

CO. 1004 of 2026

17.04.26
D/L
Sl-6
Ct. 06
(Samar)

Sri Devendra Singh & Anr.
V.
Sri Arjun Prasad Shaw

Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Mr. Saibal Rakshit,
... for the petitioners.
Mr. Debabrata Saha Roy, Sr. Adv.,
Mr. Neil Basu,
Mr. Sankha Biswas,
Mr. Avidipta Paul,
.... For the opposite party

1. Affidavit of service filed in Court today is taken on record.
2. This revisional application is directed against an order dated February 07, 2026 passed by the learned Additional District & Sessions Judge, Fast Track 1st Court at Barrackpore, North 24-Parganas in Misc Appeal No. 88 of 2025 whereby the petitioners' application for local investigation under Order 26 Rule 9 of the Code of Civil Procedure, 1908 has been rejected.
3. The petitioners have instituted Title Suit No. 476 of 2025, *inter alia*, for a decree for declaration and permanent injunction against the opposite party herein. In the said suit, the petitioners filed an application for injunction under Order 39 Rules 1 & 2 of the Code and pressed the same for *ex parte ad interim* order. On July 07, 2025 an *ex parte ad*

interim order was passed in favour of the petitioners. Assailing the said order, the opposite party have filed Misc. Appeal No. 88 of 2025 which is pending. In the said Misc. Appeal, the petitioners filed an application under Order 26 Rule 9 of the Code seeking appointment of a Commissioner for local investigation. Such application has been turned down by the order impugned. Hence the revisional application.

4. Mr. Roy, learned advocate appearing for the petitioners submits that the order impugned is bad inasmuch as the same cites contradictory reasons for turning down the petitioners' application for local investigation under Order 26 Rule 9 of the Code. Inviting the attention of this Court to the order impugned, it is submitted that while on the one hand the learned Trial Court has observed that the purpose of investigation of the suit property is to bring out relevant evidence when evidence on record is insufficient for determining the issues in suit, on the other hand, the learned Trial Court has held that such application could not be allowed for fishing out of evidence.

5. Mr. Saha Roy, learned Senior advocate appearing for the opposite party, submits that the application for local investigation under Order 26 Rule 9 filed by the petitioners could, in any event, not have

been entertained by the learned Appellate Court. It is submitted that when the order of injunction that has been assailed in Misc. Appeal No. 88 of 2025 had been passed without there being any report of a Commissioner appointed under Order 26 Rule 9 of the Code, there can be no requirement of such a report at the stage of a Misc. Appeal. In support of his contention, he relies an unreported decision of a Co-ordinate Bench of this Court in the case of **Sunil Kumar Tiwari Vs. Subir Sen (Co 1672 of 2023)** decided on **June 13, 2023**.

6. Having heard the learned advocates appearing for the respective parties and having considered the material-on-record, this Court finds no reason to interfere with the order impugned.
7. The scope of the Misc. Appeal is limited to the assessment and examination of the *ex parte* ad interim order of injunction that was passed in favour of the petitioners. Since the *ex parte* order of injunction was passed on the basis of the averments made in the plaint and the material relied on by the petitioners before the learned Trial Court at the time the order of injunction was passed, this Court is of the view that the scope of an appeal thereagainst cannot be enlarged by a further report unless the Court itself finds it necessary.

8. In such view of the matter, the ultimate conclusion reached by the learned Appellate Court does not call for any interference.
9. It is however made clear, that this order shall not prevent either of the parties from approaching the learned Trial Court in accordance with law either for local inspection or local investigation if the need therefor arises in future.
10. With the above observations, CO. 1004 of 2026 stands disposed of. There shall be no order as to costs.
11. Since the appeal is of the year 2025, the learned Additional District & Sessions Judge, Fast Track 1st Court at Barrackpore, North 24-Parganas is requested to expedite the hearing of the appeal and dispose of the same as expeditiously as the business of the learned Court would permit.
12. 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.)