

AD. 20.
August 16, 2021.
MNS.

C. O. No. 84 of 2021
(**Via video conference**)

Utpal Gomes
Vs.
Ranibala Biswas and others

Mr. Saptarshi Kumar Kundu

... for the petitioner.

Mr. Tilak Mitra

...for the opposite parties.

Affidavit-of-service filed in Court today be
taken on record.

Heard both sides.

Learned counsel for the petitioner
contends that the trial court acted palpably
without jurisdiction in accepting the final report of
the Commissioner under Order XXVI Rule 9 of
the Code of Civil Procedure, despite such report
being tainted by the admission of the
Commissioner, in his evidence, that the report
was filed about two years after the commission
work was conducted. It is further submitted that
the Commissioner's report is not valid in the eye
of law in view of the standard operating
procedure followed in such cases being not

adopted by the Commissioner inasmuch as no tri-junction pillar was selected by the Commissioner.

Learned counsel appearing for the opposite parties contends that the Commissioner's report was accepted by the court below upon giving adequate opportunity of filing written objection and cross-examining the Commissioner to the revisionist petitioner and, as such, cannot be assailed under Article 227 of the Constitution of India, since the report has become a part of the records of the suit in terms of the provisions of Order XXVI Rules 9 and 10 of the Code.

Upon hearing learned counsel for the parties and a perusal of the impugned order, as well as the relevant commissioner's report and evidence, it is clear that the trial court gave adequate opportunity to the petitioner (which was fully utilized by the petitioner) to file written objection against the Commissioner's report and to cross-examine the Commissioner as well.

As per the contemplation of Order XXVI Rules 9 and 10 of the Code, the report of the Commissioner, along with the connected evidence and written objection of the petitioner, shall form part of the record and be evidence in

the suit, the evidentiary value of which shall be considered by the trial court at the time of final hearing of the suit.

It would be premature at this juncture to interfere with the impugned order, since the opportunity to file written objection to the report and to cross-examine the commissioner was given to the petitioner and was accepted.

That part, the Commissioner clearly explained in his evidence, as accepted by the trial court, that no tri-junction pillar was found near the suit property, which compelled the Commissioner to take corners of adjacent plots of land, as per the RS and LR maps of the concerned Mouza, as fixed points. It is noticed that such corner plots were chosen from different sides of the suit property.

The judgment of the learned Single Judge of this Court, cited by the petitioner, rendered in **Bishnupada Biring Vs. Ardhendu Sekhar Biring reported at 2019(3) Indian Civil Cases 612 (Cal.)**, is not applicable in the factual context to the present case. In the said case, this Court found specifically that all the fixed points were taken from the western side of the plot only, which did not satisfy the guidelines relied on by

the opposite parties. Such choice of fixed points, itself being vitiated, was held to be erroneous and the commissioner's report set aside in the cited judgment.

However, in the present case, the Commission work was done in accordance with law and fixed points were taken, in the absence of tri-junction pillars, from the corners of several adjacent plots located at different sides of the suit property. Hence, there is no scope of interference under Article 227 of the Constitution of India with the impugned order accepting such report, at this stage.

C. O. No. 84 of 2021 is, thus, dismissed on contest, thereby affirming the impugned order accepting the Commissioner's report.

However, it is made clear that the Commissioner's report, as well as the petitioner's written objection and the evidence of the Commissioner will jointly form a part of the records of the suit and evidence therein, the evidentiary value of which shall be considered by the trial Court at the hearing of the suit, without being influenced in any manner by any of the observations made herein.

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.)