

**12.05.2026**

Ct No.2  
D/L 10  
Mujahid

**CO 4508 of 2023**

Malati Barik  
Vs.  
Sideshwar Barik & Ors.

Mr. Sandip Das  
Mr. Diptyendu Kr. Pal

...for the petitioner

Mr. Rwitendra Banerjee

...for the opposite party nos.2 to 4

**1.** Present revision petition has been filed challenging the order dated 17<sup>th</sup> November, 2023 whereby the learned trial court has dismissed the application under Order 26 Rule 9 CPC filed by the plaintiff for survey investigation.

**2.** Learned counsel for the petitioner submits that the plaintiff had sought the survey investigation on the following points:-

- “1. To survey and relay the (ka) & (kha) Schedule lands as pegged out by the plaintiff with the help of settlement map of Mouza-Kandua-Paschimbar, J.L. No. 134, under P.S. Ramnagar, for the year 1933-36 and find out whether the (KA) schedule land is part and parcel of (KHA) or not.
2. To calculate the area and boundaries of the (KA) and (KHA) schedule lands which as pegged out by the plaintiff in the filed.
3. To Survey all other important local features which will be seen or shown at the time of investigation.

4. That Ld. Commissioner is to draw a Case Map according to suitable enlarged scale showing there in the existence of (ka) and (kha) schedule lands in separate colours and submit it before the Ld. Court along with field book and report.”

**3.** Learned counsel for the petitioner submits that the defendant in their written statement had themselves admitted that there is a need for local survey investigation. However, the learned trial court fell into error by inter alia holding that there is boundary dispute as such between the parties in respect of their respective plot numbers.

**4.** Learned counsel for the opposite parties submits that in the revisional jurisdiction, the court may not interfere with the order of the learned trial court as there is no illegality or perversity.

**5.** This court has considered the submissions in the translated copy of the written statement, the defendant/opposite party nos. 1 to 4 have themselves stated as under:-

“18. (sic) That, the defendants further submit that the (KA) Schedule property under dispute is not included in (KHA) Schedule property. The 104, 65 and 66 Dag property described in disputed (KA) Schedule does not or cannot belong Dag 103. The disputed (KA) Schedule property does not or cannot be claimed as a part of (KHA) Schedule property, it is necessary to make survey commission. In absence of survey investigation the Plaintiff cannot claim schedule (KA) property. The burden of proving that disputed (KA) Schedule property is a part of (KHA) Schedule property vested upon the plaintiff.”

**6.** Thus, there is an admission on the party of the defendant/opposite party nos. 1 to 4 that the survey commission is necessary for the adjudication of the matter in dispute. Order 26 Rule 9 of the CPC confers jurisdiction upon the court for local investigation for the purpose of elucidating any matter in dispute.

**7.** This court considers that the learned trial court has committed an error by not looking into the plea of the defendant/opposite party nos. 1 to 4 and inter alia holding that there is no boundary dispute.

**8.** This court considers that survey investigation is necessary for the proper adjudication of the matter in dispute in respect of the pleadings of both the parties. Hence the impugned order is set aside. Learned trial court is directed to appoint a local survey commissioner after hearing of both the parties in accordance with the law.

**9.** CO 4508 of 2023 stands disposed of.

**10.** All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

**(Dinesh Kumar Sharma, J.)**