

In the High Court at Calcutta

Civil Revisional Jurisdiction

Appellate Side

Present:

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Case No.

CO 2234 of 2025

In the matter of :

EXULT REALTY LIMITED

.... Petitioner

VS.

GOURANGAPURKAIT&ANR.

....Opposite Parties

For the Petitioner

**: Mr. Siddhartha Banerjee
Ms. Soni Ojha
Ms. Sambrita B. Chatterjee**

For the Opposite Parties

**: Mr. Partha Pratim Roy
Mr. Sabyasachi Mondal
Mr. A. S. Fazlul Karim
Mr. Soumen Pradhan
Mr. Sarthak Dey
Mrs. Puja Naskar
Ms. Payel Khanra**

Heard on

: 14th August, 2025

Judgment on

: 14th August, 2025

Hiranmay Bhattacharyya, J. :

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an

order being no. 119 dated 5th March, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court at Baruipur in Title Suit No. 245 of 2015.

2. By the order impugned, the application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) stood rejected.
3. The opposite parties herein filed a suit for declaration of title, confirmation of possession and for permanent injunction restraining the petitioner herein from disturbing the peaceful possession of the opposite parties in respect of the suit property. The suit property comprises of three plots of land being R. S. Dag Nos. 1953, 1955 and 1958 within Mouza Kumrakhali under Police Station Sonarpur in the district of South 24 Parganas. It is the case made out in the plaint that one Satish Chandra Purkait was the original owner of the suit property and by virtue of a registered deed of gift dated 9th July, 1980 the opposite parties acquired title in respect of the suit properties.
4. The petitioner is contesting the said suit by filing a written statement denying the material allegations contained therein. The petitioner’s claim to have become the owners of two of the suit plots being Dag nos.1953 and 1955 along with several

other plots of land total measuring 4.369 acres of land by virtue of Court sale. The opposite parties filed an application under Order XXXIX Rules 1 and 2 of the Code praying for an order of temporary injunction restraining the petitioner and their men and agents from disturbing the peaceful possession of the opposite parties herein in respect of suit property. The petitioner herein is contesting the application for temporary injunction by filing the written objection denying the material allegations contained in the injunction application. It is the specific case made out in the written objection to the injunction application that the petitioner has acquired title in respect of plot nos.1953 and 1955 along with several other plots of land and the suit plots as well as other plots of land have been duly mutated in the name of the petitioner in the records of rights.

5. The petitioner filed an application under Order XXXIX Rule 7 of the Code praying for appointment of an advocate commissioner for the purpose of holding local inspection on the points specifically mentioned in the schedule of the said application.

6. The opposite parties contested the application for local inspection by filing a written objection denying the allegations contained in the application for local inspection.
7. The learned Trial Judge, by the order impugned, rejected the application for local inspection on the ground that the fact of possession of the suit property is a crucial relevant fact to the issue of title of the parties and, therefore, the local inspection for the purpose of collecting information is not permissible.
8. Mr. Banerjee, learned advocate appearing for the petitioner, on instruction, submits that though the petitioner prayed for local inspection on four points but he is restricting his claim with regard to local inspection only with regard to point no.1 of the schedule of the application for local inspection. He further submits that Order XXXIX Rule 7 of the Code permits local inspection to be carried out in respect of properties which do not form the subject matter of the suit and in respect of such contention he placed reliance upon a decision of the Hon'ble High Court at Bombay in the case of **Madhukar R. Javle -vs- Baskar Ramnath Shibad** reported at **AIR 1996 Bom 96**. Mr. Banerjee further submits that in order to bring a clear picture with regard to physical features of the property which is the subject matter of dispute between the parties

before the Court a commissioner should be appointed under the provisions of Order XXXIX Rule 7 of the Code. In respect of such contention he placed reliance upon the decision of the Hon'ble High Court at Andhra Pradesh at Hyderabad in the case of **Jayalakshmi Constructions, Hyderabad and Another -vs- Nawab Behboob Ali Khan and Others** reported at **2005 SCC OnLine AP 982** and the decision of the High Court of Orissa in the case of **Subal Kumar Dey -vs- Purna Chandra Giri and Others** reported at **AIR 1989 Ori 214**.

9. He, concluded by submitting that the learned Trial Judge ought to have allowed the prayer for local inspection in respect of point no.1 of the schedule of the local inspection as the same would assist the Court in deciding the injunction application.
10. Per contra Mr. Roy, learned advocate appearing on behalf of the opposite parties, submits that the instant suit is a suit for declaration of title and for permanent injunction. The disputes involved between the parties in the suit can be proved either by way of oral or documentary evidence. He further submits that the petitioner sought to prove their possession by way of a report of an advocate commissioner which is not permissible in law. He further submits that the

petitioner sought to fish out evidence by way of local inspection which is also not permissible in law. In support of such contention he placed reliance upon a decision of the Hon'ble High Court at Calcutta in the case of **The Institution of Engineers (India) -vs- Bishnu Pada Bag and Another** reported at AIR 1978 Cal 296.

11. Heard the learned advocates for the parties and perused the materials placed.
12. From the schedule of the application for local inspection, this Court finds that the petitioner sought for appointment of an advocate commissioner on the following points :-

"1. Whether the land comprised in R. S. Dag Nos.1953 and 1955, J. L. No.48 at Mouza - Kumrakhali in the district of South 24 Parganas forming a portion of the land described in the Schedule to the plaint is a barren land or is being used for agricultural purpose? What kind of activity is presently being carried on in such land?

2. Whether any construction has been made on the land comprised in R. S. Dag Nos.1953 and 1955, J. L. No.48 at Mouza - Kumrakhali in the district of South 24 Parganas, that form a portion of the land described in the Schedule to the plaint? What is the nature and extent of such construction?

