

Court No. 6
(265719)

30.06.2025
(AD 46)
(S. Banerjee)

CO 2243 of 2025

Ajit Kumar Ghosh & Ors.
Vs.
Pratima Dhara & Ors.

Mr. Nirmalya Kumar Das
Mr. Jahangir Hossain
Mr. Ujjal Gayen

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no. 18 dated May 3, 2025 passed by the learned Civil Judge (Jr. Division), 3rd Court, Serampore, Hooghly in Title Suit No. 601 of 2022. By the order impugned, the application under Order 26 Rule 9 of the Civil Procedure Code, stood rejected.

The petitioners filed a suit for declaration of title and for removal of unlawful encroachment made upon a portion of the plaintiffs' land by removing the unlawful, illegal foundation thereon and to handover peaceful vacant possession in faovur of the plaintiffs.

The plaint contains three schedules: Schedule A, Schedule B and Schedule C. In the prayer portion it is not specifically stated as to in which portion the plaintiffs seek removal of encroachment.

Learned advocate appearing for the petitioners submits that Schedule C property is the encroached portion and places reliance upon an order dated October 5, 2024, passed by a coordinate Bench in CO 165 of 2023 (*Ananda Chandra Paul –Vs.- Santosh Roy & Ors.*) in support of his contention that where the dispute relates to area of land, identity of the land, boundaries of land, encroachment and case of demarcation, it is appropriate to direct local investigation.

There is no quarrel to the proposition of law that in case there is allegation of encroachment, a local investigation may be permitted. However, after going through the averments made in the plaint, more particularly the reliefs sought for and the schedule appended thereto, this court finds that the petitioners have not specifically stated as to in which portion the petitioners claim removal of encroachment. That apart, no sketch-map has also been appended to the plaint to indicate the encroached portion.

Learned advocate appearing for the petitioners draws the attention of the court to a demarcation sketch-plan at page 33 of the civil revision application but on a query of the court he submits that the said sketch-plan did not form part of the plaint.

In the application under Order 26 Rule 9 of the Civil Procedure Code the petitioners have prayed for relayment of the deed of the defendants along with the sanction plan and to measure the land of the plaintiffs and also the defendants. As rightly observed by the learned trial judge, the said application does not refer to any deed of the defendants nor there is any reference of any sanction plan.

This court is of the considered view that the application under Order 26 Rule 9 of the Civil Procedure Code was filed only for the purpose of fishing out evidence which is not permissible. The learned trial judge assigned cogent reasons for rejecting the said application and was also right in holding that the application for local investigation commission was vague and ambiguous and the same lacks clarity.

For the above reasons this court is not inclined to interfere with the order impugned. Accordingly, CO 2243 of 2025 fails and the same stands dismissed.

(Hiranmay Bhattacharyya, J.)