

S/L 30
26.06.2023
Court. No. 29
Sourav

**CO 3935 of 2022
With
CAN 1 of 2023
With
CAN 2 of 2023**

**Ashis Kumar Mukherjee
Vs.
Nanda Gopal Kaibrata & Ors.**

*Mr. Rabindra Narayan Dutta
Mr. Sibasis Ghosh
Mr. Dwarik Nath Mukherjee*

...for the petitioner.

1. The petitioner is represented by his learned advocate.
None appears on behalf of the opposite parties in spite of service.
2. Heard Mr. Rabindra Narayan Dutta, learned advocate for the petitioner duly assisted by Mr. Sibasis Ghosh, learned advocate and Mr. Dwarik Nath Mukherjee, learned advocate.
3. The present revisional application is now taken up for passing appropriate order.
4. By filing the instant revisional application under Article 227 of the Constitution of India, the plaintiff/revisionist has impugned the order No. 186 dated 22.09.2022 as passed by the learned Civil Judge, (Junior Division), 2nd Court at Kandi, Murshidabad in Title Suit No. 95 of 2006 whereby and whereunder in a suit for declaration and injunction, the learned trial Court rejected the commissioner's report as submitted on December 3, 2018.

5. In support of the instant revisional application, learned advocate for the plaintiff/revisionist at the very outset draws attention of this Court to the copies of the two petitions as filed under Order 26 Rule 9 C.P.C. by the plaintiff as well as the defendant in the said suit. It is submitted by Mr. Dutta, learned advocate for the petitioner that learned trial Court in Title Suit No. 95 of 2006 by Order No. 156 of 4.09.2018 allowed both the applications on consent.
6. In course of his submission, Mr. Dutta learned advocate for the plaintiff/revisionist also draws attention of this Court to the photocopy of the commission's report which has been annexed with the mark 'P-3'. Attention of this Court is also drawn to the certified copy of the impugned order. It is contended by Mr. Dutta that on comparative study of the two petitions under Order 26 Rule 9 C.P.C. as filed by the parties to the said suit and the commission's report as submitted by the commissioner on 03.12.2018, it would reveal that the learned Advocate Commissioner, Sri Radhamadhab Ghosh of Kandi Court, Murshidabad has submitted reports on the points as mentioned in the schedule of the applications for appointment of investigation commissioner. It is contended by Mr. Datta that the learned trial Court while passing the impugned order, failed to visualize such factum and thus wrongly came to a finding that the report of the commissioner was beyond the points as mentioned in the writ of commission.

7. On perusal of the entire materials as placed before this Court and after hearing Mr. Dutta, learned advocate for the plaintiff/petitioner and also on comparative study of the contents of the petitions under Order 26 Rule 9 C.P.C. and the report of the commissioner as submitted on 03.12.2018, it does not transpire to this Court that the report of the Advocate Commissioner is beyond the writ of commission as issued by the learned trial Court on the basis of the contents of the schedule of the said two applications for commission.
8. Such being the position, this Court holds that there cannot be any justification on the part of the learned trial Court to hold that the said commission report cannot be accepted because the same is outside the purview of the power as given to the Commissioner.
9. As a result, the instant revisional application is hereby allowed. Consequently, the impugned order No. 186 dated 22.09.2022 as passed by the learned Civil Judge, (Junior Division), 2nd Court at Kandi, Murshidabad in Title Suit No. 95 of 2006 is hereby set aside. Consequently, the learned trial Court is hereby directed to accept the Commissioner's report dated 03.12.2018 as it is.
10. It is, however, made clear that the observation as made hereinabove, is purely limited for the disposal of the instant revisional application and the learned trial Court is directed not to persuade himself with any of the

observations made hereinabove at the time of passing of judgment of Title Suit No. 95 of 2006.

11. With the aforementioned observation, the instant revisional application being **CO 3935 of 2022** is thus disposed of.
12. All interim applications are hereby disposed of.
13. Considering the long pendency of the trial of Title Suit No. 95 of 2006, learned Trial Court is hereby directed to dispose of the aforementioned suit positively within a period of six months from the date of communication of this order. **It is made clear that the time limit as fixed by this Court for disposal of the aforesaid suit is mandatory.**
14. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)