

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 3978 OF 2007.

**Bangladesh University of Engineering and
Technology (BUET), represented by its Vice
Chancellor, Dhaka.**

...Petitioner.

-Versus-

Amena Begum and others

...Opposite parties.

Mr. Mohammad Nur Hossain, Advocate

... for the petitioner

Mr. Md. Matilal Bepari, Advocate

... for the opposite parties

Heard on: 14.01.2024.

Judgment on: 21.01.2024,

Md. Badruzzaman, J

This Rule was issued calling upon opposite party Nos. 1-16 to show cause as to why order dated 02.07.2005 passed by learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 221 of 1996 should not be set aside.

At the time of issuance of Rule, this Court vide order dated 02.09.2007 stayed further proceedings of Title Suit No. 221 of 1996 till disposal of the Rule.

Facts, necessary for the purpose of disposal of this Rule, are that the petitioner as plaintiff instituted Title Suit No. 221 of 1996 in the Court of learned Joint District Judge, 5th Court, Dhaka for a decree of recovery of possession of the suit land.

During pendency of the suit, the plaintiff filed an application under Order XXVI Rule 9 of the Code of Civil Procedure for holding

local investigation of the suit land and the application was allowed by the trial Court following which an Advocate Commissioner was appointed who, after investigation, submitted a report.

The plaintiff filed written objection against the report along with a prayer for holding fresh survey by appointing another survey knowing Advocate Commissioner and the trial Court vide order dated 08.03.2005 rejected the application and accepted the report.

The plaintiff challenged said order dated 08.03.2005 before this Division in Civil Revision No. 2178 of 2005 and a Division Bench of this Court vide judgment dated 23.07.2007 made the Rule absolute, set aside the order dated 08.03.2005 and directed to appoint an Advocate Commissioner afresh for holding further local investigation. It is to be noted that before filing of Civil Revision No. 2178 of 2005 the plaintiff on 16.03.2004 filed another application for appointment of survey knowing Advocate Commissioner for holding local investigation of the suit land upon field measurement and during pendency of Civil Revision No. 2178 of 2005 that application was placed for hearing before the trial Court and the trial Court, after hearing, vide order dated 02.07.2005 rejected the application against which the plaintiff has preferred this civil revision and obtained the instant Rule.

The opposite party Nos. 13, 16 and 22 have entered appearance to contest the Rule.

We have heard the learned Advocate for the petitioner and the contesting opposite parties at length.

It appears that the matter of holding further local investigation by a survey knowing Advocate Commissioner has been resolved by this Division in Civil Revision No. 2178 of 2005 whereupon this Court vide judgment dated 23.07.2007 directed to appoint a fresh Advocate Commissioner as follows:

“Accordingly, the Rule is made absolute without any order as to cost. So the impugned order dated 08.03.2005 passed by the learned Joint District Judge, 5th Court, Dhaka in Title Suit No. 221 of 1996, is hereby set aside and the Trial Court is directed to appoint an Advocate Commissioner afresh immediately for relaying the suit land so that the suit land can be surveyed.”

It appeared that the matter of holding further local investigation of the suit land by survey knowing Advocate Commissioner has been resolved by this Court directing to appoint afresh Advocate Commissioner. As per direction of this Court passed in Civil Revision No. 2178 of 2005 further local investigation should have been done in accordance with law. Since the order of this Court dated 23.07.2007 has not been complied with as yet, we are of the view that further local investigation should be conducted afresh as per direction passed in Civil Revision No. 2178 of 2005.

In that view of the matter, we find no merit in this Rule.

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

The order of stay granted earlier is hereby recalled and vacated.

The trial Court is directed to proceed with the suit in accordance of law and in view of the direction passed in Civil Revision No. 2178 of 2005.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)