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28.02.
2023
Ct. No.652

C. O. 659 of 2021

**Smt. Sibrani Ghosh & Ors.
Vs
Sri Barun Chakraborty & Anr.**

**Mr. Madan Mohan Roy
.....For the Petitioners**

This is an application under Article 227 of the Constitution of India against order no. 243 dated 10.01.2020 passed in Title Suit No. 27/2015 by learned Civil Judge (Junior Division), Additional Court at Hooghly. By the impugned order court below rejected investigation Commissioner's report with certain directions upon the Commissioner to reinvestigate, keeping in mind the scientific Principle of Survey in accordance with the principles laid down in Survey Rules, taking note of each and every measurement in his daily workings. On perusal of the relevant portion of the order impugned it appears that learned court below in the order impugned observed as follows:

"It is also pertinent to note that there is no mention of the day to day measurements taken on the workings of the Ld. Commissioner. Only the rough sketch map bears it all. However, it cannot be ascertained from the workings as to the day to day development in the survey work

which isn't the right method. Furthermore, considering the topography of the suit plot, it appears that Traverse survey would have been the most appropriate mode to have been employed in surveying the suit property as the topography of the suit property is a fit case for a closed traverse survey. Furthermore, the statements made by the Ld. Commissioner stating the R.S Mouza Map to be erroneous is unwarranted and the determination of the same is even beyond the jurisdiction of this Court. On the basis of the aforesaid discussion, I find the commission report to be unscientific and thus, I find it fit to reject the commission report with a direction upon the Ld. Commissioner to reinvestigation on the points of inspection keeping in mind the scientific principles of survey along with a direction to note each and every measurement taken in his daily workings and also the name of the method employed in doing the survey work."

Learned court below accordingly appointed the same learned Commissioner by issuance of duplicate writ. Since the order I am going to pass will not cause prejudice to either of the parties, the service of copy of revisional application as well as notice upon

the opposite parties is dispensed with.

It is not in dispute that in the suit plaintiffs' allegation is that defendant has encroached certain portion of plaintiffs' land as described in the Schedule "C-1" to the plaint. In order to adjudicate the issue in controversy a proper and meaningful local investigation is badly needed.

From the aforesaid quoted observation of the court below in connection with the local investigation commission report it is clear that the court below is not satisfied about the way the investigation work has been done by the learned Commissioner and as such from the report the court below came to a conclusion that the impugned Commission report which is required to be treated as a piece of evidence will not help the court to adjudicate the real dispute between the parties conclusively. As the court is dissatisfied with the proceeding of the Commissioner, it can always direct such further enquiry to be made as it shall think fit. In fact, if the report of the First Commissioner is found to be deficient on any point, the proper course is to direct the same Commissioner to remedy the defects. As such court below has rightly appointed the same Commissioner for conducting the commission work in accordance with the Survey Rules. However, I am informed that the Commissioner's fees for the fresh local investigation

commission has not yet been deposited, for which the commission work has not been conducted.

The plaintiff is directed to deposit the Commissioner's fees of Rs.5,000/-tentatively for conducting the Commissioner's work within a period of two weeks from the date of communication of this order and on such payment the court below will issue fresh writ to the Commissioner immediately and learned Commissioner will conduct the investigation commission work in terms of prayer and will submit a report within a period of 12 weeks from the date of communication of the order.

The next phase of the suit will proceed after submission of the report by the learned Commissioner by the trial court.

C. O. 659 of 2021 is accordingly disposed of without interfering the order impugned.

Urgent photostat certified copy of this order be given to the parties, if applied for, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)

