

06.02.2023
Item No.6
Ct. No.7
CHC
(disposed of)

C.O. 3433 of 2022

Md. Mazahar Ali & anr.

Vs.

Tapan Nayek & anr.

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee

...for the petitioners

Subject-matter of challenge in this case is against the refusal of a prayer for local investigation.

Surprisingly, the suit for declaration with a consequential prayer for eviction of defendants was filed in the year 2011 with a specific allegation contained in the pleading submitted by the petitioners/plaintiffs that there has been encroachment of some area of land, as disclosed in the pleadings, but no steps thereafter was taken to establish the same objectively in aid of Order 26 Rule 9 C.P.C. It is after the closure of the evidence of the defendants' witness, the petitioners suddenly woke up and filed the instant petitioner proposing local investigation.

Having considered the lackadaisical attitude of the petitioners, and that too at the fag end of the trial of

the case, this Court is not inclined to interfere with the impugned order.

Petitioners are however, given liberty to agitate the points at the time of argument capitalizing the flaws in the evidence, if there be any, together with the documents leading to the alleged encroachment, as disclosed in the pleadings, submitted by the plaintiffs.

With this observation/direction, the revisional application stands disposed of.

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)