

In the High Court at Calcutta

Circuit Bench at Jalpaiguri

Civil Revisional Jurisdiction

CO 45 of 2023

Prasanna Sen@ Prasanna Deb Sen

-versus-

Satish Das & Ors.

Mr. Bikash Singha,Adv.

....For Petitioner.

Mr. Sudip Guha,Adv.

....for respondent.

Counsel for the respective parties are present. The petitioner has filed affidavit of service, let the same be kept with the record. The petitioner being the plaintiff in Title Suit No. 26 of 2020 pending before the learned Civil Judge (Junior Division), 2nd Court, Jalpaiguri had filed an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 for appointment of Commissioner to ascertain the following:

- (a) To measure and survey the suit land described in the Schedule of the plaint;
- (b) To measure and ascertain the boundaries of the suit land and to determine the proper location thereof in accordance with the available R.S./L.R. Sheet map of

Mouza – Baikur Gour Gram, Sheet No. 6,
District- Jalpaiguri, and to prepare a
sketch map of the same showing all
measurements;

- (c) To note the local features, if any, in
respect of the suit land, and to depict
them in the sketch map thereof.

The plaintiff has filed the suit praying for
following relief:

- (i) A decree for perpetual injunction
restraining the defendants and/or
anyone claiming through or under
them from coming upon the suit land
and/or disturbing the peaceful
possession of the plaintiff over the suit
land in any manner whatsoever
and/or from committing any acts and
actions prejudicial to the interest of
the plaintiff over the suit land;
- (ii) A temporary injunction restraining
the defendants and/or anyone claiming
through or under them from coming
upon the suit land and/or disturbing
the peaceful possession of the plaintiff
over the suit land in any manner
whatsoever and/or from committing
any acts and actions prejudicial to the

interest of the plaintiff over the suit
land till disposal of the instant suit;

(iii) Costs of the suit;

(iv) Any other relief or reliefs which the
Court thinks that the plaintiff is
entitled to under law and equity.

The plaintiff intending that the
Commissioner should measure and also to
ascertain the boundaries of the suit property. The
learned Civil Judge (Junior Division) while
dismissing the application has rightly held that the
purpose for which the plaintiff has filed the
application will not serve any purpose for
adjudication of the suit. This Court has perused
the materials on record including the application
filed under Order 26 Rule 9 and the order
impugned.

This Court finds that the plaintiff has filed
the suit praying for perpetual injunction
restraining the defendants entering and disturbing
the possession of suit property. The plaintiff has
described the suit schedule property in the plaint.
The purpose for which the application is filed for
appointment is no way connected for adjudication
of the suit. The learned Judge has not committed
any error by rejecting the application. The
impugned order does not require any interference.

Accordingly, CO No. 45 of 2023 is thus dismissed.

(Krishna Rao, J.)