

Court No. 6
(265719)

30.04.2025
(AD 169)
(S. Banerjee)

CO 9 of 2025

Sri Harish Chandra Dhara
Vs.
Sri Chapal Kumar Bhattacharyya

Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana

...for the petitioner

Mr. Abhilash Chatterjee
Mr. Saikat Dey

...for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against order no. 61 dated August 30, 2023 and order no. 68 dated December 3, 2024 passed by the learned Civil Judge (Jr. Division) 2nd Court, Serampore in Title Suit No. 363 of 2016.

The opposite party filed a suit for declaration of title and for recovery of khas possession. In such a suit the prayer of the opposite party for appointment of an Advocate Commissioner stood allowed and a Commissioner was appointed. The learned Advocate Commissioner, after holding commission work, submitted his report.

The learned trial judge by an order dated August 30, 2023, accepted the Commissioner's report.

The petitioner filed an application under Section 151 of the Code of Civil Procedure praying for recalling of the said order on the ground that no opportunity was granted to the petitioner to make submissions on the point of acceptance of the Commissioner's report.

Such application stood rejected by the order dated December 3, 2024.

Mr. Mukherjee, learned advocate for the petitioner, submits that the petitioner filed a written objection to the Commissioner's report raising several objections touching upon the commission work. He submits that without considering the said objection, the learned trial judge accepted the Commissioner's report by a totally non-speaking order.

Mr. Mukherjee submits that the application for recalling of the said order was also rejected without considering the right of the petitioner to raise an objection against the Commissioner's report. He further submits that the learned trial Judge even after recording that the prayer of the defendant no. 1 regarding acceptance of the Commissioner's report is a genuine one, rejected the application under Section 151 of the CPC by passing an non-speaking order.

Heard the learned advocate for the opposite party on such submissions.

It is not in dispute that the Commissioner was appointed under Order 26 Rule 9 of the CPC. Order 26 Rule 10(1) CPC states that the Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

Order 26 Rule 10(2) CPC states that the report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to suit may examine the Commissioner personally in open Court touching any part of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he had made the investigation.

After a bare reading of Order 26 Rule (2) this Court finds that the same provides that the report of the Commissioner and the evidence taken by him, shall be evidence in the suit and shall form part of the record. The learned trial judge, in the considered view of this Court, was right in accepting the said report. Order 26 Rule 10(2) also provides for examination of

the Commissioner personally in open court with the permission of the court. Order 26 Rule 10(2) specifies that such examination may be made touching any of the matters referred to the Commissioner or mentioned in his report or as to this report as to the manner in which he has made an investigation.

This Court finds that the learned trial judge by the order dated December 3, 2024 observed that the defendant no. 1/petitioner herein will get ample opportunity to cross-examine the Advocate Commissioner. This Court, therefore, finds that the right of the petitioner to cross-examine the Advocate Commissioner touching upon any of the matters referred to the Commissioner or mentioned in his report or as to the manner in which he has made the investigation, has been preserved by the learned trial judge in the order dated December 3, 2024.

For such reasons, this Court is not inclined to interfere with the order impugned. Accordingly, CO 9 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)