

03.01.2023
Item No.7
Ct. No.7
CHC
(disposed of)

C.O. 2373 of 2022

Kalyani Biswas & ors.
Vs.
Shyamapada Majumder & anr.

Mr. Dhananjay Banerjee,
Mr. Snehansu Majumder
...for the petitioners

Subject-matter of challenge in this case is against the acceptance of learned Investigation Commissioner's report.

Mr. Dhananjay Banerjee, learned advocate appearing for the petitioners disputes with the impugned order submitting that in the absence of the Mouja Map being produced in course of investigation the permanent land marking (PLM) could not be effectively fixed, resulting in improper relayment of investigation commission, which is against the spirit of investigation.

Admittedly, the Commissioner, who held investigation, was subjected to cross-examination being undertaken by the petitioners/defendants in aid of Order 26 Rule 10(2) C.P.C.

It is submitted that the Commissioner during his cross-examination has disclosed admitting non

production of Mouja Map during the commission work. The objection thus submitted by the petitioners against the report of investigation could not be duly considered by the court below, and as such, the Commissioner's report has been erroneously accepted, learned advocate for the petitioners argues.

As per pleadings, the allegation of encroachment is to the extent of 27 sq.ft., while as per Commission's report, the encroachment is up to 57 sq.ft, which is strongly opposed by the learned advocate for the petitioners.

It is a suit of 2015, seeking declaration and injunction, wherein allegation of causing encroachment is there with respect to certain properties mentioned in the pleadings, submitted by the opposite parties/plaintiffs. The suit has been set for D.W. When petitioners have cross-examined the plaintiffs' witness including the learned Investigation Commissioner, who hold the investigation, to testify the extent of encroachment, if there be any, and when the court has accepted the Commission's report subscribing reasons therein, this Court is of the view that the report of the Investigation Commission should not be interfered with at this stage.

The point raised by the petitioners disclosing excess encroachment, shown in the report of the

learned Investigation Commissioner, may be agitated at the time of final hearing of this suit irrespective of the acceptance of the learned Investigation Commissioner's report.

It is, however, clarified that if any point is raised during the final hearing of the suit, pertaining to the excess encroachment, contrary to the pleadings of the plaintiffs, the same may be resolved by the court below taking into the evidence already adduced by the parties to this case during trial.

Petitioners have every right to produce all their witnesses, and documents in rebuttal of the evidence already adduced by the opposite parties/plaintiffs.

The revisional application is thus disposed of.

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

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

(Subhasis Dasgupta, J.)