

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Partha Sarathi Sen

CO 11 of 2025

**Sri Swarup Barma & Ors.
Vs.
Sri Sunil Chandra Sarkar**

For the petitioners : Mr. Narendra Nath Das
Mr. Pragyadip Roy Basunia
Ms. Binapani Singha
Mr. Jagesh Chandra Roy

For the opposite party : Mr. Momenur Rahaman
Mr. Pretom Das

Heard on : 13.08.2025

Judgement on : 13.08.2025

PARTHA SARATHI SEN, J.:

1. Though the instant revisional application was heard at length and hearing was concluded on 11th August, 2025, however, in order to get some more explanations with regard to the subject matter of *lis*, the instant matter is once again listed today under the heading ***“To Be Mentioned”***.
2. Learned advocate appearing on behalf of the revisionists/defendants and learned advocate appearing on behalf of the opposite party/plaintiff in their usual fairness have sufficiently explained the matter to this Court.

3. The instant revisional application is now taken up for passing appropriate order.
4. By filing the instant application under Article 227 of the Constitution of India, the petitioners/defendants have impugned the judgment dated 16th December, 2024 as passed by the learned Additional District Judge Tufanganj, Cooch Behar in Misc. Appeal No.1 of 2023 whereby and whereunder the said Appellate Court set aside the order No.17 dated 29th April, 2023 as passed by the learned Civil Judge (Junior Division) at Tufanganj, Cooch Behar in connection with Title Suit No.2 of 2022.
5. While passing the impugned judgment, the said Appellate Court directed the parties to the said suit to place their receptive documents before the learned Trial Court by way of affidavit and the learned Trial Court was directed to hear out the injunction application afresh on the basis of the affidavit and the documents to be filed by both the parties for determining the status.
6. It further reveals from the impugned judgment that while passing the said impugned judgment, the said Appellate Court came to a finding that local investigation in respect of the suit property is necessary to determine, who is in possession over the suit property.
7. For effective adjudication of the instant *lis*, the facts leading to passing of the impugned judgment by the said Appellate Court is required to be discussed in a nutshell.
8. By filing Title Suit No.2 of 2022, the opposite party/plaintiff herein has prayed for decree for permanent injunction against the defendants/petitioners herein restraining them from dispossessing the

opposite party/plaintiff herein from the suit property, particulars of which have been mentioned in the schedule of the said plaint.

9. Based on selfsame pleading, the opposite party/plaintiff herein filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure before the learned Trial Court praying for temporary injunction restraining the defendants/petitioners herein from interfering with the possession of the plaintiff/opposite party herein in respect of the suit property.
10. The said injunction application was contested by the defendants/petitioners herein by filing a written objection.
11. By order No.17 dated 29th April, 2023 as passed in Title Suit No.2 of 2022, the learned Trial Court allowed the said application for temporary injunction on contest and directed both the parties not to do anything over the suit property till disposal of the said suit.
12. The defendants who are the petitioners before the Court felt aggrieved and, thus, preferred the Misc. Appeal No.1 of 2023 before the Appellate Court, which came to be disposed of by passing of a judgment dated 16th December, 2024, which is impugned in this revisional application.
13. At the time of hearing, Mr. Das, learned advocate appearing on behalf of the defendants/petitioners at the very outset draws attention of this Court to the impugned judgment. It is submitted by Mr. Das that while passing the impugned judgment, the said Appellate Court came to a finding that in order to ascertain as to who is in possession over the suit property, local investigation is necessary. It is submitted by Mr. Das that such a finding on

the part of the Appellate Court is absolutely faulty inasmuch as the said Appellate Court has failed to visualize the true spirit of the provisions of Order 26 Rule 9 of the Code of Civil Procedure, which deals with the subject of local investigation.

14. In his next fold of submission, Mr. Das draws attention of this Court to the ordering portion of the impugned judgment.
15. It is submitted by Mr. Das that while passing the impugned judgment the learned First Appellate Court has also failed to visualize that before the learned Trial Court both the parties to the said suit have filed their respective affidavits and documents and, thus, there cannot be any necessity for filing any further affidavits as wrongly held by the Appellate Court.
16. It is submitted by Mr. Das that the impugned judgment dated 16th December, 2024 is required to be modified directing the learned Trial Court to hear out the injunction application afresh on the basis of the injunction application and the written objection and the supporting documents as filed by the parties to the said suit without insisting for local investigation for the purpose of ascertaining as to who is in possession over the suit property as wrongly held by the said Appellate Court.
17. Mr. Rahaman, learned advocate appearing on behalf of the opposite party/plaintiff submits before this Court that he has got no objection, if the learned Trial Court hears out the injunction application on the basis of the affidavits as already filed by the parties to the said suit including the documents, which have been relied upon at the time of hearing of the injunction application.

18. On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that the finding of the Appellate Court in its impugned judgment dated 16th December, 2024 in Misc. Appeal No.1 of 2023 that a local investigation is necessary for determining as to who in possession over the suit property is contrary to the spirit of the provisions of Order XXVI Rule 9 of the Code of Civil Procedure.
19. It is well settled principle of law that the purpose of local investigation is not to fish out evidence. On the contrary, a court of law is duty bound to come to a finding with regard to the possession of a party over the suit property on the basis of the evidence placed before it by the parties.
20. In view of such, this Court has got no hesitation to hold that the finding of the Appellate Court in the impugned judgment that local investigation is necessary to determine as to who in possession over the suit property is purely faulty and the same is, thus, set aside.
21. As rightly pointed out by Mr. Das, learned advocate for the defendants/petitioners that before the learned Trial Court both the parties to the said suit have already filed their affidavits i.e. the application for temporary injunction and the written objection and further both the parties to the said suit have also filed their respective documents in support of their pleadings.
22. Such being the position, it would be highly unjust to direct the parties to the said suit to file further documents by way of affidavit as directed by the Appellate Court.

23. In view of the discussions made hereinabove, this Court, thus, finds sufficient merit in the instant revisional application.
24. Accordingly, the instant revisional application is hereby allowed.
25. Consequently, the impugned judgment dated 16th December, 2024 as passed by the learned Additional District Judge, Tufanganj, Cooch Behar in Misc. Appeal No.1 of 2023 is modified to the extent indicated hereinunder.
26. The Order No.17 dated 29th April, 2023 as passed in Title Suit No.2 of 2022 by the learned Civil Judge (Junior Division), Tufanganj, Cooch Behar is hereby set aside.
27. Learned Civil Judge (Junior Division) Tufanganj, Cooch Behar is hereby directed to hear out the injunction application as filed by the plaintiff before him afresh on the basis of the injunction application and the written objection as already filed by the parties as well as the documents as relied upon in support of the pleadings of the respective parties without insisting for filing any further documents on affidavit and also without insisting for local investigation for the purpose of disposal of the injunction application as filed by the plaintiff.
28. With the aforementioned observations, CO 11 of 2025 is disposed of.
29. Before parting with, it is further directed that the said injunction application shall have to be disposed of by the learned Trial Court within thirty working days from the date of communication of the server copy of this order.
30. It is further ordered that till disposal of the said injunction application there shall be a *status quo* in respect of the suit property.
31. The time limit as fixed by this Court is mandatory and preemptory.

32. Liberty is given to the learned advocate-on-record of the parties to the instant revisional application to communicate the server copy of this order to the learned Trial Court.
33. The learned Trial Court is hereby directed to act on the basis of the server copy of this order.

(Partha Sarathi Sen, J.)

SR.
A.R. (Court)