

C.O. 2122 OF 2024

21.05.2026

Sl no. 37

Ct no. 2

P.M.

Champa Ghosal & Ors.

- Vs -

**Pradhan, 2 No. Ajabnagar Gram
Panchayet at Hazrapara & Ors.**

Mr. Indranath Mukherjee

Ms. Anita Khatri

... for the petitioner

1. Present petition has been filed challenging the order No. 30 dated 28.03.2024 passed by the learned Trial Court whereby the application under Order 26 Rule 9 of Civil Procedure Code has been dismissed inter alia holding that the application has been filed at a belated stage and there is no dispute of encroachment. Learned Trial Court inter alia held that local investigation is required for boundary dispute when it ex facie appears to have happened by some encroachment being believable in nature.
2. Learned counsel for the petitioner submits that the learned Trial Court has fallen into error by rejecting the application on the grounds which are extraneous to Order 26 Rule 9 C.P.C.
3. Learned counsel submits that there is a dispute as to the identification of the property as shown in the schedule sketch map.

4. The opposite parties have duly been served.

However, none has chosen to appear.

5. It is also pertinent to mention here that opposite party/defendant are ex parte before the learned Trial Court.

6. It is also pertinent to mention that the present matter is being pursued by the legal Aid.

7. Order 26 Rule 9 C.P.C. can be invoked if the Court considers that the local investigation is requisite or proper for the purpose of adjudication in the matter in dispute.

8. Perusal of the pleadings indicates that there is some dispute as to the identification of the property in dispute.

9. The Court considers that it will be expedient in the interest of justice if the local investigation is held for the purpose of complete adjudication of the matter in dispute particularly in view of the facts that the defendants are ex parte.

10. Hence the impugned order is set aside. The present petition is allowed. The matter is remanded back to the learned Trial Court. Learned Trial Court is directed to appoint the legal commissioner for the purpose of carrying

out the measurement as per point of determination given in the application under Order 26 Rule 9 C.P.C..

11. Since it is a legal aid matter the fees of the legal commissioner may be paid by the legal aid, if permissible under Rules.
12. This petition stands disposed of.
13. Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all usual requisite formalities..

(Dinesh Kumar Sharma, J.)