

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1679 of 2017

Rabindra Barik

....

Petitioner(s)

Mr.J.K.Mishra-2,
Advocate

-versus-

Gajendra Barik & Ors.

....

Opposite Party(s)

Mr.B.C.Panda, Advocate
(O.P.No.1)

Mr.A.K.Mohanty, Advocate
(O.P.No.3)

Mr.U.R.Jena, Advocate
(O.P.No.2)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
10.05.2022**

Order No.
05

1. Heard learned counsel appearing for the parties.
2. Assailing the impugned order, Mr. Mishra, learned counsel for the petitioner taking this Court to the objection filed herein to the Amin Commission report read together with the cross examination by defendant no.2, in cross examination himself has admitted that not only he has not filed any rough report for consideration and not even taken any fixed point in the measurement, it is in the above circumstance, Mr.Mishra, learned counsel submitted that there is in fact no proper report available to be considered in the final decree proceeding involving a suit for partition. Thus, it is alleged that there has been mechanical consideration of such aspect by the trial court in passing the illegal impugned order. Unless the fresh Amin report is obtained in the participation of the parties, there may not be effective termination of the final decree proceeding.
3. In their opposition, learned counsel appearing for the opposite parties though not objected the statement of the Amin Commissioner in

the cross examination by defendant no.1 but however attempted to justify the impugned order.

4. Perused the Amin Commissioner report, which disclosures undisputedly remain contrary to his deposition in the cross examination. The report so prepared remaining defective has no value. In the circumstance, this Court finds there is no valid report available to be considered in the final decree proceeding and there is failure of understanding of the trial court on this aspect as a result the impugned order must suffer.

5. This Court in the above circumstance interfering in the order at Annexure-6 also declares the report at Annexure-7 as bad and not to be taken into account. As there is fresh requirement of undertaking of exercise through the Amin Commissioner, this Court directs the trial court for undertaking a fresh exercise through Amin Commissioner asking him to furnish a spot visit and give his report in final decree proceeding but in the involvement of parties concerned. Keeping in view the decree involved, the trial court is also directed to include the valuation aspect. For there is inordinate delay in the disposal of the final decree proceeding, this Court directs the trial court to fix at least a time limit of four weeks for submission of Amin Commissioner report from the date of production of an authenticated copy of this order by either of the parties but, however, involving parties concerned.

6. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge

Sks