

Item 20.09.
No. 2024
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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 1288 of 2022

**Binoy Krishna Ghosh & Anr.
Vs
Ranjit Ghosh & Ors.**

Mr. Partha Pratim Roy,
Ms. Paulami Chakraborty,
Mr. Samrat Chakraborty

... for the petitioners.

1. Heard learned counsel appearing on behalf of the petitioners.
2. None appears on behalf of the opposite parties.
3. Challenge in this revisional application is the order dated 15.03.2021 passed by the learned Civil Judge (Junior Division), 3rd Court, Krishnanagar, Nadia in connection with Title Suit No. 35 of 2017, wherein learned Judge recorded an order of refusal of the prayer of a petition under Order 26 Rule 9 of the Code of Civil Procedure filed by the plaintiff.
4. Learned Trial Judge refused the application relying on a case of **Padam Sen Vs. State of U.P.** reported in **AIR 1961 SC 218**, wherein Hon'ble Apex Court observed that the local investigation under Order 26 Rule 9 of the Code of Civil Procedure cannot be entertained to collect evidence in favour of either of the parties. But, in circumstances, where there is a dispute as regard to identification, location or

measurement of land, local investigation should be done at an early stage so that parties are aware of the findings of the Commissioner and can conduct the trial being duly prepared. Learned Judge also considered the fact that one application under Order 39 Rule 7 of the Code of Civil Procedure filed by the defendant was allowed and the learned Advocate Commissioner submitted his report before the Court on 07.09.2018.

5. Learned counsel appearing on behalf of the petitioner has drawn my attention to the copy of the plaint annexed with the revisional application and submitted that the suit was filed with a prayer for declaration and permanent injunction with consequential relief and subject property was mentioned in the schedule to the plaint with its boundary.
6. It is further submitted that amended written statement filed by the opposite party/defendant challenging the description of the property mentioned in the schedule to the plaint is vague and meaningless.
7. In this case, after filing of the amended plaint by the respondent, one application under Order 26 Rule 9 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure was filed

stating, inter alia, that pucca dwelling house is not in existence within the subject property mentioned in the schedule to the plaint and pucca dwelling house of the defendants is situated in the non-suited plot adjacent to the subject property.

8. Therefore, there is an issue whether the pucca dwelling house of the defendants is situated within the subject property or adjacent to the subject property.
9. Therefore, Order 26 Rule 9 of the Code of Civil Procedure empowers the Court to appoint a Commissioner for local investigation when it deems such an investigation necessary for elucidating any matter in dispute. The dispute regarding boundaries, physical features or other local matters require on-site verification.
10. Here in this case, particularly after filing of the amended written statement, a dispute cropped up before the Court whether the pucca dwelling house of the defendants is situated on the subject property or on an adjacent plot.
11. The dispute, in my view, cannot be a subject matter of local inspection under Order 39 Rule 7 of the Code Civil Procedure.
12. Regard being had to the above, local investigation under Order 26 Rule 9 of the Code of Civil

Procedure, in my opinion, is required to resolve the dispute mentioned above.

13. As a sequel, the order dated 15.03.2021 passed in connection with Title Suit No. 35 of 2017 stands set aside.

14. Learned Trial Judge is requested to appoint one Survey Passed Commissioner to hold the local investigation on the points mentioned in the application under Order 26 Rule 9 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure filed on behalf of the plaintiff/petitioner herein subject to deposit of Commissioner's fees determined by the learned Trial Judge. Petitioner/plaintiff will deposit the cost of the fees of Commissioner within three days from the date of communication of this order to the learned Trial Court.

15. Learned Commissioner is directed to submit the report within four weeks from the date of receipt of the writ for the commission work.

16. With the aforesaid observation, the revisional application stands disposed of.

17. Connected applications, if any, also stand disposed of accordingly.

18. Interim order, if there be any, stands vacated.

19. Urgent photostat certified copy of the order, if

applied for, be given to the parties on usual undertakings.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court

(Bibhas Ranjan De, J.)