

BIMAL MANNA & ANR. VS. DIPAK KUMAR SHAW & ORS.

Mr. Lutful Haque
Mr. Mustak Ali
..for the petitioners

This revisional application arises out of an order dated January 11, 2021 passed by the learned Civil Judge, Junior Division, 2nd Court, Tamluk, District Purba Medinipur in Title Suit No.1417 of 2014.

By the order impugned, the learned Court below rejected the application for extension of time to file the objection to the report of the learned Advocate Commissioner. The commission was held pursuant to a direction of the court in the presence of the parties. The learned Court below came to a finding that the report was submitted on October 31, 2017. The defendant did not take any steps on January 10, 2018 and February 26, 2018. Thereafter, on three occasions, the defendant prayed for time to file the written objection. On November 27, 2018, the report was provisionally accepted but that was not challenged and ultimately on January 24, 2019, the petitioners filed an application for extension of time to file the written objection. A copy of the objection was also

filed along with the said application. It also appears that on November 27, 2018, none appeared when the matter was called on and the report was provisionally accepted. No prayer was ever made to cross-examine the commissioner. The petitioner prays that this court should accept the objection by setting aside the order impugned. A copy of the objection has been annexed. General objections have been raised as to the report of local investigation, namely, that the investigation was not according to the writ, that fixed point were not properly taken and enlargement of settlement maps were incorrect. No specifications have been given as to why the measurements were incorrect or how the writ was not followed or why the fixed points taken were not as per survey rules. Only vague and ambiguous statements have been made which have no merit.

I do not find any material irregularity in the order impugned. In my opinion, the belated objection was filed only to drag the proceeding. The suit is at the stage of evidence.

The petitioners always have the chance to rebut the contents of the report on the basis of other evidence. The petitioners shall get all chances to adduce evidence in their favour to prove the contents of the report to be incorrect. The report forms part of the evidence but is not sacrosanct and binding upon the

court. The same has to be considered along with other corroborative evidence.

This revisional application is dismissed.

There will be however no order as to costs.

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

(Shampa Sarkar,J.)