

**12.11.2025**

Court No.6  
D/L No.40  
S. Gayen

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**CO 3702 of 2025**

**Sri Ajoy Ghosh & Anr.  
Versus  
Smt. Gitarani Ghosh**

Mr. Samirul Sardar  
Mr. Md. Khairul Basar Bulbul  
...for the Petitioners

1. The petitioners are aggrieved by an order dated February 1, 2025 passed by the learned civil Judge (Junior Division), 2<sup>nd</sup> Court, Hooghly in title Suit No. 106 of 2004. The learned Court rejected an application filed under Order 12 Rule 6 of the Code of Civil Procedure (CPC) seeking dismissal of the suit. It was contended that the plaintiff had admitted that the defendants had right, title and interest in kha, ga and gha schedule property being the entire plot No. 1196. The commissioner's report also indicated that there was no encroachment by the defendants on the plaintiff's land.
2. In my opinion, the learned Court did not commit any irregularity in dismissing the said application. The provisions of Order 12 Rule 6 of the CPC cannot be applied, seeking dismissal of the plaintiff's suit, on the basis of commissioner's report and the pleadings. The

commissioner's report is rebuttable. Secondly, the plaintiff must be allowed to prove the issue of encroachment.

3. Under such circumstances, the revisional application is dismissed.
4. This is not a fit case for dismissal of the suit on the basis of the Commissioner's report.
5. The issue of encroachment has to be decided on evidence.

***(Shampa Sarkar, J.)***