3. Who is/are in possession of the land comprised in R. S. Dag Nos.1953 and 1955, J. L. No.48 at Mouza – Kumrakhali in the district of South 24 Parganas or the structure(s) raised thereat, if any?

4. Any other factual issue or controversy pertaining to the suit property or any portion thereof, that requires an elucidation by the Learned Advocate Commissioner.”

13. However, Mr. Banerjee, learned advocate for the petitioner in course of his argument, on instructions, submits that he is restricting his prayer for local inspection only with regard to point no.1 of the schedule of local inspection. After going through the point no.1, this Court finds that the petitioner has sought for the report of the commissioner as to whether the land comprised in R. S. Dag nos.1953 and 1955 is a barren land or is being used for agricultural purpose and also what kind of activity is presently being carried on in such land.
14. In the application for injunction, it has been stated by the opposite parties that they are in possession of the land in question which is an agricultural land. On the contrary, it is the case of the petitioners that the aforesaid lands are in the possession of the petitioner. Thus, there is a dispute with regard to possession of the suit plots. Though Mr. Banerjee, learned advocate appearing for the petitioner, in course of his

argument submits that the petitioner has encircled the plot nos.1953 and 1955 along with several other plots of land by a boundary wall and after obtaining sanction plan from the Municipal Authority has raised constructions thereupon but in the written objection to the injunction application no averment in that regard has been made.

15. Order XXXIX Rule 1 of the Code states that where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, or that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Thus, the prayer for injunction has to be considered on the basis of affidavits to be filed by the respective parties.

16. Mr. Banerjee would strenuously contend that local inspection is permissible in respect of the property which is not the subject matter of the suit. In support of such contention, he placed strong reliance upon the provisions laid down under XXXIX Rule 7(1) of the Code, more particularly clause (b) thereof. It is not in dispute that for the purpose of detention, preservation or inspection of any property which is the subject matter of the suit, or as to which any question may arise therein the Court may authorize any person to enter upon or into any land or building in the possession of any other property to such suit.
17. In **Madhukar R. Javle (supra)** a dispute arose as to fixation of standard rent. For the purpose of determining such controversies between the parties with regard to standard rent of the suit flat no.3, which forms the subject matter of the suit, an order for local inspection of two similar flats of the same property was allowed for the purpose of ascertaining the standard rent of the suit flat. Such was the purpose for which a local inspection of a property which did not form the subject matter of the suit was allowed.

18. Even if the contention of Mr. Banerjee is accepted that the provision of Order XXXIX Rule 7 of the Code may relate not only to the subject matter of the suit but also in other matter in which any question may arise relating to the suit, it is well settled that no commission can be issued for the purpose of collecting evidence in a suit. The Hon'ble Division Bench of this Court in **Bisnu Pada Bag (supra)** held that local inspection cannot be held for the purpose of collecting evidence in the suit.
19. In course of his argument Mr. Banerjee could not point out as to what was the necessity for holding local inspection of non-suit plots for the purpose of determining the controversy between the parties in an application for injunction in respect of suit plots being nos.1953, 1955 and 1958.
20. In **Subal Kumar Dey (supra)** the question arose as to whether there was a violation of an order of injunction. On such facts, the Hon'ble High Court at Orissa observed that the local inspection was necessary for the purpose of deciding as to whether there was violation of the order of injunction or not. The fact of that case is clearly distinguishable and cannot be applied to the case at hand.

21. In the case of **Jayalakshmi Constructions, Hyderabad (supra)** it was held that the order allowing local inspection was an innocuous one and the same may not prejudice the interest of either of the parties. The said decision cannot be said to be a binding precedence upon this Court.
22. In the application for local inspection, the petitioner claimed to have constructed a residential complex on plot nos.1953 and 1955 after obtaining sanction plan. Such fact can be proved by way of oral and documentary evidence and not by way of a report of an Advocate Commissioner. After going through the averments made in the application, this Court is of the considered view that the petitioner sought for local inspection only for collecting evidence to establish its possession in respect of the aforesaid two plots of land.
23. It is the specific case of the petitioner that several plots of land including R. S. Dag nos.1953 and 1955 were amalgamated and the same has been mutated. The learned Trial Judge was right in holding that an advocate commissioner cannot segregate plot nos.1953 and 1955 out of a large chunk of plots measuring about 4.369 acres. That apart the petitioner sought to ascertain as to whether the R. S. Dag nos.1953 and 1955 are agricultural lands or not. In the written objection to

the injunction application the petitioner has specifically stated that the said plots have been duly mutated in their names. If that is so, the order of mutation would specifically indicate the nature, character and mode of user of the aforesaid plots. This Court is, therefore, of the considered view that holding of local inspection for the purpose of ascertaining the mode of user of plot nos.1953 and 1955 is not necessary since the suit is for declaration of title, confirmation of possession and for permanent injunction.

24. The petitioner and the opposite parties are claiming title to the suit plots on the basis of their respective title deeds. The parties are also relying upon the entries in the records of rights in support of their respective possession. It is well-settled that the task of deciding the issue with regard to possession cannot be delegated by the Court to the commissioner. It is equally well-settled that it is the duty of the Court to decide the question of possession only on basis of oral and documentary evidence by the parties.
25. However, since Mr. Banerjee has given up his prayer for local inspection with regard to the other points, this Court refrains from making any observation on such issues.

26. After going through the points of local inspection, this Court is of the considered view that the petitioner sought to fish out evidence by way of local inspection which is not permissible.
27. For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.
28. Accordingly, **CO 2234 of 2025** stands **dismissed**.
29. However, there shall be no order as to costs.
30. Urgent Photostat certified copy of this judgment and order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

(Hiranmay Bhattacharyya, J.)