

09.03.2026
Item No.32
Ct. No. 30
Aloke

CO 997 of 2023

Shipra Nandi
Vs.
Chinmoy Boral

Mr. Rajdeep Bhattacharya
Mr. Sauradeep Dutta
Mr. Himadree Ghosh
..for the petitioner

Mr. Chittapriya Ghosh
Ms. Priyanka Saha
... for the opposite party

1. Affidavit-of-service filed be kept with the record.
2. The civil revision has been preferred challenging order no. 16 dated 03.03.2023 passed by the learned Civil Judge (Junior Division), 2nd Court, Chandernagore, District-Hooghly, in Title Suit No. 195 of 2021.
3. Vide the impugned order the trial Court has rejected the petitioner's second application under Order XXXIX Rule 7 CPC on the ground of res judicata on the observation that the earlier application under Order XXXIX Rule 7 CPC was rejected on the ground that, no points for inspection was mentioned and the trial Court is thus of the view that the second application is barred by res judicata.
4. Considering that the principles of res judicata does not apply in any manner whatsoever in the present case on the grounds as stated and that the same was

erroneously applied by the trial Court, the impugned order is set aside.

5. On hearing the learned counsels for the parties and considering the nature of dispute and the issues raised in the Title suit before the trial Court, it appears that there is a dispute regarding a common passage which both the parties claim to be their property and there also is a case of encroachment.

6. Thus, considering the nature of dispute, an **investigation** in the present case is required for proper adjudication of the dispute in the suit and a local inspection will not serve the purpose.

7. Accordingly, the revisional application is disposed of with liberty granted to the petitioner herein to file an appropriate application under Order 26 Rule 9 CPC including the points as noted in the second application under Order XXXIX Rule 7 CPC along with any other points required for investigation with a prior copy being served upon the opposite party.

8. The application shall be considered and disposed of by the trial Court on hearing the parties, in accordance with law, within a period of 30 days from the date of filing of the said application, after completion of SIR process, if the officer is involved in the exercise.

9. Civil revision stands disposed of.

10. Connected application, if any, stands disposed of.

11. Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)