

Court No. 6
(265719)

02.09.2025
(AD 19)
(S. Banerjee)

CO 3184 of 2025

Bapi Pramanik
Vs.
Tapan Kumar Das

Mr. Chittapriya Ghosh
Ms. Aiswarjya Gupta
Ms. Priyanka Saha

... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the order dated November 13, 2024 passed by the learned Civil Judge (Jr. Division), 5th Court at Alipore in Title Suit No. 134 of 2023. By the order impugned the application under Order 26 Rule 9 of the Civil Procedure Code stood rejected.

Learned advocate appearing for the petitioner submits that the opposite parties herein have encroached upon a portion of the A schedule property which has been specifically described in B schedule of the plaint. She submits that in order to ascertain the encroached portion, local investigation is necessary.

The petitioner filed a suit for declaration of title in respect of A schedule property. As per the schedule of the plaint B schedule is part and parcel of A schedule property. The petitioner has sought for

recovery of khas possession and for mandatory injunction directing removal of the electric meter and boundary wall from the B schedule property. Though the measurement of the B scheduled property has been stated to be of 59 square feet more or less in the western side of the A scheduled property the encroached portion has not been specifically described in the schedule of the plaint. Neither any sketch map has been appended to the plaint to specifically identify the encroached portion in respect of which the petitioner seeks a relief for recovery of possession and mandatory injunction.

The learned trial judge was right in holding that boundary wall of B scheduled property has not been properly described and only the measurement of B scheduled property has been mentioned. In the absence of boundaries it will not be possible for the learned Commissioner to conduct the local investigation. The learned trial judge assigned cogent reasons for rejecting the application under Order 26 Rule 9 of the Civil Procedure Code.

For such reasons, this court is not inclined to interfere with the order impugned. Accordingly, CO 3184 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)