

11.12.2023
Sl. No. 15
Court No.2
Sandip

**In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 86 of 2023
IA No : CAN 1 of 2023

Smt. Sabita Paul
vs.
Sri Jatindra Nath Sarkar

Mr. Hillol Saha Podder ... for the petitioner

Mr. Saumyajyoti Dutta ... for the opposite party.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration and mandatory injunction which is directed against the Order No. 24 dated July 03, 2023 passed by the learned Civil Judge (Junior Division), Tufanganj, District – Cooch Behar in a suit being Title Suit No. 11 of 2022.

The learned Trial Judge by the order impugned has allowed an application under Order XXVI Rule 9 of the Code of Civil Procedure filed by the defendant for holding local investigation of the suit property to ascertain the boundary line between suit Schedule 'A' property and suit Schedule 'B' property and the existence of the boundary wall of Schedule 'B' property.

The plaintiff admits the ownership of the defendant over the Schedule 'B' property, her only allegation is that the defendant is constructing a building over the said property violating the relevant municipal building rules as he has not left the statutory vacant space between the proposed building

and her building on Schedule 'A' property and accordingly has prayed relief in the suit.

In such a suit, investigation on the points as prayed for, is irrelevant, besides the order impugned discloses no reason, as such is not sustainable and is accordingly set aside.

C.O. 86 of 2023 is thus **allowed** without any order as to costs.

In view of disposal of the main application, the connected application for stay being I.A. No. : CAN 1 of 2023 is also disposed of.

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.)