

19.03.2021
Sl. No. 5
srm

C.O. No. 4010 of 2019
Sri Laxman Chandra Manna
Vs.
Sri Sasanka Sekhar Bhowmik & Ors.

Mr. Tapas Kumar Sinha,
Sk. Rejaul Alam

...for the Petitioner.

This revisional application arises out of an order dated July 4, 2019 passed by the learned Civil Judge (Junior Division), Haldia, Purba Medinipur in Title Suit No.254 of 1998. The suit involves boundary dispute. The survey commissioner was appointed by the learned Court below. By the order impugned, the learned Court below accepted the report of the survey commissioner upon affording an opportunity to the respective parties to raise their objections and cross-examine the survey commissioner.

It is contended by the petitioner that the survey commissioner did not measure the property or conduct the local investigation in accordance with law. The objections are that the commissioner did not perform the investigation in terms of the writ. That the fixed points were taken incorrectly. That the noting in the field book were unscientific. That the measurements were not correct and were contrary to the

settlement records. That the measurement was not done in terms of the LA map. That the offset noting were unscientific. That the enlargement and superimposing of map was unscientific.

The petitioner/plaintiff was also allowed to cross-examine the commissioner. The learned Court below came to the finding that in the cross-examination, the plaintiff mainly cross-examined the Pleader Commissioner on the point that the relay was not done according to LA map and that relay of the B strip land as per the LA map was also not done. The learned Court below came to the conclusion that from a perusal of the writ, it would reveal that the Pleader Commissioner was not directed to relay the B strip property of land or any part of the suit property as per LA map. He was directed to relay the disputed area as per RS map which he complied with. The relay was done on the basis of the fixed points selected by the Pleader Commissioner and the disputed plots that is, namely 722 and 721 were measured by implementing triangulation method and offset survey method. The Commissioner also noted the forward bearing and backward bearing of chain-line noted in the filed book at page No.22. Fixed point PQR was taken when none of the parties objected. The Surveyor also calculated the interior angle on

the same page. The Surveyor took offset measurement from the corresponding chain-line and also noted the trees and other features. Therefore, the Court did not find any irregularity or defect in the survey report. There was a minor mismatch of around 1.98 feet but said mismatch was negligible and despite using all scientific method of survey this mismatch could not be resolved.

The report of the Survey Commissioner has been placed before this Court and upon perusing the result of the survey and method used by the Survey Commissioner, this Court is not in a position to hold that the survey was done contrary to the survey rules. 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 learned Advocate for the petitioner has not been able to show or demonstrate before this Court that the method used by the Survey Commissioner was not permitted by the survey rules and that there was any admission in the cross-examination of the Survey Commissioner that the mismatch

was due to using a particular method of survey that was not provided under the Rules.

These are technical issues and the survey or has the expertise and unless the petitioner can point out non-compliance with the survey rules, this Court sitting as a superintending Court cannot probe deeper into the method of survey or the scientific technique used by the Survey Commissioner in this regard.

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.

Under such circumstances, the order impugned seems to be a reasoned one. Every objection of the plaintiff has been taken into consideration by the learned Court below, each of

the points raised by the plaintiff has been answered by the learned Court below and the report has been examined in detail. There is no blatant irregularity or error apparent on the face of record and as such the revisional application merits no consideration.

The revisional application is dismissed.

There will be, however, 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.)