

Misc Appeal – 04 of 2025 (CIS-04/25)
C.N.R. No. - WBBB05-000095-2025

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07-02-2026

Today is fixed for hearing of this Misc. Appeal positively.

Appellant files hazira.

Respondent no.2 appears today by filing a petition supported by an affidavit praying for vacating ex-parte hearing order passed against him along with one executed vakalatnama.

Respondent no.1 files petition under order 26 rule 9 read with sections 75 and 151 C.P.C.

Ex-parte vacating prayer of respondent no.2 is considered and for the interest of justice, it is allowed.

Accordingly, ex-parte hearing order passed against respondent no.2 vide order no.8, dated 22/09/2025 stands vacated.

Now, the petition under order 26 rule 9 read with sections 75 and 151 C.P.C. is taken u p for consideration.

It is contended by the Ld. Counsel for respondent no.1 that in order to ascertain actual position of the disputed property and to determine whether the appellant at all left requisite space before constructing his building on the disputed property, a local investigation on the proposed points is essential by appointing a survey passed Ld. Advocate Commissioner.

On the contrary, the Ld. Counsel for the appellant has vehemently objected to the said application and submitted that the appellant has approached this Appellate Court being aggrieved by and dissatisfied with the order of temporary injunction passed by the Ld. Trial Court and that this Court is required to examine the propriety of the impugned order only. The application preferred by respondent no.1 is not at all tenable. If respondent no.1 so desires, he is required to file such application before the Ld. Trial Court. Therefore, the application filed by respondent no.1 is liable to be rejected.

Heard both sides.

Perused the petition under disposal and other materials on record.

Here, I feel inclined to accept the submission of the Ld. Counsel for the appellant. Respondent no.1 has the right to pray for local investigation of the disputed properties. However, in the instant case, where this Court is under a statutory duty to examine the propriety of the impugned order, entertaining such an application at this stage will only delay the disposal of the appeal.

Under the circumstances, I find no cogent ground to allow the said application at this stage.

Hence, it is,

ORDERED

that the application filed by respondent no.1 under order 26 rule 9 read with sections 75 and 151 C.P.C. on this day is hereby considered and rejected on contest against the appellant but without cost.

However, respondent no.1 is at liberty to file a similar application before the Ld. Trial Court.

Now, record is taken up for hearing of this appeal.

Heard both sides.

To 25/02/2026 for judgment.

D/C

Sd/-

Sandip Kumar Kundu
Addl. District Judge,
F.T.C., Rampurhat.

Sd/-

Sandip Kumar Kundu
Addl. District Judge,
F.T.C., Rampurhat.
J.O. Code – WB00988