

Item 04.12.
No. . 2024
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3321 of 2023

Sri Sakya Singharoy & Anr.
Vs
Tapan Patra & Ors.

Mr. Partha Pratim Roy,
Mr. Samrat Chakraborty.

.... For the petitioners.

Mr. Sarat Kr. Roy,
Mr. Abhishik Banerjee.

... for the opposite party No. 5 to 9.

1. This revisional application has been filed assailing the order dated 4th August, 2023 passed in connection with Title Suit No. 5 of 2009, wherein learned Judge refused to appoint a new Advocate Commissioner as prayed for on behalf of the plaintiffs/petitioners herein.
2. Learned counsel appearing on behalf of the caveator/opposite party No. 5 to 9 is also present.
3. Heard both sides.
4. From the record, it appears that the suit was filed with a prayer for declaration and permanent injunction by the plaintiffs/petitioners and in that suit Investigation Commissioner was appointed under Order 26 Rule 9 of the Code of Civil

Procedure. After submission of Commissioner's report, plaintiffs/petitioners challenged the same before the Hon'ble Court in CO 2575 of 2014 which was disposed of by the Co-ordinate Bench holding, inter alia, that Commissioner's report is faulty only with regard to the measurement in respect of length and width of the passage. Accordingly directed the same Learned Advocate Commission to go to the locality on due notice to the parties and to measure the length and width of the suit passage in presence of the parties to the suit and prepare a scale map afresh within three months from the date of order i.e. 06.04.2016.

5. It is not disputed that direction of this Court passed in CO 2575 of 2014 has not yet been complied with as Learned Advocate Commissioner, Sri Dilip Chatterjee who has already returned the writ on 04.03.2023 along with other documents after lapse of 6 years expressing his inability to carry out the Commissioner work as directed by the Co-ordinate Bench of this Court.
6. In this trying situation, only option was left to the learned Trial Court to appoint a fresh Commissioner but he refused to do so, considering the long pendency which, in my

opinion, will stand in the way of just disposal of the suit.

7. In the aforesaid view of the matter, the order impugned stands set aside.
8. Learned Trial Judge is requested to appoint new Advocate Commissioner, at the cost of the plaintiffs/petitioners, who will comply the order passed in CO 2575 of 2014 by taking measurement of passage after serving notice to the parties to the suit and prepare a scale map fresh and to submit a report within four weeks from date of receipt of the writ.
9. Learned Trial Judge is also requested to dispose of the suit as expeditiously as possible, preferably with six months from the of receipt of the learned Commissioner's report.
10. With the aforesaid observation, the revisional application stands disposed of.
11. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)