

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**PRESENT:  
THE HON'BLE JUSTICE UDAY KUMAR**

**C.O. 1738 OF 2025**

**CAN 1 OF 2026**

**SANTI DAS  
-VS-  
PARBINA BEGAM & ANR.**

For the Petitioner : Mr. Jayanta Kr. Mondal  
Mr. Sayantan Rakshit

For the Opposite Party No.2 : Mr. Sounak Bhattacharya  
Mr. Sounak Mandal  
Mr. Abhirup Haldar  
Ms. Pipasha Bhattacharyya

Reserved on : 24.08.2026

Pronounced on : 31.08.2026

**UDAY KUMAR, J.: –**

***I. INTRODUCTION***

1. The wheels of civil jurisprudence are engineered to secure the substantive rights of litigants through a predictable, structured, and expeditious process. However, when a simple lis instituted at the dawn of a decade languishes interminably at the pre-trial threshold, it tests the patience of the litigating public and undermines the very foundational ethos of speedy justice. The present application, invoked

under Article 227 of the Constitution of India, brings to light a classic instance of such procedural friction, calling in question the legality, propriety, and jurisdictional soundness of Order No. 104 dated February 1, 2025, passed by the Learned Civil Judge (Junior Division), 2nd Court at Serampore, in Title Suit No. 218 of 2012, whereby the learned Trial Judge summarily rejected the plaintiff's prayer for the appointment of a survey-knowing Advocate Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC").

## **II. FOUNDATIONAL FACTS**

2. A meticulous appraisal of the foundational facts is imperative to gauge the true complexion of the dispute. The petitioner herein, as plaintiff, instituted Title Suit No. 218 of 2012 before the Learned Civil Judge (Junior Division), 2nd Court at Serampore, praying for decrees of declaration of title, permanent injunction, and mandatory injunction directed toward the removal of alleged illegal constructions and encroachments made by the defendants / opposite parties. The core factual matrix reveals that the plaintiff is the absolute owner and possessor of the immovable property more fully described in the "Ka" schedule of the plaint, which devolved upon her by way of inheritance from her parents, who had purchased the same during their lifetime by virtue of a registered deed of sale being Deed No. 6309 for the year 1982. Appurtenant to this property, situated at its North-East corner, is a common passage measuring 3 feet by 17 feet, specifically delineated

in the "Ka-1" schedule to the plaint, constituting the sole and exclusive pathway for ingress and egress to and from the plaintiff's residential holding.

- 3.** The grievance of the plaintiff reached a flashpoint on August 14, 2012, when the defendants, whose property is situated immediately to the western flank of the said common passage, allegedly commenced acts of nuisance, obstruction, and encroachment with the malafide design to block the pathway and amalgamate it into their own holding. Specifically, it is pleaded that Defendant No. 1 constructed an unauthorized water reservoir measuring 3 feet by 2 feet (described in the "Ka-2" schedule) by directly encroaching upon a portion of the "Ka-1" common passage, alongside other structural violations infringing statutory open space norms ("Kha" schedule). Driven to the wall, the plaintiff lodged a local police complaint on August 14, 2012 (G.D. Entry No. 457), followed by a proceeding under Section 144(2) of the Code of Criminal Procedure, 1973, before ultimately knocking at the portals of the civil court by filing the substantive title suit.
- 4.** The defendants entered appearance in the suit and filed their written statement traversing all material averments in the plaint, categorically denying any encroachment, asserting that the passage in question is their private property, and contesting the maintainability of the plaintiff's claims. During the interlocutory stage of the suit, the plaintiff filed an application under Order 26 Rule 9 read with Section 151 of the CPC seeking the issuance of a commission for local investigation, with the primary objective of having a competent survey-knowing Advocate

Commissioner inspect the locale, take measurements, and submit a scientific report detailing the exact physical features, the precise location of the alleged water reservoir, and the status of encroachment upon the "Ka-1" common passage. The defendants vehemently resisted the application, contending that a local inspection commissioner had already visited the site previously, that no further investigation was warranted, and that the petition was merely a dilatory tactic designed to protract the proceedings.

