

AD-5  
Ct No.16  
07.03.2025  
(SSS)

CO 3724 of 2024

Gobinda Ghosh and Anr.  
Vs.  
Sri Gour Chandra Ghosh and Ors.

Ms. Pampa Dey (Dhabal)  
Mr. Biswarup Chatterjee  
....For the Petitioners.

Mr. Dipanjan Datta,  
Mr. Sayan Datta,  
Ms. Reshma Chatterjee,  
Mr. Subhajit Chowhdury  
...For the Opposite Parties.

1. Affidavit of service filed today be kept on record.
2. Insofar as the Opposite Party No. 12 is concerned, it is submitted by learned Counsel for the petitioners that the postal track report indicates that the item “was out for delivery”. Insofar as the others are concerned, either service has been effected or the track report indicates refusal by the concerned Opposite Party. Since it is further submitted that only Opposite Party Nos. 1 and 9 are contesting at the present juncture in the court below, further service on the Opposite Party No. 12 is dispensed with.
3. At this juncture, learned Counsel appearing for the Opposite Party appears and submits that he has

instructions to appear on behalf of all the Opposite Parties. Accordingly, the revisional application is taken up for hearing.

4. The present challenge has been preferred against an order whereby an application filed by the plaintiffs/petitioners under Order XXVI Rule 9 of the Code of Civil Procedure for holding a local investigation to ascertain the location of a passage, which is the subject matter of dispute in the suit, was dismissed. The dismissal was on the sole ground that a writ petition is also pending in this court on similar cause of action.

5. However, I find from the records and from the submissions of learned Counsel that the writ petition was filed in respect of alleged inaction on the part of the concerned municipality and does not concern the merits of the present suit. Moreover, in the suit, declaration of title and consequential reliefs have been sought, in aid of which the local investigation was prayed.

6. Since the writ court is not competent to grant the reliefs claimed in the suit, it cannot be said that the scope and purport of the two litigations are the same.

7. Also, I find from the schedule of the local investigation application that the local investigation is germane to decide the issues involved in the suit,

since the suit pertains to a dispute regarding a passage, which has been claimed to be a private passage of the plaintiff whereas the local investigation application was to ascertain the location of the property by comparing with the RS and LR *mouza* maps as well as to ascertain as to whether the said passage was a part of the suit property and whether construction is being made thereon.

8. Accordingly, I find that the local investigation is necessary for a proper and complete determination of the disputes involved in the suit and ought to have been allowed by the learned Trial Judge.

9. Hence, CO 3724 of 2024 is allowed, thereby setting aside the impugned Order No. 41 dated August 22, 2024 passed by the learned Civil Judge (Junior Division), Second Court at Serampore, District – Hooghly in Title Suit No.470 of 2021 and directing the learned Trial Judge to appoint a Survey-passed Commissioner to hold local investigation in terms of the prayers made in the application under Order XXVI Rule 9 of the Code of Civil Procedure filed by the plaintiffs/petitioners in the said suit.

10. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)