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2024**

Ct. No. 08

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**CO 1639 of 2024**

**Md. Ahammad and another  
Vs.  
Syed Saifuddin and others.**

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**Mr. Supratick Shyamal,  
Mr. Mahaboob Ahmed.  
... for the petitioners.**

This revisional application is directed against order no. 54 dated 8<sup>th</sup> April 2024 passed by the learned Civil Judge (Junior Division), Additional Court at Serampore in Title Suit No. 73 of 2021 by which an application under Section 151 of the Code of Civil Procedure (in short 'Code') for cancelation of the Commissioner's report submitted on 20<sup>th</sup> December 2022 is rejected.

It appears that the suit has progressed substantially as the third witness of the plaintiffs being the Survey Commissioner is examined. The Commissioner in his evidence has indicated that the Commissioner work was done in absence of the defendants and immediately thereafter the present petitioners sought adjournment with a leave to take appropriate steps. Subsequently, an application is filed for cancelation of the Commissioner's Report.

Though the findings made by the Trial Court do not appear to be appropriate, but I find that the ultimate decision taken cannot be faulted with. There is no fetter on the part of the Revisional Court to substitute the finding in order to uphold the ultimate decision taken by the Trial Court.

Order XXVI Rule 9 of the Code is a repository of power conferred upon the Court to direct the local investigation by appointing the Commissioner and to submit the report. Order XXVI Rule 10(2) of the Code

provides that the report of the Commissioner shall be an evidence in the Court and shall form part of the record, but the Court or with the permission of the Court, any of the parties may examine the Commissioner personally in open Court touching upon any of the matters referred to him or mentioned in his report or as to the manner in which he had made the investigation.

The petitioners are assailing the report on the ground of the procedures adopted by the Commissioner in making the investigation. The Commissioner is the third witness on behalf of the plaintiffs and obviously the petitioners shall get an opportunity to cross-examine the said Commissioner. There is no fetter on the part of the Court in directing the Commissioner to make a further enquiry in the event the procedure adopted by the Commissioner in making the investigation brings dissatisfaction.

Thus, by making an application, when the Commissioner is in the witness box and shall face the cross-examination from the petitioners, to recall the report or cancel the report, it cannot achieve the purpose, which is not contemplated in the procedure.

This Court is of the opinion that the Trial Court shall consider the evidence of the Commissioner and in the event it is found that the manner in which the investigation is done brings dissatisfaction, it may order further investigation.

In such view of the matter, I do not find any illegality and/or infirmity in the impugned order. The revisional application is dismissed.

There shall, however, be no order as to costs.

**(Harish Tandon, J.)**

