

JPD-11
Ct No.07
18.06.2026
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 22 of 2026

Ataur Rahman @ Ataur Rahman
Vs.
M/s Sunrise Tea Estate Pvt. Ltd. Company and
others

Ms. Taniya Bhowmik
....for the plaintiff no.1/petitioner

Mr. Kunaljit Bhattacharya,
Mr. Haider Ali,
Mr. Satyam Sarkar,
Mr. Rajarshree Mukherjee
.... for the opposite parties

1. Ms. Taniya Bhowmik, learned counsel appearing for the plaintiff no.1/petitioner, submits that the learned Trial Court refused to exercise jurisdiction vested in it by law in dismissing an application under Order XXVI Rule 9 of the Code of Civil Procedure filed by the plaintiff no.1/petitioner.
2. It is argued that the plaint categorically alleges that some portions of the suit property, belonging to the plaintiff no.1/petitioner, has been encroached upon by the defendant/opposite party no.1-company and its men and agents.
3. Such contention has been controverted by the defendants in their written statement. Not stopping there, the defendants have also stated that they are mostly in occupation of their own

property and not the plaintiff's property/the suit land. In the teeth of such allegations and counter allegations, it is submitted that the best evidence would be a Survey Passed Commissioner's report by way of a local investigation under Order XXVI Rule 9 of the Code of Civil Procedure. However, such aspect of the matter was overlooked by the learned Trial Judge, who proceeded on the premise that the suit was merely for declaration of title, recovery of possession after evicting the defendants and, as such, it is not required to get a report about the physical possession in respect of the suit land. The learned Trial Judge also observed, according to the petitioner erroneously, that the petition came with an intention to fish out evidence.

4. Mr. Satyam Sarkar, led by his senior Mr. Kunaljit Bhattacharya, argues that the application was intended to fish out evidence. It is submitted that possession cannot be ascertained by visual inspection. That apart, in the written statement, the defendants have admitted that they are in occupation of a portion of the suit property but substantially they are in occupation of their own land.
5. Learned counsel submits that the dispute raised by the defendants is that the property on which the defendants are in occupation belongs to the

defendants but there is no dispute as to the boundaries or the identity of the suit properties. Thus, the parties have to prove their respective cases on the basis of their own evidence and documents and not by way of a local investigation.

6. Learned counsel reiterates that the application is a ploy of the plaintiff to fish out evidence by undertaking a roving enquiry whereas the facts in dispute might very well have been proved otherwise.
7. On a consideration of the averments made respectively in the plaint and the written statement, it transpires that the plaintiff no.1/petitioner has categorically alleged that the defendant no.1-company has forcibly trespassed and encroached upon a portion of the suit property which, according to the plaintiff no.1, belongs to the plaintiffs.
8. In the written statement, on the other hand, the defendants have squarely denied that they have trespassed upon the plaintiffs' property and have also stated that the suit properties are different properties and not connected in any way with the lands/properties of the defendant no.1.
9. Thus, in view of the nature of the disputes involved in the suit, a local investigation would be the best mode of adduction of evidence in order to establish the facts relating to the issues in dispute.

10. Contrary to the contention of the defendants, this is not a case simpliciter where possession of the parties is sought to be ascertained by visual inspection. The allegations and counter allegations of the parties also pertain to the question as to whether any portion of the plaintiffs' property has been trespassed and encroached upon by the defendants and/or whether the suit properties are different and not connected in any way with the lands/properties of the defendant no.1.
11. Hence, a Commissioner's report would be the best piece of evidence which could be produced in the suit.
12. In the prayer portion of the Order XXVI Rule 9 application, the plaintiff has sought a local investigation identifying the Schedule A, B and C properties of the plaintiff and drawing a sketch map of the suit property "in order to ascertain the suit lands as well as ascertain whether the suit property is otherwise connected with the lands of the defendants".
13. Thus, the local investigation is not merely for the purpose of ascertaining the suit lands but first to ascertain such foundational fact and thereafter to proceed on an enquiry as to whether there has been any overlap between the defendants and the plaintiff's property, which has a vital bearing on the allegation of encroachment.

14. Hence, the learned Trial Judge proceeded on an entirely erroneous premise in observing that the suit is merely for declaration of title, recovery of possession and eviction, without taking into account the aforesaid facet of encroachment, as alleged by the plaintiffs and denied by the defendants.
15. The concept of 'fishing out of evidence' only applies where, despite the issue in dispute being amenable to proof by other better modes, a party seeks a roving enquiry to collect evidence.
16. However, in the present case, it is not a roving enquiry but an incisive ascertainment which has been sought by the plaintiff no.1, which has germane bearing on the disputes involved in the suit.
17. Thus, the concept of 'fishing out of evidence' is not attracted to the present case at all.
18. Accordingly, the impugned order cannot be sustained in law.
19. Hence, CO 22 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 70 dated December 08, 2025 passed by the learned Civil Judge (Senior Division), Jalpaiguri Sadar Court in Title Suit No. 31 of 2012, and directing the learned Trial Judge to appoint a Survey-passed Commissioner to conduct local investigation in terms of the prayer made in the

plaintiff/petitioner's application under Order XXVI Rule 9 of the Code of Civil Procedure. Such appointment shall be made within a week from the date of communication of this order to the learned Trial Judge.

20. It is expected that the commission work shall be completed at the earliest, preferably within one month from the date of appointment of the Commissioner, in order to expedite the hearing of the suit.
21. There will be no order as to costs.
22. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)