

20.04.2023
Court No.652
Item No.31
AP

CO 984 of 2021

**Nitish Das and Ors.
Vs.
Smt. Doli Karmakar**

Mr. Tapodip Gupta
Mr. Kingsuk Mondal

... For the Petitioners.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee

... For the Opposite Party.

This is an application directed against the Order No.206 dated 25th November, 2019 passed by the learned Civil Judge (Junior Division), Additional Court at Jangipur, Murshidabad in Title Suit No.17 of 2004. By the impugned order learned Court Below accepted the report of the Investigation Commissioner.

The petitioners contended that the opposite party herein filed aforesaid suit. The petitioners herein being defendant Nos.1 to 8 and 11 to 16, entered appearance in the said suit and filed written statement.

The allegation levelled in the prayer made in the plaint is that the “Kha” schedule property to the plaint is the exclusive property of the plaintiff and for eviction of the defendants from the “Kha” schedule property. In the said suit the plaintiff /opposite party filed application for local investigation commission. The Commissioner after conclusion of commission work submitted report.

The petitioners herein filed written objection against the Commissioner’s report and the main

allegation levelled against the investigation Commission's report are as follows:-

- (a) Learned Commissioner did not take measurement of the entire disputed land in proper manner and on the contrary he entirely prepared his report on the basis of sketch map as provided in the plaint.
- (b) In spite of there being specific direction so as to determine the boundary of the disputed land, the Commissioner failed to do the same in proper manner.
- (c) Learned Commissioner mentioned about one municipal road over the disputed land but did not take measurement of such road.

However, learned Court below after considering the evidence adduced by the investigation Commissioner and after considering the materials in the report had ultimately accepted the report by the impugned order.

Being aggrieved by the said order, learned counsel appearing on behalf of the petitioners submits that the Court below acted illegally and with material irregularity not appreciating the case as made out by the petitioners in their aforesaid objection application filed against the local investigation Commission report. He also failed to appreciate the importance of correct and flawless local investigation report which is of utmost important for the determination of the said suit. In fact, he has submitted the report on wrong appreciation of facts for which the order impugned is liable to be set aside.

Learned counsel for the petitioners further submits that the Court below in the impugned order has observed that there are some casual faults in the report but in spite of that learned Court below was pleased to accept the said report.

Learned counsel on behalf of the opposite party submits that in the order impugned, learned Court below has given sufficient reasons in support of acceptance of the said report and the evidentiary value of the report shall be adjudicated at the time of final hearing of the suit after adducing evidence by the parties. Accordingly, he submits that the order impugned does not call for any interference.

Having heard the facts and circumstances of the case, it appears to me that the defendants/petitioners herein has raised certain objections against the report submitted by the learned Commissioner. However, learned Court below though indicated a stray line in his order but ultimately accepted the report without mentioning about any flaws in his observation in the order impugned.

From the order impugned and from the reports submitted by the Commissioner, I do not find anything to set aside the said report at this stage or to appoint second Commissioner for the same purpose. Accordingly, the order impugned does not call for any interference.

CO 984 of 2021 is accordingly dismissed.

However, the points of objection raised by the petitioners herein against the Commissioner's report shall be kept open before the Court below for adjudication at the time of final adjudication of the suit.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Ajoy Kumar Mukherjee, J.)