

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

CIRCUIT BENCH AT PORT BLAIR

PRESENT: HON'BLE JUSTICE PARTHA SARATHI SEN

CO/38/2026

SMTI. SOMA SUNDARAM

... PETITIONERS

Versus

SMT. SEEMA ADHIKARI

... OPPOSITE PARTY

For the Petitioner : Mr. Rakesh Kumar

For the Opposite party : Mr. Gopala Binnu Kumar
Ms. Vinita Devi

Heard on : 30.07.2026

Judgment on : 30.07.2026

PARTHA SARATHI SEN, J.

1. The subject matter of instant revisional application is the order No. 11 dated 30.06.2026 as passed by learned Civil Judge (Senior Division) Port Blair in Other Suit No. 71 of 2006 whereby and whereunder the said Trial Court allowed the defendant's application under Section 151 of the Code of Civil Procedure by directing the plaintiff to open the padlocks as put by him on the shutters/gates of the suit property. The plaintiff felt aggrieved and thus filed the instant revisional application.

2. At the time of hearing Mr. Rakesh Kumar learned advocate on behalf of the plaintiff/revisionist submits before this Court that in a suit for eviction of the defendants as filed by the plaintiff, the plaintiff obtained an ad interim order of *status quo* on 29.04.2026.

3. It is submitted on behalf of the plaintiff/revisionist that after making appearance before the learned Trial Court the defendant/opposite party herein filed an application under Order 39 Rule 7 CPC praying for appointment of a commissioner for inspection of the suit property and to submit its reports on the following terms:

- “a. Whether the building/shop rooms belongs to the plaintiff or not?*
- b. Whether the plaintiff has locked the three shop rooms by putting lock above the lock of the defendant in the shop rooms standing in the RCC building of Sree Radha Krishna Temple Committee?*
- c. Whether there exist two locks in the shop rooms?”*

4. It is submitted that the learned Trial Court by its order No.5 dated 10.06.2026 allowed such prayer in part only in respect of point nos. (b) and (c).

5. It is further submitted on behalf of the plaintiff/revisionist that on perusal of the commissioner's report a copy of which has been annexed at page no. 116 to 119 it would reveal that the commissioner as appointed by the Trial Court has submitted his report in respect of point Nos. (a) to (c) despite the fact that the said commissioner was directed to submit his report in respect of point Nos. (b) to (c) only. It is submitted on behalf of revisionists/plaintiff that since the commissioner's report is not in tune of the order No.5

dated 10.06.2026 as passed by the learned Trial Court the present plaintiff/revisionist has filed a written objection against acceptability of the said report.

6. It is further submitted by Mr. Rakesh Kumar that soon thereafter the defendants approached the learned Trial Court by filing an application under Section 151 CPC praying for an order directing the plaintiff to open the padlock of the three suit shop rooms. It is submitted that on perusal of the impugned order 30.06.2026 it would reveal that the learned trial Court on the said day was obliged to hear the objection of the plaintiff with regard to the acceptability of the commissioner's report as well as the defendant's application under Section 151 CPC as mentioned supra.

7. It is submitted that despite such fact the learned Trial Court in the impugned order made no observation with regard to the objection raised by the plaintiff regarding acceptance of commissioner's report and most unilaterally allowed the defendant/opposite party's application under Section 151 CPC directing the plaintiff to withdraw the padlocks which has been allegedly put by the plaintiff on the shutters of the suit property. It is thus submitted on behalf of the plaintiff/revisionist that a serious miscarriage of law occurred on account of passing of the impugned order and thus interference of this Court is warranted.

8. On being asked by this Court Mr. Rakesh Kumar, learned advocate appearing on behalf of the plaintiff/revisionists, however, submits that the plaintiff/revisionists denies and disputes that he has put any padlock on the shutters and/or doors of the three shop rooms which are subject matter of the said suit.

9. Learned advocate for the plaintiff/revisionists further submits that since the finding of the learned Trial Court in the impugned order dated 30.06.2026 is based on a faulty commissioner's report the impugned order cannot stand in the eye of law.

10. *Per contra*, Mr. Gopala Binnu Kumar, learned advocate appearing on behalf of the opposite party/defendant submits before this Court that since the defendant's occupation over these suit three shop rooms is admitted, the plaintiff has got no right to put padlock over the door/shutters of the said three suit shop rooms.

11. It is thus submitted that learned Trial Court has passed a correct order which may not be interfered with.

12. This Court has meticulously gone through the entire materials as placed before this Court. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.

13. On careful perusal of the entire materials as placed before this Court it reveals that before the learned Trial Court plaintiff has filed the Other Suit No. 71/2026 against the defendant praying for recovery of possession of the suit three shops rooms. In view of such this Court has got any hesitation to hold that plaintiff has admitted the possession of the defendants in respect of the suit three shops rooms and for the aforesaid reasons the plaintiff has approached the learned Trial Court by filing the said suit for eviction of its tenant i.e. defendant.

