

21.08.2024
Item No.46,
ML, Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 233 of 2024

**Smt. Santi Bhuiya
-Vs-
Sri Bablu Das & Ors.**

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Anirban Sah Ray.
.....for the petitioner.

The present application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration and is directed against Order No.28 dated November 20, 2023 passed by the 2nd Court of the learned Civil Judge (Junior Division) at Serampore, District: Hooghly in the said suit being *Title Suit No. 340 of 2018*.

The learned Trial Judge by the order impugned has dismissed the application of the plaintiff, the petitioner herein under Order XXVI Rule 9 of the Code of Civil Procedure for holding local investigation of the schedule property and to ascertain whether 'C' schedule property is common passage of the 'A' schedule property.

The plaintiff *inter alia* is praying for a decree of declaration that 'D' schedule property is the part and parcel of the common passage of 'C' schedule property. The existence of the common passage or its part is not in dispute, the dispute

is with regard to the mode of user of the said passage which cannot be determined by way of investigation as prayed for by the plaintiff. Therefore, the learned Trial Judge is absolutely justified in refusing the said prayer.

C.O. 233 of 2024 is therefore dismissed without any order as to costs.

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

(Biswajit Basu, J.)