

S/L 4
22.03.2021
Court. No. 19
GB

C.O. 12 of 2020

Tarak Saha
Vs.
Haripada Saha & Ors.

(Through Video Conference)

*Mr. Shyamal Mukhopadhyay,
Ms. Priyanka Chatterjee.*

...for the Petitioner.

This revisional application arises out of an order dated September 7, 2019 passed by the learned Civil Judge (Junior Division), Kalyani, Nadia in Title Suit No.226 of 2010.

By the order impugned the learned court below accepted the report of the survey Commissioner, filed pursuant to an order for local investigation. The suit is one for declaration and permanent injunction. There is an allegation of encroachment and on the prayer of the plaintiffs, local investigation was allowed. The learned court below came to the following conclusions:

“Heard. Considered. Perused the W/O and the report of the Ld. Survey Commissioner.

After perusing an examination of the Ld. Survey Commissioner in the form of cross examination from the record and comparing it with the report, map and field book submitted by him, I do not find any prima facie discrepancy in respect of the said report.

Notices were served by registered post to both the parties for the said survey. Further it is clear from the report that the Ld. Commissioner has selected the fixed points with independent check measurement and inter distance.

It is also observed that the Ld. Commissioner have surveyed the locality and conducted the work properly and have drawn case map and prepared the report as per survey science. Therefore the court does not find any reason for interfering the result of a long and laborious piece of investigation at this stage of proceeding. Further the points of objection which have been raised by the Ld. Advocate for the defendants are not fatal and they have failed to prove that the direction of the court has been followed by the Ld. Survey Commissioner after pursuing the point of investigation and observation of the Ld. Survey Commissioner, it does not appear that the court direction is not followed.”

Hence, the learned court below ordered as follows:

“ORDERED

That the report along with the field book and the case map submitted by the Ld. Survey Commissioner Madan Mohan Biswas is hereby provisionally accepted and such report is to be considered along with other evidences at the time of final hearing of the suit.

The objection raised by the defendants against the commissioner’s report stands disposed of on contest.

To 16/12/2019 for P.H.”

The petitioner/defendant challenged the report, inter alia on the following grounds

- i) That the suit property was not relayed with the R.S. map;
- ii) That the points were not fixed as per the scientific survey rules and the points were arbitrarily taken.
- iii) The lands were not measured by the method of forward bearing and backward bearing.
- iv) The survey Commissioner travelled beyond the writ issued by the court.
- v) No R.S. map was attached to the report.
- vi) The measurement of the surrounding plots had not been taken.

The points for local investigation were as follows:

“Points for Local Investigation

- 1) To ascertain and fix the locality, the suit land, as described in the schedule of the plaint.*
- 2) The Ld. Advocate Commissioner shall relay the suit plot being R.S.&L.R. plot no.150 of Mouza- Subarnapur, J.L. No.42, P.S.- Haringhata, Dist-Nadia, with reference to R.S. or L.R. Map of the suit mouza, and to show the same in his case map, comparative case map & enlarged case map.*
- 3) The Ld. Advocate Commissioner, shall relay the registered patta, being no.6579,*

dated 10.05.1954, executed by Gabardhan Durlav in favour of Krishna Lal Saha, since deceased and shall relay the Amalnama, dated 31.01.1995 which took settlement from Shibani Deve & ors. in the name of Krishna Lal Saha, since deceased and to show the same in his case map & comparative case map.

- 4) Whether any portion of suit land, including any structure boundary wall, is in occupation of the principal-defendant no.1 or not? If so give in details in his report, field book and case map & enlarged case map.*
- 5) Whether any portion of suit land falls into the Panchayat Road or not? If so give in details in his report, filed book and case map & enlarged case map.*
- 6) The relay is to be made with reference to R.S. or L.R. map of the suit mouza.”*

The report submitted by the learned Commissioner has answered each and every point is quoted as hereinbelow:

“Answer to Pt. No.1:- I have ascertained and fixed at the locality the suit land as described in the schedule in the schedule of the plaint.

Answer to Pt. No.2:- I have relaid the suti plot being Plot No.150 of Mouza subarnapur, J.L. No.42, PS- Haringhata, District: Nadia with reference to C.S. & R.S. Map of the suit Mouza and I have showed the same in the case map, comparative case and map and enlarged case map.

Answer to Point No.3:- I have relaid the registered Pattah being No.6579 dated 10-05-

1954 executed by Gobardhan Durlav in favour of Krishnalal Saha since deceased and I have relaid the amalnama dated 31.03.1955 which is taken settlement from Shibani Devi & others in the name of Krishnalal Saha. Since deceased and I have shown the same in the case Map and comparative case map.

