

JP-20
Ct No.07
17.06.2026
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction

C.O. 37 of 2026

Shibraj Dutta
Vs
Sunil Kumar Roy @ Das and others

Mr. Bikramaditya Ghosh
Mr. Mayank Bhandari
Mr. Ved Rai
Mr. Vivek saha
Mr. Binayak Bandopadhyay
.... for the petitioner.

Mr. Kalipada Das
Ms. Saheli Roy Dakua
...for the opposite parties.

1. The present challenge has been preferred against an order whereby the plaintiff/petitioner's application for appointment of a commissioner for the purpose of local investigation under Order XXVI Rule 9 of the Code of Civil Procedure was refused primarily on the ground that the same would tantamount to fishing out of evidence.
2. Upon hearing learned counsel for the parties, it transpires that the suit is for perpetual injunction restraining the defendants/opposite parties and their men from entering into the suit land and also from disturbing the peaceful

enjoyment and possession of the land by the plaintiff/petitioner.

3. Relief “aa)” of the plaint claims recovery of possession of the suit land from the defendants after evicting therefrom on removal of unauthorised tin fencing on a portion thereof.
4. The allegations of the plaint are broadly denied in the written statement.
5. In paragraph no.10 of the written statement, it is averred that the suit land is not under the possession of the plaintiff whereas in paragraph no.19 of the written statement, the defendants/opposite parties state that the entire land of the plaintiff is covered by pucca brick boundary wall wherein rice mill, stone crushing mill and weigh bridge of the plaintiff are being run and that the land as described in the schedule of the plaint is beyond the boundary wall of the plaintiff as the same does not belong to him.
6. More interestingly, in paragraph no.13 of the written statement, the defendants/opposite parties themselves have categorically stated that the suit property is required to be surveyed by a survey knowing commissioner by tallying with the title deeds and revenue records of the parties to the suit, which was the precise compass of

the application for local investigation filed by the plaintiff/petitioner.

7. Thus, not only is a local investigation required for a proper and complete adjudication of the suit, in order to ascertain as to whether there has been any encroachment by the defendants on the plaintiff's land, but also to identify the exact location and contours of the property.
8. In fact, the defendants/opposite parties are estopped from opposing such application after having categorically averred in their own written statement that a survey knowing commissioner is required to be appointed to tally the suit property with the title deeds and revenue records of the parties to the suit.
9. Thus, the learned Trial Judge refused to exercise jurisdiction vested in him by law in rejecting the application for local application filed by the plaintiff/petitioner under Order XXVI Rule 9 of the Code of Civil Procedure.
10. Accordingly, C.O. 37 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no.37 dated February 19, 2026 passed by the learned Civil Judge, Junior Division at Alipurduar in Title Suit No. 70 of 2020, and directing the learned Trial Judge to appoint a survey passed commissioner for the

purpose of conducting local investigation in terms of the prayers made by the plaintiff/petitioner in the petitioner's application under Order XXVI Rule 9 of the Code of Civil Procedure.

11. Such appointment shall be made within a week from the date of communication of this order to the learned Trial Judge.
12. It is expected that the commission work will be completed at the earliest and the commissioner's report shall be submitted in the Trial Court within a month from the date of appointment of the survey passed commissioner, in order to allay the apprehension of the defendants/opposite parties that the suit may be unnecessarily delayed.
13. There will be no order as to costs.
14. Urgent certified copies, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)