5. By the impugned Order No. 104 dated February 1, 2025, the learned Trial Court was persuaded by the objections of the defendants and rejected the plaintiff's application, reasoning that a survey investigation is entirely unnecessary where the primary dispute centers around the existence or non-existence of a common passage, which can be proved through cogent documentary evidence. The trial court also factored in the prolonged pendency of the suit since 2012 and the lack of documentary evidence adduced by the plaintiff thus far, culminating in the setting of a date for peremptory hearing under threat of dismissal. It is this order that forms the subject matter of challenge in the instant revisional application under Article 227 of the Constitution of India.

### ***III. QUESTION FOR DETERMINATION***

6. The singular, definitive question that emerges for determination by this Court is whether the learned Trial Court committed a grave jurisdictional error, material irregularity, or perverse exercise of discretion in refusing to appoint a survey-knowing Commissioner under

Order 26 Rule 9 CPC in a suit where the central lis involves physical boundaries, measurements, and specific allegations of encroachment upon a narrow common passage and unauthorized structural constructions thereon, merely on the premise that such a dispute can be adjudicated solely through documentary evidence.

#### **IV. SUBMISSIONS OF THE PARTIES**

7. Mr. Jayanta Kumar Mondal, learned counsel appearing in support of the petitioner, vehemently contended that the learned Trial Court acted with material irregularity and patent illegality in misinterpreting the scope and utility of Order 26 Rule 9 CPC. He submitted that when a specific allegation of physical encroachment, shrinking of a narrow 3-foot-wide passage, and construction of a water reservoir is raised, oral testimonies and paper deeds alone cannot scientifically or graphically demonstrate the ground reality.
8. Mr. Mondal emphasized that a survey-knowing commissioner acts as the "eyes and ears" of the court, and shutting out scientific investigation in an encroachment dispute cuts at the very root of a fair trial, as the existence of paper title does not obviate the necessity of establishing physical spot-level boundaries and overlapping encroachments through an independent scientific survey report.
9. In support of the proposition that the appointment of a survey commissioner is imperative for the proper determination of boundary disputes and local investigations, Mr. Mondal placed extensive reliance upon the decisions in *Sri Subhas Mondal & Anr v. Sri Manorajan*

*Samanta & Anr* [(2015) 4 WBLR (Cal) 266], *Chittaranjan Sardar v. Biswanath Sardar & Ors* [2025 (4) ICC (Cal) 57], *Latika Sinha & Anr. v. Kakali Das & Ors.* [2025 (4) ICC (Cal) 850], and *Raj Kumar Dadlani v Dr. Smt. Pushpita Sahu (Basu)* [(2011) 4 WBLR (Cal) 112], wherein the consistent judicial view has been reiterated that local inspection ought to be permitted to unearth the physical truth of the matter, even if sought at a belated stage.

10. Per contra, Mr. Sounak Bhattacharya, learned counsel appearing on behalf of the opposite parties, ardently supported the reasoning embedded in the impugned order, submitting that the plaintiff has been guilty of gross laches and procrastination, keeping a 2012 suit pending at the interlocutory stage for over a dozen years without adducing a shred of evidence. He further argued that a commission cannot be permitted to be utilized as a tool for "fishing out" evidence to cure the inherent weaknesses or lacunae in the plaintiff's case, particularly when title and existence of property must be established independently by the plaintiff through cogent primary documents, and maintained that since the trial court exercised its discretionary jurisdiction rationally in rejecting said application of the petitioner under Order 26 Rule 9 CPC, no interference under Article 227 of the Constitution of India is warranted.

## **V. DISCUSSION ON FACTS, LAW, AND PRECEDENTS**

11. I have given my anxious, thoughtful, and comprehensive consideration to the rival submissions advanced at the Bar and have meticulously

perused the statutory provisions, the binding judicial precedents, and the entire compilation of records annexed to this revisional application.

