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24.07.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)*

C.O. No. 2569 of 2024

Madan Chandra Mondal & Anr.

Vs.

Mathur Ghorai & Ors.

Mr. Rabindranath Mahato,

Mr. Aritra Sankar Ray ... For the petitioners.

The instant application under Article 227 of the Constitution of India is at the instance of the defendant nos. 3 and 4 in a suit for declaration of title and other consequential reliefs, and is directed against the order No. 62 dated June 04, 2024 passed by the 3rd Court of learned Civil Judge, (Junior Division) at Midnapore, District: Midnapore (West), in the said Suit being *Title Suit No. 162 of 2012*.

The petitioners had filed an application under Order XXVI Rule 9 of the Code of Civil Procedure for investigation of the suit plot and some other non-suit plots by survey pass *Advocate Commissioner*.

The learned Trial Judge by the order impugned has dismissed the said application holding that it will be immaterial to physically calculate evidence in respect or in support of possession of the parties over the suit property, especially when the said defendant side are still having the opportunity of adducing appropriate evidences in support of their claim that they are in

possession of the suit property, not the plaintiff; at this stage, allowing such an application would amount to permitting the defendants to collect evidence which is not permissible under Order XXVI Rule 9 of the Code.

This Court does not find any illegality and/or infirmity in the said findings warranting interference with the order impugned.

C.O. 2569 of 2024 is therefore dismissed without any order as to costs.

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.)