

Civil Revision 06 of 2025

Order No. 14 dated 10.12.2025

Today the matter is fixed for judgment.

Both parties are present by filing hazira.

The matter is taken up for passing judgment.

After careful perusal of case record it reveals that the revisionist has filed this revisional application praying for setting aside the impugned order dated 21.02.2025.

Subsequently, on 06.06.2025 the opposite party has filed one petition under Section 151 of CPC praying for dismissal of the revisional application on the ground of non maintainability.

The submission of the parties have been heard in respect of the petition under Section 151 of CPC filed by the OP.

Both the parties declined for the hearing of the revisional application unless the order in respect of petition under Section 151 of CPC is passed.

So, the matter is taken up for passing order in respect of the petition under Section 151 of CPC filed by the OP.

After careful consideration of the submission of the parties and materials on record it reveals that the OP filed one suit praying for -

- 1) declaration that the plaintiff is the owner of the property mention in the schedule A of the plaint;
- 2) declaration that the construction made by the defendant described in schedule 'A-1' of the plaint are illegal and unauthorized;
- 3) a decree of permanent injunction restraining the defendant and its men and agents from disturbing the peaceful possession of the plaintiffs and the family members of the plaintiff in any manner what so ever and an order of ad interim injunction in the same terms;
- 4) a decree of mandatory injunction upon the defendant to demolish the unauthorised, illegal part of construction done by encroaching the portion of the plaintiffs land described in the schedule 'A-1' of the plaint at his own cost and other reliefs.

In the said suit the plaintiff/OP filed one application under Order 26 Rule 9 of CPC which was allowed and survey commissioner submitted report. The said report was accepted by the Court after recording evidence of the commissioner vide order dated 21.02.2025. The defendant/revisionist has come before this Court under Section 115A of CPC by challenging the impugned order. Now the OP/plaintiff files this petition contending that the revisional application does not lie against this impugned order as it is barred by the proviso of section 115 of CPC.

After careful perusal of section 115 and 115A of CPC, it reveals that the stress is on the question whether the order in favour of the party applied for revision would have given finality to suit or other proceeding. If the answer is 'Yes' then the revision is maintainable. But on the contrary if the answer is 'No' then the revision is not maintainable. Therefore if the impugned order is of interim in nature or does not finally decide, the lis, revision will not be

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Order No. 14 dated 10.12.2025 Contd....

maintainable. In this provision the expression 'case' includes 'a part of proceeding'. The expression 'case' includes any order made in the course of the suit or other proceeding. Even if the right or obligation is not decided by the impugned order and even if it will merely have the effect of deciding the right or obligation, the said order can be treated as an order whereby the case is decided. The adjudication of the right or obligation by that order need not have any lis in regard to main proceeding. The expression 'case decided' includes a decision of any substantial question in controversy although such decision is made in course of trial. Adjudication of some right or obligation of the parties in controversy for the purpose of the suit is needed to mean 'case decided'. A case may be said to be decided if the Court decides or adjudicates in a suit some right or obligation of the parties in the controversy. The expression 'any case which has been decided' includes also an order made in the course of a suit or other proceeding. 'Case decided' means even a part of the case.

So, in this case the OP has prayed for declaration in respect of 'A-1' schedule that the construction over 'A-1' schedule is illegal and also prayed for mandatory injunction to demolish the construction over A-1 schedule property at the cost of the revisionist. So, it is substantial question whether the construction in 'A-1' schedule is illegal or construction over 'A-1' schedule has been made by encroaching the property of the OP. This portion of controversy will be finally decided on the acceptance of commissioner's report, though the decision in respect of A schedule cannot be decided only on the basis of report of the survey commissioner. Whether the commissioner's report was legally accepted or not or whether the impugned order is sustainable in law can be considered only after hearing the revisional application on merit but at this stage it is revealed that the impugned order if would decided in favour of the revisionist it could finally decide the prayer of the OP/plaintiff in respect of schedule A-1 of the plaint.

On the above discussion this Court is inclined to hold that the revisional application is maintainable and it should be heard by this Court on merit.

Hence,

it is

ordered,

that the application under Section 151 of CPC filed by the OP on 06.06.2025 is rejected on contest but without any costs.

To 28.01.2025 for final hearing of revisional application.

D/C by me,

Sd/-

Additional District Judge,
2nd Court, Hooghly

Sd/-

Additional District Judge,
2nd Court, Hooghly