

Item No. 11
02.01.2026
Court. No. 6
GB

C.O. 4335 of 2025

Minati Roy & Ors.
Vs.
Ashim Ghosh @ Khokan Ghosh & Ors.

Mr. Partha Pratim Roy,
Mr. Souvik Das,
Mr. Rudranil Das

...for the Petitioners.

Mr. Aniruddha Chatterjee, Sr. Adv.,
Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee

...for the Opposite Party Nos.23 & 24.

1. The petitioners are aggrieved by an order dated November 13, 2025, passed by the learned Civil Judge (Junior Division) Bongaon in Title Suit No.31 of 2004.
2. By the order impugned, the learned court allowed an application for local investigation filed by the defendant nos.5 and 6, who are the opposite parties nos.23 and 24. As the other opposite parties are not contesting the suit, service of this revisional application upon the said opposite parties is dispensed with. The opposite party nos.23 and 24, who are the defendants in the suit are represented.
3. The learned court allowed the application, upon holding that, the points considered at the time of local inspection by an advocate commissioner and the points for local investigation were distinct and separate. The issue of local inspection was restricted to an alleged construction/obstruction on the village road, which according to the plaintiffs was done in violation of the order of injunction. Thus, the report

filed by the learned advocate commissioner and the issues which were decided by the court upon accepting the report of the learned advocate commissioner, would not operate either as *res judicata* or constructive *res judicata* and the application for local investigation should not be disallowed on such basis.

4. The local inspection was conducted in a contempt proceeding. The local inspection did not record any measurement of the suit plots. The said report was based on physical features that were observed by the learned advocate commissioner. Under such circumstances, the application for local investigation was allowed.
5. Mr. Roy, learned advocate for the petitioners submits that the learned court mechanically allowed the application for local investigation, without considering that the points for local investigation were beyond the issues to be decided in the suit and wholly irrelevant. Mr. Roy contended that, the existence of the road over the plot nos.41, 103 and 105 of Mouza – Gopalnagar was an admitted position. Even the defendants, in the written statement, admitted that there was an existence of a village road. Several orders were passed by the High Court in proceedings arising out of the injunction application, which recorded the existence of the village road. The High Court also acknowledged that the report of the advocate commissioner was conclusive, insofar as, the points referred to the said

advocate commissioner for inspection were concerned.

6. Under such circumstances, Mr. Roy prays that the order impugned should be set aside and the suit should proceed on the basis of evidence that shall be led by the parties. Mr. Roy refers to the averments in the plaint as also the prayers in support of his contention that the reliefs claimed were restricted to a pathway/road on the plot nos.103 and 105. Accordingly, a declaration was sought for that, plot nos. 103 and 105 comprised of a village road, and the defendants did not have any authority or right to deny usage of such village road by the plaintiffs/petitioners.
7. Mr. Chatterjee, learned senior advocate appearing on behalf of the defendant nos.5 and 6 in the suit, at whose instance the application for local inspection was allowed, submits that the petitioners claimed easementary right or right of way. Thus, there was already a contradiction in the plaint case, inasmuch as, an easementary right could not be claimed over a village road. An easementary right can be claimed over a private pathway or a private road, user of which may have been permitted by the owner or owners thereof. Referring to the written statement, Mr. Chatterjee contends that the specific case of the defendant nos.5 and 6 in the written statement was that the plot no.105 belonged to the said defendants

and others, and the said plot was not exclusively a village road.

8. I have heard the rival contentions of the parties. The points for local investigation are quoted below:-

“POINTS FOR LOCAL INVESTIGATION

1. *To identify the suit property along with non-suit plot No.41, 102 and 102/334.*
2. *To measure the width and length of the village road situated over the plot No.105 and 103.*
3. *As per the RS and LR map in which direction the village road has been visible?*
4. *To measure the actual area of the land of the Plot No.105 and with comparison of the LR ROR of the land mentioned the name of Rayat and their length and breath of the rasta as used by the common people.*
5. *Whether any rasta is visible on the western side over the suit plot no.105? If so then measured it how much width and breath of the rasta exclusively over the suit plot No.105 with comparison of the LR Record?*
6. *Whether any rasta is visible over the suit plot no. 103 If so then measured it how much width and breath of the rasta exclusively over the suit plot No.103 with comparison of the LR Record?*
7. *Whether the village road over the plot no.41 which ended in the North of the Plot No.105 owned by the defendants, the said Plot No.41 is extended how much and its width of the village road?*
8. *If any Villagers or the Rayat of the Plot holder (s) is/are intending to entering into that plot then is there any road or they will go over the Plot No.42,43,44 and 102/334? Whether they have required to ingress and egress over the plot No.102 where the plaintiffs are residing?*
9. *That at present there is any visible the demolishing of construction of Building over the suit Plot No.105? That there is a Passage over the suit Plot No.105 is visible after said demolishing work? If then the width and length of the said Passage will be measured and the said Passage is involved with any other plot?*

10. Local features.”

9. Upon perusal of the plaint case and the written statement, this Court finds that a measurement of the village road by relayment through an Amin or any competent authority in the office of the Block Land and Land Reforms is necessary. This necessity arises on account of the plaintiffs claiming that there exists a village road over plot nos.105 and 103, which leads to a part of plot no.41. The plaintiffs claim right to use such village road. Whereas, the defendants submit that the alleged village road does not find any mention in the settlement records and the defendant nos.5 and 6 are owners of part of plot no.105 along with other persons. Thus, a demarcation of the village road which is at plot nos.103 and 105 leading up to the plot no.41 is required to be made with measurements and relayment with the LR records, mouza map and any map maintained by the local panchayat authorities.
10. Under such circumstances, the local investigation will be restricted to the following points:-
 - A. To measure the width and length of the village road situated over the plot No.105 and 103. The extent and measurement of the road which leads up from the said plot no.103 and 105 to plot no.41.
 - B. Demarcation of the entire stretch of the said village road with measurement.
11. Under such circumstances, such investigation shall be made by the Block Land and Land Reforms Officer

with the assistance of the Amin in the presence of the parties and persons interested. A report shall be filed in the trial court. The order impugned is modified accordingly. The consequences of the order impugned, if any, are also set aside.

12. Accordingly, the application is disposed of.
13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)