

Dd

19 **17.11.2025**

***IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI***

CO/124/2025
BINOD PRASAD@BINOD KUMAR PRASAD
AND ANR
VS
MAHENDRA SHARMA AND ANR

Mr. Anand Bhandari,
Mr. Mayank Bhandari, Advocates
... .. For the Petitioners

1. Petitioners assail Order No. 43 dated March 27 of 2025 passed in O.C. Suit No. 06 of 2021 (CIS 03 of 2021) pending before the Court of the learned Civil Judge (Senior Division) at Kalimpong.
2. Learned advocate appearing for the petitioners submits that the petitioners as the plaintiffs filed a suit for eviction. He submits that the defendants encroached upon the land belonging to the petitioners, ostensibly on the basis of a title deed allegedly executed by a different person. He submits that initially application for local inspection filed on behalf of the petitioners was rejected by retaining the liberty to reapply at an appropriate stage.
3. Learned advocate appearing for the petitioners submits that, the evidence of parties is being recorded at the trial. He submits that a local inspection is required in order to introduce the position of the land as obtaining presently, at the trial for the trial Court to evaluate the issues framed in the suit appropriately.

4. Affidavit-of-service filed in Court be taken on record. None appears for the opposite parties despite service.
5. There is a suit for eviction by the defendants pending. Plaintiffs claim right, title and interests in respect of the suit property. It is the allegation of the plaintiffs/petitioners that the defendants encroached upon a portion of the land belonging to the plaintiffs ostensibly on the basis of a title deed through which, no right flowed to the defendants, in respect of the land of the plaintiffs which the defendants encroached upon.
6. In order to establish the area of encroachment, the plaintiffs/petitioners applied for local inspection. As noted above, initially such application was rejected with right of the plaintiffs being retained to reapply at an appropriate stage of the suit.
7. The nature of the suit and the issues framed therein, permits a plausible view to be taken that a local investigation is required for the purpose of elucidating on the issues in the suit. As noted above, the suit is for eviction. Plaintiffs are claiming that the defendants encroached upon land belonging to the plaintiffs. Nature and extent of encroachment can be found out by a local inspection in terms of Order XXVI Rule 9 of the Code of Civil Procedure, 1908.
8. In such circumstances, the impugned order is set aside. Learned trial Judge is requested to appoint an Advocate Commissioner for the purpose of undertaking an exercise under

Order XXVI Rule 9 of the Code of Civil Procedure, 1908, as prayed for by the plaintiffs in its petition thereunder.

9. CO/124/2025 is **disposed of** accordingly.

(Debangsu Basak, J.)