

A.11
01.09.2025
Court No.6
BP

C.O. 3198 of 2025

Ashis Kumar Bhakta
-versus-
Prasanta Das & Ors.

Mr. Rollick Chowdhury
Mr. Ramji Munsii
... for the petitioner

Mr. Suhrid Sur
..for the opposite
Party nos. 1, 2 and 3

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated July 15, 2025 passed by the learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly in Title Suit No. 313 of 2016.

By the order impugned the application under Order 26 Rule 9 of the Code of Civil Procedure praying for appointment of an Advocate Commissioner for holding local investigation stood rejected.

The learned advocate appearing for the petitioner submits that there is a boundary dispute between the parties and for such reason the local investigation is necessary.

The learned advocate appearing for the opposite party nos. 1, 2 and 3 submits that the said opposite parties have filed a counter claim praying for a decree of

demarcation of plot no. 3474. He also submits that the local investigation is necessary for the purpose of adjudication of the dispute and the counter claim as well.

After going through the plaint filed by the petitioner and the counter claim of the opposite party nos. 1, 2 and 3, this Court finds that there is a dispute with regard to demarcation of plot no. 3474. The petitioner has prayed for a declaration that 'A-1' schedule property is part and parcel of 'A' schedule property and he is not related to the 'B' schedule property. The 'B' schedule property has been described in the plaint which comprises of plot no. 3474. The opposite party nos. 1, 2 and 3 in the counter claim have prayed for declaration of their title in respect of plot no. 3474 and 3473 which has been described as Schedule 'A' and 'B' of the counter claim and a decree for demarcation of plot no. 3474.

After going through the schedule of the application for local investigation this Court finds that the petitioner has sought for relaying of plot nos. A, A-1 and B schedule property and to report as to the measurement of 'A-1' schedule property and also to ascertain whether there is six feet wide passage or any space of 'B' schedule property being plot no.3474 towards eastern side of the boundary wall standing on 'B' schedule plot no. 3474.

Upon hearing the learned advocates for the respective parties and after going through the materials on record, this Court is of the considered view that the

local investigation is necessary for the purpose elucidating the dispute involved between the parties in the said suit. There is a boundary dispute between the parties.

The learned trial judge rejected the application under Order 26 Rule 9 of the Code of Civil Procedure only on the ground that the petitioner is an Advocate and is well conversant with the provisions of law and in spite of the same has filed the application at a belated stage. From a bare reading of the provisions under Order 26 Rule 9 of the Code of Civil Procedure it does not appear to this Court that the said provision specifies a particular stage when an application under Order 26 Rule 9 of the Code of Civil Procedure has to be filed. The learned trial judge without considering as to whether the local investigation was necessary rejected the said application on flimsy ground.

For such reason, this Court is inclined to interfere with the order impugned. The application under Order 26 Rule 9 of the Code of Civil Procedure stands allowed.

The learned trial judge is directed to appoint an Advocate Commissioner for holding local investigation on the point mentioned in the schedule of the application as expeditiously as possible but preferably within a period of two weeks from the date of receipt of a server copy of this order. The learned trial judge is directed to fix a time limit for completion of the commission work.

With the above observations and directions, C.O. 3198 of 2025 stands allowed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)