

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:
The Hon'ble Justice Md. Shabbar Rashidi.

CO 869 of 2024

**Sri Tapan Kumar Dutta @ Tapan Dutta
Vs.
Sri Pintu Dutta & Ors.**

For the petitioner : Mr. Manabendra Thakur

For the Opposite Parties : Mr. Sukanta Das,
Mr. Snehasis Jana,
Ms. Anulekha Bera Misti.

Judgment on : **09/01/2026**

Md. Shabbar Rashidi, J.:-

1. The parties are represented through their respective learned Counsels.
2. The revisional application is directed against an order dated September 29, 2023 passed in title suit No.46 of 2004 by the learned Civil Judge (Junior Division) Additional Court at Ghatal, Paschim Midnapore.
3. The petitioner/plaintiff filed Title Suit No.46 of 2004 seeking declaration of right and title over the suit property. It was the allegation of the petitioner/plaintiff that the defendant/opposite party encroached certain portions of the suit property belonging to the petitioner/plaintiff.

4. The suit was contested by the defendant/opposite party by filing written statement. The suit property was partitioned amongst the parties in terms of a registered partition deed dated December 2, 1983 wherein the petitioner/plaintiff was allotted 02 decimals of land in R.S. Plot No.318 of Mouza Konnagar. After such partition the petitioner/plaintiff constructed their house bearing 2' wide area beyond their construction on their allotted portion. It was the allegation of the petitioner/plaintiff in the title suit that the defendant/opposite party constructed, encroaching upon the said 2' wide area left by the petitioner/plaintiff which actually belonged to the share of the petitioner/plaintiff.
5. In such suit, the petitioner/plaintiff applied for local investigation of the suit property by Survey Commissioner for demarcation of 'ka' and 'kha' schedule properties allotted in favour of the parties. On the prayer of the petitioner/plaintiff for local investigating, survey knowing pleader commissioner was appointed by the learned Trial Court on November 10, 2021.
6. After taking into consideration the written objection filed on behalf of the defendant/opposite party in respect of the petition for local investigation, a survey was held by the local investigating officer and report was submitted. The same was challenged by petitioner/plaintiff. Upon hearing of such objection and after examining the report of the learned Commissioner, the learned Trial Court rejected the Commissioner's report.

7. It is submitted on behalf of the learned Advocate petitioner/plaintiff that the Survey Commissioner's reported was rejected on the ground that the learned Commissioner committed mistake in the measurements. He did not consult the R.S. Mouza Map for the purpose of survey of the disputed land.
8. The learned Advocate for the petitioner/plaintiff submits that the Survey Commission report was rejected upon hearing on an objection raised by the defendant/opposite party. The petitioner/plaintiff is not aggrieved with rejection.
9. It is submitted by the learned Advocate for the petitioner/plaintiff, however, while rejecting the Survey Commissioner's report, the learned Trial Court ought to have directed a fresh Commission.
10. It is submitted by the learned Advocate for the defendant/opposite party that the matter should be relegated to the learned Trial Court for fresh Commission within a fixed time.
11. Having considered the submissions on behalf of the parties and on perusal of the materials on record including the impugned order it appears that the learned Trial Court rejected the Commissioner's report. Several discrepancies in the measurement on the part of the learned Commissioner have been noted in the impugned order. It is also noted that although survey map was provided to the learned Commissioner at the time of measurement but he could not say as to which party supplied the map. The said Map was also not resubmitted with his report which was submitted in the Court. On these premises, the learned Trial Court rejected the report

submitted by the Survey Commissioner. Upon such rejection learned Trial Court fixed the suit for steps by defendant/opposite party.

12. As evident from the materials on record that the petition filed on behalf of the petitioner seeking local investigation of the suit plot by a Survey Commissioner was considered by the learned Trial Court and it was allowed upon consideration of the dispute between the parties. Such Commission was conducted and report in this regard was submitted by learned Survey Knowing Pleader Commissioner. An objection was raised on behalf of the defendant/opposite party. Upon hearing, the survey report was rejected by the learned Trial Court. It is evident that once the learned Trial Court found that the local investigation by the Survey Knowing Pleader Commissioner was necessary for the purpose of adjudication of the case and allowed the petition for local investigation and such local investigating Officer's report was rejected, the suit would not have proceeded without the report of the Survey Knowing Commissioner. The report was rejected upon hearing both the parties as well as the learned Commissioner.
13. In such circumstances, the learned Trial Court ought to have directed a fresh commission by the same Survey Commissioner or any other Survey Commissioner.
14. In the facts and circumstances of the case, the impugned order is set aside so far as it relates to fixing the case for steps on the part of the defendant/opposite party. The learned Trial Court is

requested to direct a fresh Commission upon rejection of the earlier Commission report by the self-same pleader Commissioner or by some other pleader Commissioner as the learned Court deems fit. The learned Trial Court shall endeavour to conclude the survey proceeding within three months from the date of communication of this order. After taking into consideration the objection, if any, such report submitted and accepted by the Court, the learned Trial Court shall proceed with the suit in accordance with law.

15. With the above observation and directions, this writ petition CO 869 of 2024 is disposed of without any order as to costs.
16. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(MD. SHABBAR RASHIDI, J.)