

29.01.2021
Sl. No. 15
srm

C.O. No. 182 of 2021
Smt. Sumitra Sett & Ors.
Vs.
Sri Tapan Kumar Sett & Ors.

Mr. Kajal Roy,
Mr. Aditya Sen

...for the Petitioners.

This revisional application has been filed by the defendants being aggrieved by the order dated January 9, 2019 passed in Title Suit No.53 of 2016 by the learned Civil Judge (Junior Division), 1st Court, Hooghly.

By the order impugned, the learned Court below kept the application dated May 26, 2016, filed by the defendants, in abeyance till the completion of cross-examination of learned Advocate Commissioner. The said order was passed pursuant to the direction of this Court dated January 24, 2019 in C.O. No.4501 of 2016. The relevant portion of the order of this Court is quoted below:

“The learned trial Judge while dealing with the said application under 39 Rule 7 of the Code filed by the defendants, in the order impugned has held that the Court does not find any anomaly in the Commissioner’s report and overruled the objection of the defendants to the said report.

The Commissioner admittedly has not yet been examined. The defendants are entitled to cross-examine the said Commissioner on the points on which they are raising objection to the acceptance of the said report. The learned trial Judge prior to the proof of the said commissioner’s report and without affording opportunity to the defendants to cross-examine the said commissioner on the points of

their objection in accepting the said report should not have held that there is no anomaly in the said Commissioner's report.

The learned Trial Judge is, therefore, directed to afford opportunity to the defendants to cross-examine the advocate commissioner before accepting his report.

The learned Trial Judge thereafter shall consider the application filed by the defendants under Order 39 Rule 7 of the Code and if found that the said application is necessary for the effective disposal of the suit."

Under such circumstances, this revisional application is misconceived. The learned trial Judge had rightly followed the direction of the High Court and fixed the date for cross-examination of the learned Advocate Commissioner. This Court is of the opinion that after the completion of the cross-examination of the learned Advocate Commissioner, if the learned Court below feels that further local inspection was necessary in that case alone the application under Order 39 Rule 7 of the Code of Civil Procedure filed by the petitioners would be taken into consideration.

This revisional application is dismissed.

There shall 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.)