Answer to Pt. No.4:- Portion of suit land in Plot No.150 including portions of structure, boundary wall are in occupation of the Defendant No.1. It is found that Defendant No.1 has occupied 2.304 dec. of suit plot No.150 and 80Sq. ft. of Building construction and 7.5 sq. ft. are of privy construction. 10ft. in length of law boundary wall also in occupation of defdt. No.1. Those fall within .18 dec. of land of the plaintiffs.

Answer to Pt. No.5:- It is found that 1.730 dec. of the Plaintiffs' land fall within Panchayet Path. Details have been given in the report, Field Book case map and enlarged case map.

Answer to Pt. No.6:- Relay has been made with reference to C.S. & R.S. Map of the suit Mouza.

I have drawn the case map, enlarged case map, and comparative case map according to scientific scale depicting the suit plot and relevant important local features and I hereby submit elaborate Report of local investigation.”

The maps and sketches in the field book and case map have also been annexed to the report comprising of eight pages. It appears that measurements were taken of the adjoining plots and also of the area between the disputed

plots. Sketch map of plots of other adjoining owners have also been drawn and a detailed report with measurements of the area of the land of the plaintiff, which was in the occupation of the defendant no.1 was filed. The contention of the defendant no.1 is that the report and the measurements in the field book were unscientific and erroneous and the report was not prepared by consulting the relevant deeds and documents of the parties. This contention has no basis. It also appears that the points taken by the learned Commissioner as fixed points were not objected to at the time of measurement by either of the parties who were present. Both the parties were present during the measurement and had affixed their signatures in the field book. In the cross-examination by the defendant, the Commissioner has categorically stated that the comparative case map of C.S. and R.S. maps were filed; that the fixed points A and B were certainly junction points and the points selected as A, B, P and Q were all taken on the basis of the appearance of these points in the R.S. map. It has been stated in the report that there has been no amalgamation of plots and plot no.161 and plot no.141 were separate in their existence. That the measurements of the plots were taken as per the fixed points. That the relay was done of the suit plot by comparing the same with the patta and the Amalnama. From the Amalnama and Patta, lineal measurement of the property was available. The traverse measurements were also done and possession of the parties as per the Amalnama

and Patta were also mentioned in the report. In the cross-examination the Commissioner deposed as hereunder:

“On explanation

It is fact that I was directed to relay only upon the suit plot and no other plot. I have relayed the Patta and Amalanama. I did my field work on three separate dates. I have submitted the details of my work routine of those three days before this court. It is fact that both parties were present at the time of field work. At the time of selection of fixed point, land marks and verification points, neither party raised any objection. As per my report I took one check point “T”. It is fact that at page no.2 and 5 of my report, it is mentioned that I have taken measurement in between permanent land mark A to T and intermediary point F to T. It is fact that I have taken all off set measurements in between the said lines. It is fact that at the time of close traverse there remains no scope of direct measurement but always it is measured indirectly. It is fact that all measurements taken by me by prismatic compass are angular.

I have followed the principle of checking measurement from forward bearing or back ward bearing or vice-versa and the difference should always be 180 degree. The measurement I have taken is correct as per this principle.

I have taken test measurement and mentioned the same in my field book by taking the fixed point and land marks. It is fact that I have done desk work after survey and relay

and in my map the things are in proper place and position as they situate in the sit plot.”

The learned court below also came to a finding that there has been no obvious error or arbitrariness in the measurements and investigation done by the learned Commissioner and that the defendant has not been able to prove that the survey rules had not been followed. When an elaborate report is filed by the Commissioner, whose integrity, creditability and carefulness have not been questioned, interference with the report could be made only in very exceptional circumstances, that is, in cases where convincing evidence contrary to the report was available before the court.

The report of the local investigation is admissible in evidence but it is not the exclusive evidence and the defendant will always have a right to adduce further evidence in support of his case. The report has a corroborative value but same is always be subject to the other evidence adduced by the parties and the court has the jurisdiction to arrive at a conclusion which may be contrary to parts of the report upon the evidence adduced by the parties at the trial. The report is an expert opinion and it has to be considered in corroboration with other evidence at the time of hearing of the suit, which was also the opinion of the learned Judge.

The Commissioner's report is only evidence of the points to which the commission refers. Any report he chooses to make on any other point is not evidence. There is

also scope for raising contentions at all the subsequent stages of the suit to satisfy the court that the report of the Commissioner cannot be relied upon as conclusive evidence. Report of the Commissioner is only one piece of evidence, amongst the other evidence to be led by the parties for determination of the issues involved. It is not the sole basis for determination of the suit. Objections with regard to the fixed points taken by the Commissioner should have been raised at the time of the Commission itself.

With the above observations the revisional application is dismissed.

However, there will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)