

Item No.19
01.04.2024
Court. No. 19
GB

C.O. 960 of 2024

Sri Ashok Kumar Sinha
Vs.
Md. Khurshid Alam & Anr.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K.R. Ahmed,
Mr. Rudranil Das,
Mr. Sumava Santra,
Mr. Tapas Chatterjee

...for the Petitioner.

Mr. Wasim Ahmed

...for the Opposite Parties.

1. The revisional application arises out of orders dated March 7, 2024, March 11, 2024 and March 12, 2024, passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah in Title Suit No.221 of 2021.
2. By the order dated March 7, 2024 the learned court rejected an application dated February 13, 2024 filed by the plaintiff/petitioner, praying for an opportunity to adduce evidence in furtherance of his objection to the partition commissioner's report. By the orders dated March 11, 2024 and March 12, 2024, the prayer of the petitioner for adjournment of the proceedings to enable the petitioner to approach the High Court was rejected and the learned court fixed March 13, 2024 for hearing on the point of acceptance of the partition commissioner's report.
3. Mr. Mukherjee, learned advocate for the petitioner/plaintiff submits that the commission was held

in the absence of the plaintiff, which was available from the cross-examination of the partition commissioner. The partition commissioner accepted the fact that the notice had returned with the endorsement 'refused'. At one place the date has been mentioned as May 20, 2022 and in another place as May 21, 2022 whereas, the commission work was held on May 18, 2022.

4. Mr. Mukherjee further submits that objection has been taken to the entirety of the report, including the observation of the partition commissioner that the caretaker/security guard called Sibü had identified the property on behalf of the plaintiff and was also present through out the commission work and had signed the minutes.
5. According to the plaintiff, Sibü was not authorized to do anything on behalf of the plaintiff and the said statement of the commissioner, if accepted by the court, will cause irreparable loss and injury. The objection would not be effective and urged in its true sense, especially because the plaintiff had not consented to the manner in which the commission work had been done in presence of Sibü.
6. Mr. Mukherjee further submits that the Hon'ble Division Bench, while setting aside the ex parte final decree, had directed the court to hear out the objection of the plaintiff to the partition commissioner's report before accepting the same.

7. Mr. Ahmed, learned advocate appearing on behalf of the defendants submits that the authorization of Sibbu was never questioned. No question was posted to the commissioner during the cross-examination. The application to adduce evidence upon recall of the plaintiff and upon production of Sibbu was only to drag the suit. The Hon'ble Division Bench directed that the objection of the plaintiff be heard but did not pass any order with regard to any evidence being adduced.
8. Having heard the rival contentions of the parties, this court holds that in case the partition commissioner proceeded with the commission work on the assumption that Sibbu was representing the plaintiff and the partition commissioner concluded the work in presence of Sibbu and obtained signature of Sibbu, then other objections of the plaintiff with regard to non-service of the notice of the commission work cannot be agitated in its correct perspective. The presence and absence of the plaintiff during the commission work, may have an effect on the ultimate decision of the court while deciding the issue of acceptance of the commissioner's report.
9. This Court cannot pre-judge such contention of the petitioner. However, when specific objection with regard to Sibbu's presence and authorization had been raised in the objection to the commissioner's report and the Hon'ble Division Bench had permitted the petitioner to agitate his objection and had further directed the learned

trial judge to hear out the objection, for the ends of justice, the petitioner must be allowed to recall himself, adduce evidence and produce Sibbu as a witness with regard to such issue. The evidence shall be restricted to the contention that Sibbu was not authorized by the plaintiff to attend the commission and that the notice prior to the commission work had not been served. The defendant will be entitled to cross-examine the plaintiff and Sibbu. The evidence shall be concluded within two days, including the chief and the cross. Such dates shall be fixed by the learned court and the learned court shall fix such dates only upon being satisfied that a cost of Rs.15,000/- was been paid to the defendant by the plaintiff, within two weeks from date. The learned court shall conclude the suit by passing the final decree, within two months from completion of the evidence. No unnecessary adjournments shall be granted to either of the party and the dates fixed by the learned court shall be final.

10. Accordingly, the revisional application is disposed of.
11. All the parties are directed to act on the basis of the learned advocates' communication.

(Shampa Sarkar, J.)