**12.** To resolve the controversy, it is apposite to examine the structural contours of Order 26 Rule 9 of the Code of Civil Procedure, 1908, which provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing them to make such investigation and report thereon. A plain reading of this provision reveals that while the power vested in the court is discretionary, it is coupled with a solemn judicial duty to exercise the same soundly whenever a local investigation is requisite or proper for elucidating any matter in dispute. Furthermore, under Order 26 Rule 10(2) of the CPC, the report of the Commissioner and any accompanying plan form a part of the record and evidence of the suit, serving as an objective, independent aid to the court.

**13.** In property disputes where the essence of the action is encroachment, overlapping boundaries, deviation from sanctioned plans, or obstruction of a narrow pathway (such as the 3 feet by 17 feet common passage in the present case), oral evidence is notoriously subjective and often contradictory. Witnesses speak from memory or partisan perspective, whereas physical objects, walls, drains, water reservoirs ("Ka-2"), and pathways have fixed geographical locations. To ascertain whether a wall has transgressed into a common passage or whether a water tank has been erected by narrowing a pathway down from its original dimensions, paper deeds alone are wholly insufficient. While title deeds

establish legal ownership, they do not automatically map out ground-level spatial coordinates or physical encroachments, making a scientific survey commission bridges this vital chasm between paper title and physical reality.

14. The foundational principles governing the scope, object, and mandatory import of Order 26 Rule 9 CPC in matters of demarcation and encroachment have been authoritatively expounded by the Hon'ble Supreme Court in the landmark ruling of *Haryana Waqf Board v. Shanti Sarup and Others*, reported in (2008) 8 SCC 671, wherein the Apex Court underscored that in a case where demarcation or identification of a disputed land or passage is warranted due to rival allegations of encroachment, it is fully appropriate and incumbent upon the court to direct an investigation by appointing a local commissioner. The rationale underlying this binding precedent is worth reiterating in the words of the Hon'ble Supreme Court:

*"3. The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant-Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land."*

*"4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner..."*

15. Amplifying this core principle, this Court and various other forums have consistently held in the catena of decisions cited by the petitioner,

namely *Subhas Mondal* (supra), *Chittaranjan Sardar* (supra), *Latika Sinha* (supra) and *Raj Kumar Dadlani* (supra) that whether there is a dispute regarding the identification, location, or physical lie of a property or narrow access lane, the report of an Advocate Commissioner assists the court immeasurably in arriving at a just and lawful conclusion. It is well settled that while a commission cannot be issued merely to collect evidence for a negligent party, where physical measurements, spatial coordinates, and spot encroachments form the core foundation of the lis, denying a survey commission creates an evidentiary vacuum that prejudices the administration of justice.

- 16.** Applying these settled legal principles to the factual matrix of the instant case, the learned Trial Court fundamentally erred in holding that because the existence of a common passage can be proved through documents, a survey investigation is wholly redundant. The trial court failed to appreciate the distinction between proving the grant or paper existence of a passage and proving the extent of physical encroachment and obstruction caused by a structure like a water reservoir ("Ka-2"). How can a court measure a 3-foot passage or determine if an inch-by-inch encroachment has occurred merely by reading a 1982 sale deed? The answer is self-evidently in the negative. The physical features of the "Ka-1" passage and the "Ka-2" water reservoir can only be brought onto the judicial record through an objective, independent, and scientific local investigation report.
- 17.** At the same time, this Court cannot shut its eyes to the legitimate and justifiable grievance voiced by the opposite parties regarding the

agonizingly slow progress of the suit. Instituted in the year 2012, the suit remained mired at the interlocutory stage for over thirteen years. A litigant cannot be permitted to use procedural provisions like Order 26 Rule 9 CPC as a handle to perpetuate delay. However, the remedy for procedural delay or lack of diligence on the part of a plaintiff is not the outright denial of vital scientific evidence that goes to the root of the matter; rather, the appropriate judicial response is to balance equities by fixing strict, unyielding timelines and imposing adequate conditions or costs.

