Judgment Dated: 26-11-2026
WBCHCJ0067972026

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 196 OF 2026

SRI SUBIR KUMAR DEB **.....PETITIONER**

-VERSUS-

SRI ARJUN ROUTH & ANR. **.....RESPONDENTS**

For the Petitioner : Mr. Sanjay Mazoomdar, Adv.

For the Opposite Party : Ms. Bedashruti, Adv.

Hearing concluded and judgment delivered on : 26.11.2026

OM NARAYAN RAI, J.:-

1. Affidavit of service filed in Court today is taken on record.

2. Supplementary affidavit filed on behalf of the petitioner is taken on record. The same shall be treated as part of the revisional application.

3. The opposite parties are represented.

4. This revisional application is directed against an order dated September 14, 2026 passed by the learned Civil Judge (Junior Division), Jalpaiguri in Title Suit No. 169 of 2025(R) thereby rejecting the petitioner's application for local inspection under Order 39 Rule 7 of the Code of Civil Procedure, 1908 (hereafter "the Code").

5. The opposite parties have filed Title Suit No. 169 of 2025 before the learned Civil Judge (Junior Division), Jalpaiguri praying *inter alia* for a decree of declaration and permanent injunction against the petitioner herein. The petitioner is contesting the said suit by filing written statement.

6. Issues have already been framed. At this stage, the petitioner took out an application for local inspection under Order 39 Rule 7 of the Code asserting that the opposite parties have constructed a boundary wall on a 9 feet wide road thereby appropriating 6 feet thereof for their own use in order to take revenge from the defendant (i.e. petitioner and his family members) and thereby diminishing the width of the road to just 3 feet.

7. The said application has been turned down by the learned Trial Court by observing that the petitioner has not raised any claim in respect of the 6 feet land in his written statement, over which, according to the petitioner construction has been raised by the opposite parties. Hence the present revision.

8. Learned advocate appearing for the petitioner submits that the 6ft. wide road forms part of the suit property and as such, the learned Trial Court was not correct in observing that since the petitioner had not laid any claim over it, the same could not be ordered to be inspected under Order 39 Rule 7 of the Code.

9. In the considered view of this Court, the conclusion of the learned Trial court is absolutely correct. The schedule of the plaint indicates that the same is for declaration of title of the opposite parties in respect of a land measuring 2 Katha 4 Chhataks and for permanent injunction.

10. As to whether the same includes the 6 feet wide road as alleged by the petitioner or not is a question which should flow from the pleadings, but such is not the case here. Neither the plaint nor the written statement

say so. Till such time that it is demonstrated from the pleadings that the suit property includes the 6 feet road over which, the petitioner has a right, the learned Trial Court's conclusion cannot be faulted.

11. The provision for local inspection under Order 39 Rule 7 of the Code cannot be invoked unless the inspection of the suit property is found to be necessary or a question as regards the same has arisen. Neither of the conditions apply here.

12. Further, it is well settled that there can be no inspection to fish out evidence. The present case is worse, since the attempt to fish out evidence is to support an unpleaded claim. It is always open for the petitioner to plead and prove his case in accordance with law.

13. The order impugned dated September 14, 2026 does not call for any interference. CO. 196 of 2026 stands dismissed. No costs.

14. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)