

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 6 of 2025

With
CAN 1 of 2025

Kartick Maity & Anr.
Versus
Mahadeb Maity & Anr.

Mr. Susim Kumar Kar
... For the Petitioners.

Ms. Shohini Chakraborty
Ms. Prajaaini Das
... For the opposite parties.

1. Challenging the order no.24 dated 5th November, 2024 passed by the learned Civil Judge (Junior Division) Additional Court Tamluk in Title Suit No. 210 of 2022 rejecting the plaintiffs/petitioners application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code), the instant revisional application has been filed.
2. To understand the scope of the aforesaid revisional application it is relevant to note down the facts leading to institution of the present revisional application.
3. The records would reveal that the plaintiffs/petitioners had instituted a suit for declaration and injunction. From the prayers made in the plaint it would transpire that the plaintiffs were seeking a decree of permanent

injunction restraining the defendants and his men, agents and associates from interfering /disturbing/obstructing the use of 3 feet wide side space kept open by the plaintiffs which forms part of the plaintiffs' land on the eastern side running from the north to south direction which ultimately meet the kanchacha Panchayet by-lane and the same was for use as common passage meant for egress and ingress of the plaintiffs. The schedule of the suit property has been identified in the plaint itself. The defendants/opposite parties have been contesting the suit and have not only filed a written statement but also filed a counterclaim, inter alia, claiming that the pathway on the eastern side is an ejmali property and a declaration be issued to such effect. The defendants had also filed an application praying for local inspection. The aforesaid application was allowed, and on 9th April, 2024 the learned advocate commissioner had filed a report. Subsequently, on 12th July, 2024, the plaintiffs filed a written objection against the inspection report. Still later, on 18th July, 2024 an application has been filed by the plaintiffs for local inspection in respect of the selfsame plot on the points identified in their application

appearing at page 107 of the revisional application. Perusal of the schedule of the points for local inspection would indicate that the plaintiffs had sought for local inspection to ascertain the nature, character, status and local features of the suit plot, being plot no.197. As noted above, in the said application a further prayer has been made that the advocate commissioner should identify the 4 feet wide concrete Panchayet by-lane made by Deriachak Gram Panchayet which is lying on the southern side of suit plot no.197, which is meant for ingress and egress of the plaintiffs' land. It appears that the learned Judge by the order impugned had rejected the said application, inter alia, on the ground that the Court did not find any requirement to permit the second local inspection of the suit property, when a clear picture of the suit property was already brought on record and there is no viable ground for disbelieving the report of the advocate commissioner dated 9th April, 2024.

4. Mr. Kar, learned advocate appearing in support of the aforesaid revisional application would submit that the advocate commissioner by his report dated 9th April, 2024 did not

appropriately identify the suit property and its local features and also suppressed the 4 feet wide concrete panchayat by-lane lying on the northern side which in between the defendants' land and RS Dag No. 199, to facilitate the order of injunction in favour of the defendants which necessitated the plaintiffs to apply afresh.

5. Ms. Chakraborty, learned advocate enters appearance on behalf of the opposite parties. She would submit that the learned Judge has rightly rejected the application for local inspection filed by the petitioners.
6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record I may note that the plaintiffs/petitioners had sought for a declaration that the plaintiffs have absolute right, title and interest over the 3 feet wide side space kept open by the plaintiffs out of their land on the eastern side from the north to south direction which ultimately meet the kanchacha Panchayet by-lane and the same is meant for their beneficial enjoyment. On the contrary, the defendants by filing counterclaim had claimed the said strip of land to be an ejmali property. There is no dispute as regards identification of the suit plot. Admittedly, in this case for holding local

inspection, an advocate commissioner had been appointed who has filed his report and has also prepared sketch map appearing at pages 103 and 104 of the revisional application. It would also transpire from the records that the petitioners herein have filed written objection to such report taking exception to the same. As of today, there is no decision on the written objection filed by the petitioners though the learned Judge in the aforesaid order dated 5th November, 2024 has recorded that there is no viable ground for disbelieving the report of the advocate commissioner dated 9th April, 2024 and that the commissioner has acted as per order of the learned Court. The learned advocates for the parties would, however, jointly submit that there is no decision till date on the written objection filed by the petitioners on the report filed by the commissioner.

7. Having regard thereto, the observation made by the learned Judge as regards there being no ground for disbelieving the report of the advocate commissioner or the commissioner having performed commission work as per the direction of the writ of commission, appears to be premature. The learned Judge has, however, concluded that since a report is already on

record, there cannot be any question of subsequent report, I do not find any irregularity in such finding. Till such time the report filed by the commissioner on 9th April, 2024 is either accepted or rejected, on the basis of the objection filed by the petitioners there cannot be any cause of action for appointment of an advocate commissioner to hold inspection or to direct filing of a fresh report.

8. Having regard thereto, I do not find any scope to interfere save to the extent indicated hereinabove. The learned Judge should, however, first decide on the objection filed by the petitioners to the advocate commissioner's report prior to taking a decision on the injunction application.
9. With the above observations and directions the revisional application along with the connected application, being CAN 1 of 2025 stands disposed of.
10. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)