**18.** Synthesizing the factual contours, the statutory framework of Order 26 Rule 9 and Rule 10 CPC, and the authoritative enunciation of law by the Hon'ble Apex Court in *Haryana Waqf Board v. Shanti Sarup* (supra) alongside the subsequent interpretations of this Court, the comprehensive legal findings emerge that while the issuance of a local investigation commission is discretionary, that discretion is coupled with a binding judicial duty to invoke it whenever physical measurements, spot-level boundaries, or structural obstructions form the core foundation of a lis, because oral testimony and paper title deeds are inherently insufficient to capture ground-level realities in narrow pathway encroachment disputes.

**19.** The trial court therefore committed a material irregularity and a grave jurisdictional error by holding that documentary evidence alone could resolve a physical encroachment dispute, ignoring the established ratio of *Haryana Waqf Board* as well as the consistent view of this Court in *Subhas Mondal*, *Chittaranjan Sardar*, *Latika Sinha*, and *Raj Kumar*

*Dadlani* that local inspection must be permitted to unearth physical truths. Furthermore, while balancing the equities regarding the protracted pendency of the suit since 2012, procedural delay on the part of a litigant cannot serve as a valid ground to shut out vital scientific evidence that goes to the root of the matter; the appropriate judicial response to past delays is not the outright denial of a survey commission, but rather the imposition of strict timelines and unyielding conditions to compel expedition.

- 20.** Consequently, the impugned Order No. 104 dated February 1, 2025, proceeds on a complete misconception of the utility and scope of Order 26 Rule 9 CPC in boundary and encroachment suits and, therefore, cannot be sustained in the eye of the law. Simultaneously, to cure the mischief of past delays and to ensure that the opposite parties are not prejudiced, the consequential order must incorporate stringent directives compelling the petitioner to proceed with utmost expedition, bringing the long-drawn-out litigation to its logical conclusion within a compressed timeframe.

## **VI. ORDERS**

- 21.** In view of the foregoing exhaustive discussions, legal principles, and findings, the revisional application stands allowed, and the following directions are issued:

- i. Order No. 104 dated February 1, 2025, passed by the Learned Civil Judge (Junior Division), 2nd Court at Serampore, in Title Suit No. 218 of 2012, is hereby set aside.

- ii. The plaintiff's application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure stands allowed.
- iii. The learned Trial Court is directed to appoint a competent, survey-knowing Advocate Commissioner within a period of two weeks from the date of communication of this order, for holding a comprehensive local investigation in terms of the reliefs prayed for in the plaintiff's application, upon prior written notice to both contesting parties.
- iv. The costs, fees, and remuneration of the learned Advocate Commissioner shall be borne initially by the petitioner-plaintiff, as may be assessed and fixed by the learned Trial Court.
- v. The learned Trial Court shall ensure that the commission work is executed, the spot measurements are taken, and the formal report is submitted by the Commissioner within a strict timeframe of four weeks from the date of issuance of the commission.
- vi. Upon receipt and formal acceptance of the Commissioner's report into evidence, the learned Trial Court shall immediately proceed with the peremptory hearing and conclude the trial of Title Suit No. 218 of 2012 with utmost expedition, preferably within a period of six months from the date of receipt of this order.
- vii. The learned Trial Court shall ensure that no unnecessary adjournments are granted to either party under any pretext whatsoever.

- 22.** Interim order, if any, stands disposed of.
- 23.** All connected applications stand disposed of.
- 24.** There shall be no order as to costs.
- 25.** Let a copy of this judgment be communicated to the learned Trial Court forthwith for information, compliance, and necessary action.
- 26.** Urgent certified server copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

***(Uday Kumar, J.)***