

Item No.14
25.02.2026
Court. No. 6
GB

C.O. 268 of 2025

Shrimati Sumita Saha & Ors.
Vs.
Dulal Chandra Kar & Ors.

*Mr. Debasish Roy, Sr. Adv.,
Mr. Debnath Mahata*

...for the Petitioners.

Mr. Pritam Choudhury

...for the Opposite Party Nos.1 & 2.

1. The petitioners are the plaintiffs in Title Suit No.24 of 2006. The petitioners are aggrieved by an order dated November 12, 2024, passed by the learned Civil Judge (Senior Division), 2nd Court at Alipore, District – 24 Parganas (South).
2. By the order impugned, the learned court rejected an application under Order 26 Rule 9 of the Code of Civil Procedure. The court was of the view that by an order dated March 13, 2014, one Mr. Nirmalendu Jana, a survey passed commissioner was appointed to hold commission as per the direction of the High Court in C.O. 3567 of 2010 and the said commission report was submitted before the court with the annexures. The learned commissioner was called upon to give evidence. A second application under Order 26 Rule 9 of the Code of Civil Procedure was rejected. After much effort, the evidence of the learned commissioner could be closed on June 10,

2024. The defendants did not cross-examine the learned commissioner.

3. The court found that the contents of the first application and the points for commission which were allowed were similar to the contents and grounds taken in the present application.
4. In fact, the plaintiffs relied on the commissioner's report dated July 3, 2018 and the commissioner proved the said report formally. The same was marked as an exhibit. The plaintiffs did not object to the commissioner's report. After four years from filing of the said report, suddenly on June 29, 2022, the plaintiffs filed a second application for appointment of a survey passed commissioner. The same was rejected. Before the second application was filed, the commission report was proved and the same was marked as Exhibit-1. After rejection of the second application, the third application was filed which is the subject matter of the present revisional application. The court recorded that the application for commission was filed only to delay the suit.
5. The plaintiffs filed the suit for declaration, damages and permanent injunction. Their allegation in the suit was that the defendant nos.1 and 2 had illegally encroached the entire 10ft. wide common passage lying on the northern portion of the plaintiffs' house and on the southern portion of the defendants'

property, by raising a brick wall which resulted in denial of access of the plaintiffs to their newly constructed building. When the plaintiffs requested the defendants to remove the illegal boundary wall, such request was not accepted. A 'salishi' was held and respectable members of the locality directed the defendant nos.1 and 2 to remove the illegal boundary wall lying in the southern side of the property purchased by the defendants and requested them to leave a 10ft. wide common passage on the northern side of the plaintiffs' property. A notice was also issued by the plaintiffs to the Kolkata Municipal Corporation. The cause of action arose on September 3, 2000, when the encroachment of the 10ft. wide common passage lying in the northern portion of the plaintiffs' house and the southern portion of the defendants' property had taken place upon construction of the boundary wall. The prayers were for a declaration that the 10ft wide pathway in the northern portion of the plaintiffs' house and towards the southern portion of the defendants' property was a common passage. An injunction was prayed for restraining the defendants from encroaching the said passage and a further prayer for mandatory injunction was made for a direction for removal of the brick wall. The schedule of the property, that is,

the common passage has been mentioned in the plaint, which is quoted below:

*“SCHEDULE OF SUIT PROPERTY
ALL THAT 10’ft wide Scheme Common
 Passage/Pathway running from East to
 West and then taking turn to the North
 meets 12’ft wide Pathway and then meets
 the 20’ft wide common passage main road
 running east to west, for egress and ingress
 in the residential house of the Plaintiff lying
 and situate on a portion of the Plot of land
 under, Khatian No:44, Dag No: 208,
 208/219, appertaining to Touzi No: 56, J.L.
 No: 25, R.S. No: 3. Pargana-Khaspur, of
 Mouza-Nayabad, P.S: Jadavpore, Dist: 24-
 Parganas (South)”.*

6. It is for the plaintiffs to prove that the said 10ft. wide passage was a common passage and that the defendants had encroached upon the said passage by raising a brick wall. The commissioner’s report has already been proved and there is a finding with regard to such encroachment. Secondly, measurement of the passage by relayment and demarcation thereof upon consultation with the master plan of the defendants with fixed points, etc., are neither relevant nor required, to adjudicate the dispute which is with regard to encroachment over a common passage as described in the plaint.
7. The defendants’ case is that there has been no encroachment at all. In view of such fact, this Court

is of the view that allowing this application will only permit the plaintiffs to fish out evidence. The plaintiffs are trying to locate and identify the common passage, although the passage has been described in the schedule of the plaint. The passage is supposed to be within the knowledge of the plaintiffs.

8. This is not a boundary dispute and no doubt has been created, which requires further elucidation.
9. Accordingly, the revisional application fails and is dismissed.
10. The learned court rightly rejected the said application. The learned court has already observed that the suit is required to be heard expeditiously. Accordingly, the learned court is requested to proceed with the suit in an expeditious manner.
11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)