IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Supratim Bhattacharya

CO/327/2026

Sangeeta Agarwala
VS
Souvik Das & Ors.

For the petitioner : *Mr. Sarbananda Sanyal,*
Ms. Poulami Chakraborty,
Mr. Samrat Chakraborty,

For the respondent no. 1 : *Mr. Manab Kumar Gupta,*
Ms. Moumita Gupta,

Heard on : 1st October, 2026

Judgment on : : 1st October, 2026

Supratim Bhattacharya, J.

1. The backdrop of the present dispute is as regards to the boundary and as such the plaintiff has filed the suit seeking declaration and injunction claiming thereby that her property is being encroached by the defendants and to prove her contention, the petitioner/plaintiff has filed an application under Order XXVI Rule 9 of the Code of Civil Procedure seeking an appointment of Local Commissioner to make local investigation in respect of the suit property. The learned Trial Court after hearing the learned counsel representing the

parties has been pleased to reject the application under Order XXVI Rule 9 of the Code of Civil Procedure (hereinafter, referred to as the said Code).

2. Being aggrieved by and dissatisfied with the said order passed by the learned Trial Court, the petitioner/plaintiff has preferred the present civil revisional application.

3. The learned advocate representing the petitioner/plaintiff submits that the suit is for declaration and injunction, and originally the property belonged to one Chaitanya Sen and at the relevant point of time it was becoming C.S. Plot. No. 625. He has further submitted that thereafter, the suit property devolved upon the three sons of Chaitanya Sen namely, Ashim Krishna Sen, Atul Krishna Sen and Bimal Krishna Sen. By way of partition in the year 1945, the aforesaid sons got the property settled among themselves. The property belonging to Bimal Krishna Sen, one of the sons of Chaitanya Sen was sold by way of deed of sale, during the year 1954 to one Manikuntala Das and thereafter the property has been transferred in favour of the petitioner/plaintiff. He has further submitted that the C.S. Plot No. 625 got divided into 625, 625/677 and 625/978.

4. Having attempted to be encroached, the petitioner/plaintiff instituted the present suit and has sought for appointment of Survey Passed Commissioner which has been rejected. He further submits that the learned Trial Judge has rejected the said application on the ground that the local investigation is neither requisite nor proper and appointing Local Commissioner for the purpose of issue included under point no. 1 would in effect amount to collecting evidence on behalf of the plaintiff on the point of

possession which is contrary to legal principles. The learned counsel has further submitted that to prove attempt of encroachment only the report of the Investigation Commissioner, if allowed, can be the best proof of evidence.

5. In support of his contention, the learned counsel has relied upon the following authorities which are published at **(I) (2008) 8 SCC 671, (II) AIR 1933 Cal 475** and has also relied upon a judgment of the Hon'ble Madhya Pradesh High Court published at **2011 (2) Madhya Pradesh Law journal 576**. Relying upon the aforementioned judgments, the learned counsel has prayed for setting aside the impugned order and allowing the prayer for Local Investigation Commission.

6. Per-contra, the learned counsel representing the opposite party submits that there is no question for encroachment and further submits that only injunction has been prayed for and there is no prayer for declaration and question of encroachment does not arise at all. He further submits that the petitioner/plaintiff has raised the issue that there is a dispute as regards the plot numbers which cannot be agitated before Civil Court on the contrary it has to be agitated under the West Bengal Land Reforms Act before Revenue Forum (BL & LRO). There being no question of encroachment and the opposite parties being in possession of the suit property since long that is more than thirty years question of appointing Investigation Commissioner does not arise at all and the learned Trial Judge has been clear in his view and has rightly rejected the application through which Investigation Commissioner has been prayed for under Order XXVI Rule 9 of the said Code. He further submits that the application has been made only to have evidence which can be adduced by the

parties and at this stage there is no necessity of allowing the application seeking Investigation Commission.

7. In support of his contention the learned senior counsel has relied upon the following authorities. He has relied upon a judgment of Co-ordinate Bench of this Hon'ble High Court passed in a Civil Revision Application bearing No. CO 1738 of 2025. He has also relied upon a judgment of the Punjab and Haryana High Court passed by a Co-ordinate Bench reported in **2022 SCC OnLine Punjab and Haryana 1777,** also relied upon judgment of the Orissa High Court passed by a Co-ordinate Bench in the case between the **Basanta Kumar Swain Vs. Baidya Kumar Parida and Ors**. The learned counsel has also relied upon a judgment of Madhya Pradesh High Court in the case between **Shantilal Kasera Vs. Sumitrabai.** Relying upon the aforementioned authorities, the learned counsel has submitted that the impugned order does not require interference at all and is in accordance with law, as such, the present Civil Revisional application is liable to be rejected.

8. From the contentions advanced by the learned counsels representing the petitioner and the opposite party, it transpires that there is a dispute with regard to land between the two contending parties and where the question of dispute arises which involves encroachment and to prove encroachment the actual picture is to be placed before the learned Trial Court and for that a Survey Passed Investigation Commissioner is required to be appointed to place the real fact before the Court through a report to come to the just conclusion of the case. It is fact that to prove encroachment and to have settlement as regard to dispute involving land, Survey Passed Commissioner is the correct person

who can bring the clear picture with regard to the dispute involving encroachment of property and place the same before the learned Trial Court to settle the dispute.

9. In this context this Court relies upon the judgment of the Hon'ble Apex Court published in **2008 Volume 8 SCC 671** wherein the Hon'ble Apex Court in paragraph no. 6 has opined that … ***"It is also not in dispute that even before the appellat Court, the appellant Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. The High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case, whether the Local Commissioner should be appointed for the purpose of demarcation in respect of the suit land…"***

10. Thus, it is evident that the application Under order XXVI Rule 9 of the Code of Civil Procedure, 1908 seeking appointment of Local Investigation Commissioner ought to have been allowed and in such circumstance, the said impugned order requires interference and is being set aside. A Local Investigation Commissioner be appointed and he is to furnish a report after serving notice upon both the contending parties and having been investigated in presence of both the sides.

11. With the above observations, CO 327 of 2026 stands allowed.

12. At this stage learned counsel representing the opposite party submits that the learned Investigation Commissioner be directed to complete the work of Local Investigation Commission within limited period.

13. In this regard, this Court requests the learned Trial Judge to appoint Survey Passed Local Investigation Commissioner from the panel and direct him to complete the commission work within four months from the receipt of the writ of commission from the Court and the learned Trial Judge is also requested to fix the remuneration of the Investigation Commissioner.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Supratim Bhattacharya, J.)