

19
25.08.2021
TN

CO No.1025 of 2021

Shri Sujit Kumar Nandan @ Sujit Nandan
Vs.
Sri Shyamal Kumar Nandan and another

Mr. Noni Gopal Chakraborty

.... for the petitioner

Learned counsel for the defendant/petitioner argues that the trial court acted without jurisdiction in accepting the Commissioner's report by the order impugned herein, despite having recorded that there was a clear discrepancy between the decretal property (preliminary decree) and the map annexed to the deed-in-question and the finding of the Commissioner. Such discrepancy in measurement of area should have prompted the court to reject the report and direct a fresh Partition Commission, it is argued.

Upon perusal of the impugned order, it appears that the trial court proceeded on the premise that, in the absence of gross anomaly or irregularity and on a proper reading of the deed on the basis of which the preliminary decree was passed, the report did not call for any interference or modification.

In view of the nature of the challenge thrown in the present revisional application, the factual aspects of the actual area of the suit property, as compared with the Commissioner's report and other land records, if required, would be necessitated, which is beyond the scope of adjudication of this court, sitting in judicial review under Article 227 of the Constitution of India. As such, there is little scope for interference with the impugned order under Article 227 of the Constitution of India. However, the petitioner will be at liberty to set up the grounds taken in the present revisional application as grounds of appeal, if preferred against the final decree, when passed.

Accordingly, CO No.1025 of 2021 is disposed of without interfering with the impugned order but leaving it open to the petitioner to take the grounds of objection in the present revisional application as grounds in any appeal, if preferred by the petitioner against the final decree passed in the partition suit.

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.)