

21-01-2020
Court No.3
(Susanta)
SI/01.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 101 OF 2019

**Sri Durbal Ghosh & Ors.
Vs.
Smt Gouri Singla**

Mr. Nripen Das,
Mr. Debanjan Das.

. . .For the Petitioners.

The revisional application Under Article 227 of the Constitution of India is at the instance of the defendants in a suit for declaration of title.

The defendants in the suit filed an application for holding local investigation of the suit property to demonstrate before the Court that the suit plots have no existence.

The learned Trial Judge has dismissed the said application by the order impugned being order no. 17 dated September 6, 2019 holding that Order XXVI Rule 9 of the Code of Civil Procedure cannot be resorted to for the purpose of fishing out evidence.

The plaintiff is seeking declaration of title over the suit plots, it is therefore, incumbent upon the plaintiff to prove the existence of such plots in order to get the relief as prayed for in the suit.

The learned Trial Judge therefore, has not committed any error in dismissing the said application.

The order impugned does not call for any interference.

C.O. 101 of 2019 is dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)