22.06.2026
Item No.2 (DL)
Court No.06
AJ.

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 396 of 2025

Sk. Sahanizam Ali & Ors.
-Vs-
Abdul Rahaman Mallick & Anr.

Mr. Saurabh Guhathakurta,
Mr. Tarak Nath Sarkar,
Mr. Surajit Dutta,
Mr. A. Sarkar.
.....for the petitioners.
Mr. Sukanta Das,
Mrs. Anulekha Bera Maiti.
.....for the opposite party no.1.

1. This revisional application is directed against an order dated July 23, 2024 passed by the learned Civil Judge (Senior Division), 3rd Court, Paschim Medinipur in Title Suit No. 222 of 2022.

2. Title Suit No. 222 of 2022 has been instituted by the opposite party no.1 praying for partition of the properties in the suit. In the said suit, the petitioners made an application under Section 151 of the Code of Civil Procedure, 1908 seeking permission to construct a pukka residential house. Such application filed by the petitioners was allowed by the learned Trial Court by an order dated September 21, 2023 and a learned Advocate Commissioner was appointed to supervise the construction to be carried out by the defendant no.2 and to file a report on conclusion of such construction.

3. Subsequently, the learned Advocate Commissioner filed a report before the learned Trial Court which alleged that the defendants had raised certain unauthorized construction.

4. Upon such report being filed, the opposite party no. 1 filed an application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 praying for local inspection of the properties. Such application for local inspection has been allowed by the learned Trial Court and the learned Trial Court has also directed the Commissioner to inspect and report as regards the measurement of additional construction made by the defendant no.2 beyond the Panchayat plan. The petitioners are aggrieved by such order.

5. Mr. Guha Thakurta, learned Advocate appearing for the petitioners submits that the direction to file a report as regards measurement of additional construction by the defendant no.2 beyond the Panchayat plan could not have been issued to the learned Advocate Commissioner by the learned Trial Court inasmuch as such exercise can be conducted only by a Survey Passed Commissioner.

6. Mr. Das, learned Advocate appearing for the plaintiff/opposite party no.1 however submits that such a direction has been passed by the learned Trial Court in the clear facts of the present case

where the Commissioner herself had stated in her report that there was an unauthorized construction.

7. Mr. Das further submits that the order impugned has already been acted upon and the petitioners have participated in the inspection that has been conducted in terms of the impugned order.

8. Mr. Guha Thakurta refutes the contention that there is any unauthorized construction.

9. Heard the learned Advocates appearing for the respective parties and considered the material-on-record.

10. The order impugned has while dealing with the opposite party no.1's application for local inspection observed as follows :-

> *"In course of hearing it appears before the Court from the commissioner report filed by the ld. Commissioner Sumana Chjakraborty on 31.01.2024 that the defendants apart from making construction to the extent of 857 sq. ft. has construction 3.5 ft. cantilever on northern and western side of the roof and approx 3 ft. parapet and all side of the roof and he has built a small shed which is beyond the panchayet plan. However, the Ld. Commissioner has not mentioned how much of the area the defendant no.2 has made additional construction. The plaintiff claims that the defendant no. 2 has made additional construction to the extent of 455 sq. ft. but*

the report of the Ld. Commissioner is silent in this regard. Thus, to ascertain the said fact and considering the attending facts and circumstances of the instant suit and materials on record and the urgency of the situation, this Court finds that the local inspection as to the said fact is essential to bring before this Court for the purpose of effective adjudication of the present application and the suit."

11. A perusal of the above observation by the learned Trial Court reveals that the learned Court requires clarification as regards the Commissioner's earlier submission that there has been unauthorized construction. Since the observation quoted hereinabove clearly indicates that, therefore, the order impugned cannot be faulted for such purpose.

12. Furthermore, it is settled law that a report filed by a Commissioner under Order 39 Rule 7 of the Code is not sacrosanct. It is always subject to proof for being accepted as evidence and a party always has the right to take exception thereto. It will be open to the petitioners to challenge the report by way of an appropriate exception thereto before the learned Trial Court, in accordance with law.

13. For all the reasons aforesaid, this Court is not inclined to interfere with the order impugned.

14. C.O. 396 of 2025 stands disposed of. There shall be no order as to costs.

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

(Om Narayan Rai, J.)