

06.06.2023
Srimanta
Sl. No. 24
Ct. No. 652

CO/3125/2019
Ajoy Krishna Naskar & Ors.
-Vs.-
Milan Naskar & Ors.

Mr. Asit Kumar Bhattacharyya,
Ms. Mousumi Biswas

...for the petitioners.

This application under Article 227 of the Constitution of India has been directed against Order No. 148 dated July 12, 2019 passed by learned Civil Judge (Junior Division), 2nd Court, Baruipur, South 24-Parganas in Title Suit No. 9/2017. By the order impugned learned Court below accepted Investigation Commissioner's report without examining the Advocate Commissioner and without inviting any objection from either side.

Petitioners contended that the petitioners as plaintiffs filed aforesaid suit against the opposite parties for recovery of possession from encroached land. In the plaint plaintiffs have specifically pleaded that on 21st March, 1991 the defendants have encroached a portion of plaintiffs' land without having any right and for which they have sought for recovery of possession.

In the said suit the plaintiffs filed an application for local investigation commission to ascertain the encroached portion as alleged by the plaintiffs. Said prayer for local investigation commission was allowed and learned Investigation Commissioner has submitted his report on 21st February, 2019. Learned Court below was pleased to keep the said report with the record and was further pleased to fix 25th April, 2019 for examination of the local Investigation Commissioner. However, by the impugned order learned Court below without inviting any objection

from the plaintiffs and without examining the learned Investigation Commissioner has accepted the report on the ground that the suit is proceeding ex parte.

Mr. Naskar, learned Counsel appearing on behalf of the petitioners submits that the order impugned is suffering from material irregularity as the Court below accepted the report without giving any opportunity to file written objection by the plaintiffs against that report and learned Court below accepted the said report without following the principles which are required to be followed at the time of accepting the Commissioner's report. Accordingly, he has prayed for setting aside the order impugned.

Order XXVI Rule 14 read with Rule 10 clearly postulates that parties are entitled to file objection against commissioner's report and parties may be given opportunity to examine the commissioner personally in open Court touching any of the matters referred in his report and after considering objection and evidence, if any, made by the party/parties to the report, Court shall confirm, vary or set aside the same. Under Rule 14 parties should be given opportunity to file objections to the commissioner's report and to substantiate their objections, the commissioner should first be examined with reference to the objections. If a party wants to file objection and wants to examine the commissioner, the Court has no option but to examine the commissioner and the report may become part of evidence only thereafter. Merely because no objection was raised by the party, it cannot be held that the report has been proved.

In the present case order impugned shows that the ground of acceptance of report is, that the suit is proceeding ex parte. Order sheet further reveals that Court below also did not invite objection before he

proceeded for acceptance of report, specially when plaintiff wants to submit objection against Commissioner's report.

In view of above, the order impugned suffers from material irregularity and the acceptance of report without giving any opportunity to file objection to the plaintiffs or to examine the Commissioner before acceptance, is perverse. This is also because Court below did not assign reason as to why he accepted report. Merely because suit is proceeding ex parte or because till that date plaintiff suo moto has not filed objection cannot be the ground of acceptance of commissioner's report. Accordingly, the impugned Order No. 148 dated 12.07.2019 is hereby set aside. Learned Court below is directed to invite objection, if any, from the plaintiffs and in the event of filing such objection, he will give opportunity to the plaintiffs to examine the Advocate Commissioner and after such examination on the basis of materials in record he shall confirm, vary or set aside the report by a reasoned order, preferably within a period of eight weeks from the date of communication of the order.

C.O. 3125 of 2019 accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Ajoy Kumar Mukherjee, J.)