

132
17.08.2021
TN

CO No.2347 of 2008
IA No: CAN 5 of 2019
(Old No: CAN 10966 of 2019)

Kamala Devi and others
Vs.
Milan Mukherjee and others

(Via video conference)

Mr. Tanmoy Mukherjee,
Mr. Emon Bhattacharya,
Ms. Pooja Sah

.... for the petitioners

Mr. Prasanto Kumar Banerjee,
Ms. Indrani Nandy

.... for the opposite parties

The limited question which arises for consideration in the present revisional application is that, despite the dispute involved in the suit being primarily as to whether the defendant has encroached upon Schedule-‘B’ property, which is a part of Schedule-‘A’ at R.S. Plot No.4325 of Mouja-Chinsurah, the Commissioner, in his report, failed to clarify such point, although covered by point no.1 of the Commission.

Learned counsel for the opposite parties contends that the report was substantiated by the Commissioner's evidence and, as such, there is no scope of interference with the impugned order accepting the Commissioner's report.

It is evident from the first point on which Commission was directed, as it appears from the Commissioner's report itself, that the Commissioner was to go to the locale and relay the second part of the property mentioned in the Schedule of the sale deed enumerated therein, in C.S. and/or R.S. Plot No.4325 of Mouja – Chinsurah and its adjoining plot, if necessary, and to determine if the property described in the second part of the Schedule to the said sale deed includes the 'B' schedule property of the plaint and/or, if any part of it falls outside the said plot, that is, plot no.4325, to which plot or plots that part appertains and what is the extent and area of that part.

However, while answering the said point, the Commissioner has merely made the cryptic remark in his report that "the 'B' schedule property of the plaint falls in Dag No. (Part) 4327 i.e. 16' x 4' 4".

Evidently, the said report is not only incomplete but fails to cover the moot question involved in the

suit, as to whether Schedule 'B' is a part of Schedule-'A' comprised in R.S. Plot No.4325 of the said Mouja.

Irrespective of the evidence of the Commissioner, such evidence cannot be looked into to the extent that is beyond the Commissioner's report itself.

In view of such patent inconclusiveness in the report of the Commissioner pertaining to the first point of Commission, CO No.2347 of 2008 and CAN 5 of 2019 (Old No: CAN 10966 of 2019) are disposed of by modifying the impugned order to the effect that the trial court shall pass an order directing the same Commissioner, who held the first Commission, to hold a second Commission, restricted only to point no.1 of the Commission, to elicit the answer to the entire question covered by the said point.

In view of the long pendency of the matter, such exercise, of re-appointing the Commissioner and completion of the Commission work should be confined to a limited period, preferably two months from the date of communication of this order to the court below.

It is made clear that the Commissioner's report in respect of other points of Commission are not interfered with and shall be retained as part of the

records, as contemplated in Order XXVI Rule 10 of the Code of Civil Procedure.

The parties shall be at liberty to take objection to the Commissioner's fresh report as well as cross-examine the Commissioner on the said same.

It is further clarified that in the event of unavailability of the said Advocate Commissioner, the court will be at liberty to appoint any other survey-passed Commissioner for the purpose of such re-Commission.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)