the real controversy.

Conclusion:

Upon an overall consideration of the facts, circumstances, materials on record, submissions advanced by the learned Counsels and the legal principles governing local inspection and local investigation, I am of the considered view

that the petitioners have failed to establish that the impugned judgment and order suffers from any jurisdictional error, material irregularity, misreading of evidence, non-consideration of a material fact or error of law resulting in failure of justice.

The learned trial Court may have passed the order dated 05.02.2014 in brief terms, but the learned Revisional Court subsequently considered the matter at length and assigned sufficient reasons for affirming the decision. The alleged deficiency in the reasoning of the trial Court, therefore, has not caused such prejudice as would justify interference in the present revisional jurisdiction.

The power of inspection under Order XVIII Rule 18 is undoubtedly available to the Court, but its availability does not mean that a litigant has an absolute right to obtain inspection. The power is discretionary and must be exercised to enable the Court to understand and appreciate the evidence and the physical features relevant to the dispute. It cannot be invoked to collect fresh evidence, prove matters

that are otherwise capable of proof by ordinary evidence, or fill lacunae in a party's case.

Similarly, local investigation under Order XXVI Rule 9 is not a matter of course. The Court must be satisfied that such investigation is requisite or proper for elucidating a matter in dispute. The necessity of such investigation must emerge from the nature of the controversy and the materials already before the Court.

In the present case, the petitioner has not established such necessity. The matters referred to in the application can substantially be established through oral and documentary evidence, and the defendants have not yet been deprived of their opportunity to produce such evidence. Consequently, the refusal of local inspection cannot be characterized as an illegality resulting in failure of justice.

It is, therefore, held that **the discretionary power relating to local inspection or local investigation cannot be claimed as a matter of right; nor can such power be employed as a substitute for evidence or as a device for**

filling up an evidentiary lacuna. The determinative consideration is whether inspection is genuinely necessary to assist the Court in appreciating the evidence and elucidating the matter in dispute.

Accordingly, I find no merit in the Rule.

Order:

The Rule is, accordingly, **discharged**, without any order as to costs.

However, it is made clear that the learned trial Court shall proceed with the trial in accordance with law and shall consider the evidence of the parties objectively. If, at any subsequent stage, the learned trial Court finds, upon proper judicial consideration, that inspection of the property under Order XVIII Rule 18 or local investigation under Order XXVI Rule 9 is genuinely necessary for elucidating any matter in dispute and that such exercise would assist the Court in properly adjudicating the controversy, it shall remain open to the learned trial Court to exercise its statutory discretion in accordance with law. Nothing contained in this judgment shall

be construed as an absolute prohibition against such exercise of jurisdiction in an appropriate case.

The learned trial Court is further directed to conclude the trial as expeditiously as possible, preferably without granting unnecessary adjournments, subject, however, to the rights of the parties to conduct their respective cases in accordance with law.

Let the Subordinate Courts Record (SCR), together with a copy of this judgment, be transmitted forthwith to the concerned Court.

(Abdur Rahman, J.)