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**(2011) 03 CAL CK 0138**  
**In the Calcutta High Court**  
**Case No : C.O. No. 3509 of 2010**

Sk. Hayat Box and Others

APPELLANT

Vs

Sushil Chandra Naraya Chowdhury and Others

RESPONDENT

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**Date of Decision :** 24-03-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 99, Order 26 Rule 9

**Citation :** (2011) 03 CAL CK 0138

**Hon'ble Judges :** Prasenjit Mandal, J

**Bench :** Single Bench

**Advocate :** Prasanta Behari Mahata, for the Appellant; Jiban Ratan Chatterjee and Hiranmoy Bhattacharyya, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Prasenjit Mandal, J.—This application is at the instance of the applicants and is directed against the order dated September 4, 2010 passed by the learned Civil Judge (Junior Division), First Court, Alipore, District - South 24 Parganas in Misc. Case No. 312 of 2008 arising out of the Title Execution Case No. 2 of 2005.

2. The short fact is that the Plaintiff / decree holder / opposite party No. 1 herein got a decree against the opposite party Nos. 2 to 4 herein for recovery of possession in respect of certain immovable property, as described in the Title Suit No. 251 of 1984 and that suit property includes the shop room No. 3 as described in the Misc. Case No. 312 of 2008. The said decree was put into execution and accordingly a Title Execution Case No. 2 of 2005 has arisen. The applicants resist the execution of the decree on the ground that the Petitioner No. 1 is the owner of the said third room and his room is situated on his purchased land and in fact, the Petitioner No. 1 inducted the opposite party Nos. 2 to 3 as tenants in respect of that third room and so the opposite party Nos. 2 to 3 are the tenants under the Petitioner No. 1. Such Petitioner No. 1 is the landlord in respect of that premises. The application under Order 21 Rule 97, 99,

100 and 101 filed by the three Petitioners has been converted into a misc. case being Misc. Case No. 312 of 2008. In that misc. case, the applicants filed an application under Order 26 Rule 9 of the CPC contending, inter alia, that the said third room is situated on their purchased land and not on the suit land. So, they have prayed for appointment of an advocate commissioner to investigate into the matter. That application was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that it is the specific case of the landlord / decree holder / opposite party No. 1 that the said shop room in question fall under the suit land over which the Plaintiff got the decree against the opposite party Nos. 2 to 4. That shop room is situated on the holding No. 522, Diamond Harbour Road under police station - Behala and it is the suit property over which the Plaintiff got the decree against the opposite party Nos. 2 to 4. Now, the contention of the Petitioners is that the said third room is not situated within the suit premises of the Plaintiff/opposite party No. 1 herein. The right, title and interest between the Plaintiff and the opposite party Nos. 2 to 4 have been decided at the time of trial though the decree was passed ex prate. Therefore, at present taking a plea that the said third room is situated outside the suit property, the applicants have come up with this application only with the sole object to frustrate the decree obtained by the decree holder/opposite party herein. The learned Trial Judge has rightly observed that local investigation is not at all necessary and the matter has already been adjudicated in the ex prate decree passed in the suit.

4. Therefore, I am of the view that the learned Trial Judge has rightly observed that the application is totally misconceived and so, he has rightly rejected. So, there is nothing to interfere with the impugned order.

5. The revisional application is, therefore, dismissed.

6. Considering the circumstances, there will be no order as to costs.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.