IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 2572 of 2023
With
CAN 2 of 2025

Kamal Kumar Samanta & Anr.

Vs.

Sukdeb Giri & Ors.

For the petitioners	:	Mr. R. Mahato, Mr. A. S. Ray
For the Opposite Parties	:	Mr. Aswini Kumar Bera, Mr. Aarijit Bera, Ms. Sudipta Chandra
Heard on	:	05.10.2026
Judgment on	:	05.10.2026

MD. SHABBAR RASHIDI, J.:

1. The instant revisional application has been filed on behalf defendant nos. 1 and 2 assailing an order no. 59 dated 17th May, 2023 passed in Title Suit No. 470 of 2026 pending before the Court of Learned 3rd Civil Judge (Junior Division), Paschim Medinipur. By

the impugned order, the Learned Trial Court allowed an application filed on behalf of the plaintiffs under order XXVI Rule 9 of the Code of Civil Procedure and directed a local investigation to be made on the disputed property.

2. It is submitted by the learned advocate for the petitioners that the Learned Trial Judge erred in appreciating the provisions of Order XXVI Rule 9 of the Code of Civil Procedure. He further submitted that the impugned order passed by the Learned Trial Court is a non speaking order. No reasons have been noted in the impugned order for allowing petition filed on behalf of the plaintiffs.

3. Learned advocate for the petitioners further submits that the original Title Suit has been filed by the plaintiffs in respect of declaration of his right and title in respect of 'K' schedule property and a declaration of easementary right over 'Kha' schedule property which belongs to defendant nos. 1 and 2. He further submits that the application under Order XXVI Rule 9 of the Code of Civil Procedure was filed by the plaintiffs with a view to collect evidence in order to establish the existence of a pathway over the 'Kha' schedule property.

4. According to the case made out by the plaintiffs in the suit, there is an existence of public pathway over 'Kha' schedule property. On the contrary defendant nos. 1 and 2 have stated in their written

statement that 'Kha' schedule property exclusively belong to the defendants and defendants use the said property as private pathway for ingress and egress to their houses.

5. It is further submitted by the learned advocate for the petitioners that the application under Order XXVI Rule 9 of the Code of Civil Procedure, which resulted in the impugned order, was directed to collect evidence in order to establish the existence of a public or a private pathway over 'Kha' schedule property which is beyond the scope of the provisions of Order XXVI Rule 9 of the Code of Civil Procedure.

6. Learned advocate for the petitioners also submitted that the suit filed by the plaintiffs does not involve a boundary dispute or identification of property or even encroachment over any portion of a property. Therefore, a local investigation is not at all necessary for the purpose of decision in the suit. The said is merely in respect of decree of declaration of right and title of the plaintiffs over 'K' schedule property and prescriptive easementary right over 'Kha' schedule property.

7. On the other hand the learned advocate for the opposite parties/plaintiffs submits that by a local investigation ordered by the impugned order, it would be evident whether the 'K' schedule property is private pathway or a public pathway. Moreover, the

petitioners/defendants will have the opportunity to cross-examine the learned commissioner. He submits that the Learned Trial Court rightly passed the impugned order directing a local investigation over the suit property.

8. In support of his contentions, learned advocate for the opposite parties relies upon decisions of the Hon'ble Bombay High Court in the case of ***Kolhapuri Bandu Lakade -Vs.- Yallappa Chinappa Lakade since deceased through Pooja @ Poojariy, Lakade and others*** reported in ***2011 SCC OnLine Bom 370*** and in the case of ***Yeshwant Bhaduji Ghuse -Vs.- Vithobaji Laxman Ladekar*** reported in ***2009 SCC OnLine Bom 1934***.

9. The opposite parties/plaintiffs filed Title Suit No. 470 of 2016 praying for the following reliefs:

> *"1. A decree of declaration of title as well as possession of the plaintiffs over 'K' schedule properties.*
>
> *2. A decree of declaration of existence of prescriptive right of easement of the plaintiffs over 'Kha' schedule properties which is situated contiguous to 'K' schedule property.*
>
> *3. injunction against the defendants restraining the defendants from enjoyment of 'K' schedule properties by the plaintiffs and from interfering with the rights of the plaintiffs over 'Kha' schedule properties."*

10. The plaint filed in Title Suit No. 470 of 2016 also contained sketch map showing the deposition of the disputed plots. At the time of hearing learned advocate for the opposite parties/plaintiffs

also stated that the existence of a pathway over 'Kha' schedule property is also supported by the settlement survey map. He also submitted that several other local persons were also impleaded in the suit and they have supported the case of the plaintiffs.

