

Item No. 14
25.09.2023
Court. No. 19
GB

C.O. 2097 of 2023

Sri Sankar Roy
Vs.
Sri Sanjit Kumar Mallick & Anr.

Mr. Srijib Chakraborty,
Ms. Sudeshna Basu Thakur,
Ms. Banani Bhattacharya

...for the Petitioner.

The petitioner has challenged the order dated May 11, 2023, passed by the learned Civil Judge (Senior Division), 1st Court at Alipore in Title Suit No.349 of 2018.

By the order impugned, the learned court below rejected the report of the learned commissioner on the following grounds:-

- a) The commissioner did not state the method used for measuring the suit property.
- b) The commissioner directed the parties to file documents and the map, but the measurement was concluded subject to verification of the plans to be produced by the parties.
- c) The schedule of the title deeds of the parties were not considered while making the survey.
- d) Fixed points were not taken from which the measurements were to be done.
- e) There were several contradictions in the submissions of the parties with regard to the boundary of the suit property.

f) As per the commissioner, the eastern side of the boundary was found to be in the correct position as admitted by the parties. The measurement of the land occupied by the respective parties, was relayed from the said boundary wall.

g) The procedure and the technique necessary for surveying the suit property was not used.

This Court does not find any illegality in the order impugned. For the aforementioned reasons, the learned court rejected the report. The learned court below had elaborately discussed the deficiencies and contradictions in the report of the learned commissioner. The learned court was satisfied that the rules of commission were not followed. The survey was not done by relaying the property either with the deeds or with the mouza map. Based on the admission by the parties, that the eastern side of the boundary wall was in the correct position, the measurements were taken. The parties were not technically trained persons and they were not in a position to prevail upon the commissioner to take the measurements by relay from the eastern side boundary wall.

The findings of facts as above, cannot be interfered with by this Court under Article 227 of the Constitution of India. The order impugned is well-reasoned. All aspects have been taken into consideration. Several decisions of the Hon'ble Apex Court and High Courts have been discussed.

Accordingly, the revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)