

GHANASHYAM DAS VS. SUBHASIS PATRA

Mr. Jayanta Kumar Das
Mr. Gourav Das
Ms. Madhumanti Das
..for the petitioner

This revisional application arises out of an order No. 116 dated July 31, 2019 passed by the learned Civil Judge (Junior Division) 2nd Additional Court, Contai, District Purba Medinipur in Title Suit No.93 of 2017.

By the order impugned, the learned Court below accepted the report filed by the learned Survey Commissioner and fixed a date for peremptory hearing of the suit. The petitioner is the defendant in the suit. The petitioner is aggrieved by the aforementioned order because the learned Court below failed to take into account the objection raised by the defendant/petitioner with respect to the report of the learned Survey Commissioner. The objections are as follows :-

- a) Notice had not been served properly for holding commission work;
- b) Fixed points had not been selected and checked properly;
- c) Relay had not been done of the suit property;
- d) The survey work was done contrary to the

survey rules. It was unscientific and beyond the writ.

The learned Court below considered each and every objection raised by the petitioner and came to a finding that the survey commission continued for three consecutive days and notice was served on the first day and the parties were also present on all the days. The Field Book showed that the parties had put their signatures. It also appears from the order impugned that the learned Court below came to a finding that the fixed points had been selected scientifically and the parties did not raise any objection to the fixed points taken by the learned Survey Commissioner as admittedly there was no tri-junction stone or tri-junction pillar in and around the premises from which the survey could be done. It is also on record that the suggestion regarding the corners of the plots to be taken as a fixed point was given by the defendant himself. The survey was done by following the procedure of chain survey with triangulation method. The suit plot was also relayed. Thus, in the absence of any grave and serious error in the survey work and the defendant having failed to show any serious non-compliance with the survey rules, the learned Court below accepted the survey report.

The notice is annexed as P-6 of this revisional application. The dates of survey have been mentioned in the Field Diary. The learned Survey Commissioner searched for the tri-junction stone but could not find the

same then, fixed points from the nearest plot corners were taken and marked X, Y and Z after taking off-sets of local features with triangulation method. The notice was served upon the plaintiff and the defendant. They were present and signed the field book. 15 persons were present during such survey. The plaintiff and the defendant were asked to supply the settlement map, which was supplied by the plaintiff. The parties identified the suit plots. The defendant identified A, A/1, A/2 schedule lands. The survey map was consolidated. As the tri-junction could not be identified by either of the parties, the parties accepted the fixed points X,Y,Z which were taken with the consent of the parties and recorded in the Field Note Book. Station points marked as A,B,C,D,E,F,G,H,I,J,K,L,M,N and P were taken and A/1, A/2, A/3 and A/4 were taken as sub-station point for survey work of suit plot no.7. Relay was made with the settlement map and upon considering the record of rights and partition deed etc. Thus, the learned Court below rightly came to the conclusion that the petitioner could not show any arbitrariness, illegality or unscientific method in the learned Survey Commissioner's work.

I find that the objections are generic and there are no specific instances which would persuade this Court to hold otherwise.

It is an admitted position of law that the learned Survey Commissioner's report is not the only

conclusive piece of evidence but the same has to be corroborated with other evidence. The parties are entitled to lead their own evidence in support of their respective cases and prove that the report may not be completely correct.

Under such circumstances, this revisional application merits no consideration and the same 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.)