11. The opposite parties/plaintiffs filed an application under Order XXVI Rule 9 of the Code of Civil Procedure in such suit praying for local investigation of the disputed L.R Plot No. 562/676. The points of investigation that were canvassed in such application were as follows:

> *"a) The Ld. Commissioner will execute the investigation work after serving notices upon both partis earlier.*
>
> *b) He should realy and survey the L.R. plots No. 562/676, with specific portion in the field book report and case map its length, breadth nature and with connecting road, 564, 568, 618, 619 on the basis of L.R. settlement map (1976-1991).*
>
> *c) He should survey and report of L.R. plots 5698670 and draw in the case map L.R. plots 675, 563 with its nature.*
>
> *d) He should note the field book whether L.R. plot No. 562/676 is the only path way of the plaintiffs and local villagers for their ingress & egress from their dwelling plots 569, 570 and the surrounding plots of the villages to the pitch road on plot no. 618, 619 in the east through said connecting bus road. To note other as important local features to which the plaintiffs draw the commissioner attention."*

12. By the impugned order, after noting submissions made on behalf of the parties on the application under Order XXVI Rule 9 of

the Code of Civil Procedure, the Learned Trial Court allowed such application with the following findings:

> *"Considering the case of the plaintiff as well as the defence taken by the defendants this court draws the inference that a local investigation is necessary for the purpose of identification of the suit property and also for proper adjudication of the dispute. However, the points of the local investigation petition has been drafted in a casual manner and this court opines that some additional points are need to be investigated in this particular suit so that the matter may be adjudicated properly."*

13. From such findings it transpires that the Learned Trial Court held that considering the case of the plaintiffs as well as defence taken by the defendants, the Learned Trial Court drew an inference and a local investigation was necessary for the purposes of identification of the suit property and also for proper adjudication of the suit.

14. From the case made out in the plaint and the written statement placed on record of the instant proceeding, there appears no dispute with regard to the identification of the disputed property. The plaint also does not disclose any dispute with regard to the boundary issues and identification of the disputed property nor there is any case that there has been any encroachment over such property. The plaintiffs have filed Title Suit No. 470 of 2016 for a declaration of his easementary right over 'Kha' schedule property

belonging to defendant nos. 1 and 2 as a pathway. The identification and demarcation of such property has not been disputed in the pleading put in by the parties.

15. Moreover, while passing the impugned order the Learned Trial Court also held that the points of local investigation petition were drafted in a casual manner and the Learned Trial Court opined that some additional points needed to be investigated for proper adjudication. However, the said additional points have not been indicated in the impugned order. In any case, there was no dispute with regard to the identification of the disputed property or an encroachment therein was made out in the plaint filed on behalf of the opposite parties/plaintiffs.

16. In ***Kolhapuri Bandu Lakade*** *(supra)* the Bombay High Court was of the view that:

> *"**19.** In that view of the matter, to find out as to whether the defendants have, in fact, encroached upon the City Survey No. 1894 or not, I find that the appointment of Court Commissioner would assist the Court in arriving at the just decision. Needless to state that, as has been consistently observed, the report of the Court Commissioner would not be conclusive and if any of the parties are aggrieved by the same, such a party would always be entitled to cross-examine the Court Commissioner, so as to challenge the veracity of the report."*

17. Similarly in ***Yeshwant Bhaduji Ghuse*** *(supra)* it was observed that:

> *"**6.** It is settled position of law that under Order 26, Rule 9 of the Code of Civil-Procedure, the Court has discretion to order local investigation. The object of local investigation is not so much to collect evidence which can be taken in Court, but to obtain evidence which from its peculiar nature can only be had on the spot. Cases of boundary disputes and disputes about identify of lands are instances when a Court should order local investigation under Order 26, Rule 9 of the Code. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out exact area encroached upon, Oral evidence cannot conclusively prove such an issue."*

18. In both the cases relied upon by the learned advocate for the opposite parties/plaintiffs, it was opined by the Hon'ble Bombay High Court that a local investigation should not be directed to collect evidence which can be taken in Court. Such cases also lay down that the cases of boundary disputes and disputes about identity of lands were the incidence where a local investigation is considered necessary.

19. In the instant case, however, as noted above, there is no boundary dispute. There is no allegation of any encroachment on the disputed property. By a local investigation, the plaintiff showed to fish out some evidence to establish their claim that the 'Kha' schedule property were used by public at large as a pathway. Such

fact could be established by producing relevant evidence at the trial. It does not call for a local investigation as contemplated under Order XXVI Rule 9 of the Code of Civil Procedure.

20. In such circumstances, the impugned order cannot stand. The same is hereby set aside.

21. With the aforesaid observations and directions **C.O. 2572 of 2023** is disposed of.

22. Connected pending application is also disposed of.

23. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MD. SHABBAR RASHIDI, J.)

B.K.N.
A.R. (Court)