

Court No. 6
(265719)

04.03.2025
(A 40)
(S. Banerjee)

CO 384 of 2025

Amiyabala Barman & Anr.
Vs.
Santosh Kumar Roy & Anr.

Mr. Sukanta Das

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiff challenging the orders dated March 19, 2024 and November 11, 2024 passed by the learned Civil Judge (Jr. Division), 2nd Court, Paschim Medinipur in Title Suit No. 271 of 2008.

Petitioners herein filed a suit for declaration of title and for permanent injunction restraining the opposite parties from encroaching upon the pathway in between the land of the plaintiff and the defendant no. 1. In connection with the said suit the petitioners filed an application under Order 39 Rule 1 and 2 of the Code. The learned trial Judge by an order dated June 22, 2009 rejected the prayer for temporary injunction.

Being aggrieved, the petitioners preferred an appeal being Misc. Appeal No. 61 of 2009. In connection with the said miscellaneous appeal, a

local inspection was held and the Commissioner submitted a report.

Learned District Judge, Paschim Medinipur by a judgment and order dated September 9, 2009 allowed the miscellaneous appeal thereby setting aside the order passed by the learned trial Judge. By the said order, the opposite parties herein were restrained from demolishing the boundary wall of the petitioner forcibly and otherwise in due course of law till the disposal of the suit. The learned District Judge while deciding the miscellaneous appeal took into consideration the report filed by the learned Advocate Commissioner.

The petitioners filed an application in Title Suit No. 271 of 2008 praying for allowing the petitioners to prove the report submitted by the Advocate Commissioner in Misc. Appeal No. 61 of 2009 by examining the learned Advocate Commissioner.

The learned trial Judge, by order dated November 18, 2024 observed that the local inspection report filed in connection with the miscellaneous appeal cannot be taken into consideration, however, granted liberty to the plaintiff to file local inspection petition in the present suit.

Learned advocate for the petitioners submits that the certified copy of the inspection report is available with the petitioners. He further submits that the Commissioner's report is part of the record of the trial Court.

Learned advocate for the petitioners submits that since the local inspection has already been conducted in connection with the miscellaneous appeal, he does not wish to file a separate application for local inspection in that regard but intends to rely upon such report in the suit.

Such submission of the learned advocate for the petitioners is placed on record.

Commission work was conducted pursuant to an order passed in Miscellaneous Appeal between the self-same parties and such report is available in the records and the petitioner herein is also in possession of the certified copy of such report.

In the light of the submission made by the petitioner it will be open to the petitioners to rely upon the said report in the manner known to law.

It will be open to the petitioners to tender the said document in course of his evidence in accordance with law.

With the above observation CO 384 of 2025
stands disposed of.

(Hiranmay Bhattacharyya, J.)