14. At this juncture if I look to the order dated 18.06.2026 as passed by the learned Trial Court it reveals that by the said order the learned Trial Court fixed 29.06.2026 for hearing of the application under Section 151 CPC as filed by the defendants on 03.03.2026, hearing of an amendment petition and acceptance of commissioner's report with a liberty to file written objection against the said application under Section 151 CPC.

15. On being asked by this Court, learned advocate for the plaintiff candidly submits that on the adjourned date and/or even on the date of hearing of the said application under Section 151 CPC, no written objection has been filed by the plaintiff against defendant's application under Section 151 CPC.

16. In considered view of this Court when the plaintiff has approached the learned Trial Court for eviction of the defendant from the suit three shop rooms it clearly indicates that the plaintiff has admitted the possession of the defendants in the suit property. At the time of hearing on being asked by this Court, learned advocate for the plaintiff/revisionist also submitted that plaintiff denied and disputed that he had put any padlock on the gates/shutters of the said three shop rooms.

17. On perusal of the impugned commission report as filed before the learned trial Court it reveals that the commissioner notices two sets of locks on the outer doors of the suit three shop rooms.

18. In view of such this Court considers that since the plaintiff has admitted the possession of the defendant in respect of this three suit shops rooms and the plaintiff has denied that he has put such locks on the gates/shutters of the said three shop rooms, the learned Trial Court's order, directing the plaintiff to remove the padlocks would not affect the plaintiff/revisionist much.

19. In other words, when the plaintiff has denied that he has put padlock over the gates/shutters of the suit three shop rooms and when the defendant's possession in respect of the said three shops rooms are not disputed, this Court considers that justice would be sub served if the defendant is permitted to remove the padlocks

which have not been fixed by defendant on the opening gates/shutters of the said three suit shop rooms.

20. In view of such, this Court while disposing of the instant revisional application permits the defendants/opposite party to remove the padlocks as have been fixed on the opening gates/shutters of the suit three shop room and while opening such padlocks the plaintiff shall not cause any obstruction to the defendant.

21. In the event despite passing of order of this Court, the plaintiff raises any resistance in opening of the padlocks by the defendant, the defendant is at liberty to approach jurisdictional Police Station and the Station House Officer of the jurisdictional Police Station shall give adequate police assistance to the defendant forthwith.

22. So far as the objection of the plaintiff in respect of the commissioner's report is concerned this Court finds some merit in the submission of the learned advocate for the revisionist in view of the fact that the learned Trial Court while passing order No. 5 dated 10.06.2026 directed the commissioner to file his report in respect of point nos. (b) and (c) of the paragraph no. 16 of the commission application while the commissioner has also submitted his report in respect of point no. (a).

23. In considered view of this Court the report of the commissioner in respect of point No. (a) is beyond the scope of the writ as issued to him and thus report of the commissioner in respect of point no. (a) stands hereby expunged.

24. Learned Trial Court is thus directed to make necessary endorsement in the report of the advocate commissioner in respect of the point no. (a) in terms of this Court's order.

25. This Court further finds substance in the submission of the learned advocate for plaintiff/revisionist inasmuch as in the impugned order dated 30.06.2026 the learned Trial Court has made no observation with regard to the plaintiff's objection with regard to the acceptance of the commissioner's report in respect of remaining two points i.e. point nos. (b) and (c) as mentioned in paragraph No. 16 of the commission application.

26. In view of such this Court directs the learned Trial Court to give its findings in respect of acceptability of the report of the advocate commissioner regarding the aforementioned two points in the light of his earlier order No. 5 dated 10.06.2026 and after giving due opportunity of hearing to both the plaintiff and defendant.

27. The entire exercise as indicated in the forgoing paragraph is to be completed by learned Trial Court positively within 15 (fifteen)

working days from the date of communication of the server copy of this order.

28. This Court directs both the plaintiff and the defendants to appear before the learned Trial Court on August 05, 2026 either personally or through their learned counsel along with a server copy of this order and on such approach being made the learned Trial Court shall fix a date of hearing on the point of acceptance of commissioner's report keeping in mind the time line as fixed by this Court.

29. With the aforementioned observation CO/38/2026 is disposed of.

30. The impugned order No.11 dated 30.06.2026 as passed by the learned Civil Judge (Senior Division) Port Blair in Other Suit No. 71 of 2006 is modified to the extent indicated herein above.

31. There shall be however no order as to costs.

32. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on priority basis on compliance of all legal formalities.

(PARTHA SARATHI SEN, J.)