



Accord CHAMBERS

INSIGHTS

LEGAL & REGULATORY UPDATES, ANALYSIS AND COMMENTARY

How Court Safeguards Substantive Rights Preventing Systemic Failures in Property Disputes

By Ananno Raihan Chowdhury

Property litigation proceedings are notoriously protracted in Bangladesh, and the stakes are invariably high. While procedural codes ensure finality, a mechanical application of these rules can result in grave injustice, particularly when litigants face systemic administrative lapses or bad-faith procedural manipulation. This article explores how courts deploy their inherent powers under Section 151 of the Code of Civil Procedure (CPC) to correct institutional failures, bypass procedural blocks, and preserve essential property rights.

1. Lost Records and the Paramount Duty of the Court

The physical loss or premature destruction of court records often threatens to extinguish a litigant's pursuit of justice, creating a procedural vacuum. In *Ramjit and Ors. vs. Ramadevi and Ors.* AIR 1991 SC 211, 1990 Supp (1) SCC 758, where critical court records went missing, the Supreme Court of India reversed a summary dismissal and held:

"It is the paramount duty of the Court to ensure that no prejudice is caused to the litigating parties on account of some lapse on its part."

Rather than letting administrative failure deny the claims, the Court ordered an inquiry to trace the files. Similarly, in *Ram Krishna Jha vs. State of Bihar and Ors.* IV (2000) CCR 102 (SC), the Court directed

District Judges to investigate lost records across fourteen cases and reconstruct the files, ensuring cases are decided on substantive merits rather than institutional errors.

2. Inherent Powers as a Shield Against Rigid Procedural Bars

The impact of lost records is magnified when combined with strict statutory bars. In the High Court Division case *Abdur Razzaque and Ors. vs. Md. Kabir Hossain and Ors.*, the plaintiffs' subsequent title suit faced dismissal because a previous suit on the same cause of action was dismissed for default, triggering the strict procedural bar of Order IX, Rule 9(1) of the CPC.

Refusing to allow a mechanical application of procedural bars to deny remedy, the plaintiffs filed an application under Order XXIII, Rule 1 read with Section 151 of the CPC. This application sought to withdraw from the current suit and allow them to restore the original suit. By invoking Section 151, the Court can bypass rigid procedural barriers to ensure that a litigant's substantive property rights and title claims are properly addressed in the appropriate forum.

3. Unraveling Fraud and the Fallacy of Functus Officio

Fraudulent manipulation represents another severe procedural challenge. In *Abu Sama vs. Abu Syed and others* 48 DLR (1996) 141, co-plaintiffs' names were struck from a title suit, leading to an adverse ex-parte decree that compromised their land rights. When they sought rectification years later under Section 151 CPC, the opposing parties challenged the court's authority, arguing that the court was functus officio.

The High Court Division rejected this rigid view, upholding the use of inherent powers under Section 151 to correct the court's own record and restore the co-plaintiffs' names to the plaint and decree. This demonstrates that where fraud is practiced on the court and the parties, inherent powers enable the judiciary to correct its record, ensuring that fraud does not escape judicial correction due to procedural delays.

These decisions highlight several vital aspects:

- i. Procedural rules must serve justice. Rules like Order IX, Rule 9 are not absolute barriers when triggered by administrative errors or third-party fraud.
- ii. Section 151 CPC is an active tool to protect litigants. Inherent powers are robust, equity-driven mechanisms designed to resolve uncommon procedural blockades.
- iii. The litigant not to be prejudiced from judicial lapses. The court must remedy its own errors, from lost files to unnotified deletions, to protect substantive titles.

Ultimately, these rulings demonstrate that when procedural law threatens to defeat substantive rights, the courts' equitable tools ensure justice prevails.

How can we assist?

Successfully navigating succession proceedings requires uncompromising procedural compliance. Accord Chambers provides comprehensive legal support, from drafting precise succession petitions and executing effective trial management to facilitating the final transmission of corporate shares and bank funds. For any strategic assistance, please feel free to reach us any time.

This publication is the property of Accord Chambers and may not be distributed without expressly attributing it to the author and publisher. Accord Chambers fully reserves the rights of disclosure, publication and/or distribution of the contents of this publication. This is not a piece of legal advice.

For any query or legal advice on this topic, feel free to contact us: assistance@accordchambers.com