

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

CO 5 of 2023

**Parimal Kumar Ghosh @ Parimal Ghosh and Ors
-versus-
State of West Bengal and Ors.**

Mr. Rajat Das
Ms. Srijana Thapa

...for the petitioner.

Counsel for the petitioners has filed affidavit-of-service showing that the copy of the instant civil revisional application was served upon the respondents twice but in spite of service of notice none appears on behalf of the respondents. The petitioner has also filed supplementary affidavit enclosing the copy of the application filed under Order XXVI Rule 9. Let the same be kept with the record.

The petitioners/plaintiffs have filed the present revisional application challenging the order passed by the learned Civil Judge (Senior Division), Siliguri in Money Suit No. 30 of 2012 dated 24.06.2022 wherein the application filed by the petitioners/plaintiffs under Order XXVI rule 9 was rejected. The petitioners/plaintiffs have filed the suit praying for recovery of a sum of Rs.20 lakhs together with interest on the ground that the respondents/defendants have illegally occupied the land of the petitioner and have constructed a bridge without any acquisition proceeding and without paying any compensation amount.

The specific case of the plaintiffs before the learned Judge is that the petitioners/plaintiffs were the owner of

the property in question but the respondents/defendants had occupied the said property by constructing a bridge without following the due process of law and as such the plaintiff is entitled to get compensation. In the written statement the respondents/defendants have denied that the said bridge was constructed on the land of the petitioners/plaintiffs though the respondents have taken a specific plea that the bridge was constructed on the vest land. The respondents/defendants have also taken the plea of limitation as the plaintiff has filed the suit after a period of 8 years 7 months. In the application filed by the petitioners/plaintiffs for appointment of Commissioner under Order XXVI Rule 9, the plaintiff intends to ascertain the following points :-

- “(i) Whether the Bridge over the river Chenga, Mouza-Harivita, under the Police Station-Phansidewa is constructed over the land of the plaintiffs or over the vest land, belonging to the Government?
- (ii) What was the measurement of land, on which the Bridge over the river Chenga, Mouza-Harivita, under the Police Station-Phansidewa is constructed?”

Counsel for the petitioners has relied upon the judgments reported in **(2014) 144 AIC 770 (Anwar Batcha and Mehar Banu vs. S. Mahuedoom)** and **(2016)1 CalHCN 673 (Subhas Mondal and Others vs. Monoranjan Samanta and Others)**.

The learned Judge has rejected the application filed by the plaintiffs on the ground that the plaintiffs have filed

the suit for recovery of money and only by way of investigation, the plaintiffs now intends to bring all the materials on record to prove that whether the bridge was constructed by utilizing the land of the petitioner. The learned Judge while rejecting the application failed to consider that whether the bridge was constructed on the land of the petitioners or not is the disputed question of fact before the learned trial Court and if a Commissioner is appointed and a report is called for, the same would be beneficial for the Court also for adjudication of the suit. The learned Judge while rejecting the application also failed to ascertain the said aspect and rejected the application filed by the petitioner. Accordingly, this Court finds that the impugned order passed by the learned Judge is not sustainable, the same is set aside and quashed and the application filed under Order XXVI Rule 9 is allowed.

The learned Judge is directed to appoint a proper survey knowing person within a period of two weeks from the date of receipt of copy of this order so that he can ascertain the points as mentioned above and to file report before the learned Court.

It is made clear that the remuneration of the Commissioner shall be borne by the plaintiffs.

CO No. 5 of 2023 is thus disposed of.

(Krishna Rao, J.)