

Court No. 6
(265719)

19.08.2025
(AD 17)
(S. Banerjee)

CO 2877 of 2025

Tuhin Kumar Gorain @ Tuhin Gorain
Vs.
Uday Kumar Gorain & Anr.

Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 and is directed against order no. 57 dated April 21, 2025 passed by the learned Civil Judge (Jr. Division), First Court at Bolpur, Birbhum in Title Suit No. 103 of 2018. By the order impugned, the application under Order 26 Rule 9, praying for local investigation, stood rejected.

Mr. Mahato, learned advocate appearing for the petitioner submits that the plaintiff gifted a portion of the suit plot in favour of the defendant/petitioner herein by executing a deed of gift and the petitioner is carrying on business thereupon by constructing structures. He submits that since the suit property is situated adjacent to the property of the petitioner which was gifted in favour of the petitioner, local investigation is necessary for the purpose of demarcating the property of the petitioner and the

plaintiff/opposite party. He submits that the suit property is situated within the gifted property of the petitioner.

The opposite parties filed a suit for eviction of licensee. It has been specifically stated in the plaint that the opposite parties have transferred 5 decimals of land in Dag No.457 by a registered deed of gift dated October 23, 1994 registered on October 24, 1994 being deed no. 7915 in favour of the defendant/petitioner herein. It has been further stated in the plaint that in order to avoid any future dispute with regard to the demarcation of the gifted property with that of the property of the plaintiff, a map was prepared by a surveyor which forms part of the gift deed. It has been further stated in the plaint that since the defendant did not have the financial capacity to start a business, the plaintiff extended the financial help to the defendants for the purpose of construction of a tin-shaded structure in the gifted property and it was mutually agreed between the parties that the wife of the plaintiff and the defendant would be jointly carrying on business from the said tin-shaded structure situated on the gifted property. It has been further stated in the plaint that the plaintiff, who is an advocate by profession, constructed a structure for running his chamber practice on his property. It is the further case of the

opposite parties that the defendant/petitioner herein approached the plaintiff to use the said property which the plaintiff constructed for his chamber practice for extension of the business of the defendant/petitioner, and upon being approached, the petitioner was allowed to run his business from the said chamber. Since the petitioner failed and neglected to vacate the said room which has been specifically described in the schedule of the plaint to be a tin-shaded one-storied structure consisting of two rooms, the opposite parties filed a suit for eviction of a licensee.

After going through the averments made in the written statement this court finds that the petitioner has denied the fact of grant of license by the opposite parties to the petitioner. However, from the written statement this court could not find that the petitioner made out a case that the suit property falls within the gifted property of the petitioner or that the said construction was made encroaching upon the gifted property of the petitioner. Thus, the learned trial judge was right in holding that no case for encroachment has been made out. The instant suit is a simplicitor suit for eviction of a licensee. No case of encroachment or a boundary dispute has been made out. To the mind of this Court the prayer for local

investigation was rightly rejected by the learned trial judge.

Accordingly, CO 2877 of 2025 stands dismissed.

It is, however, made clear that all observations made hereinbefore are only for the purpose of deciding the civil revision application and the learned trial judge shall be free to decide the suit without being influenced by the aforesaid observations.

(Hiranmay Bhattacharyya, J.)