

21.08.2025
Court No.25

Sl. No.81
Mujahid

CO 24 of 2022

Mrinal Kanti Mondal & Ors.

Vs.

Rajib Das & Anr.

Mr. Purbangshu Chandra Mitra,
Ms. Piyali Mitra,
Ms. Mahasweta Mukherjee

...for the petitioners

Mr. Anirban Mitra,
Mr. Amit Halder,
Mr. Amit Roy,
Mrs. Madhumita Sadhukha

...for the opposite parties

1. Present petition has been filed challenging the Order No.114 dated 6th July, 2020 passed by the learned Civil Judge (Senior Division) at Basirhat, inter alia, held that the Commissioner's report cannot be set aside on technical ground and accepted the report of the Commissioner.

2. Before proceeding further, it is pertinent to mention that reading of the entire order actually demonstrates the inherent contradictions in the order itself. In the backdrop, petitioners/plaintiffs filed an application under Order 26 Rule 9 of CPC for appointment of a Commissioner to make certain local investigation. The local Commissioner filed the report in pursuance to Order 26 Rule 10 sub-rule (1), CPC. As being stated by bar by both the learned counsels,

the Commissioner was examined and cross-examined.

3. Learned counsel for the petitioners submits that vide impugned order despite noting various contradictions in the report of the local Commissioner, the learned trial court has accepted the same, by ignoring the illegalities and inconsistencies in the report of the local Commissioner.

4. It is settled proposition that after the Commission files the report, the court has ample power to accept the Commissioner's report as part of the record and may also refuse to accept the report of the Commissioner. It is also a settled proposition that the report of the Commissioner is only a piece of evidence amongst other evidence for determination of the issues. Even if the report is initially accepted by the court it does not preclude the parties from challenging the Commissioner's report by way of cross-examination of the Commissioner or by adducing other evidence to countermand the Commissioner's report. The evidentiary value of the report of the Commissioner is to be assessed and determined at the time of final evaluation of the entire evidence on record. Thus, even if the Commissioner's report is accepted and taken as a piece of evidence or has been formed part of the record the same cannot

be relied upon conclusively, unless it is accepted by both the parties or proved in accordance with the law. Order 26 Rule 9, CPC empowers the court to issue a commission if local investigation is deemed necessary for the purpose of adjudication of matter in dispute. After the commission is executed such Commissioner is to reduce the evidence collected by him in writing and submit his report in writing to the court under Order 26 Rule 10 sub-rule (1). Such report and the evidence shall form part of the evidence in the suit and the parties are entitled to cross-examine with the permission of the court relating to any finding in such report. The court is also empowered to issue further commission, if it is not satisfied with the report.

5. Thus, after the report is submitted by the local Commissioner, the court firstly has to satisfy itself regarding the proceedings of the Commissioner and if the court is satisfied such report will be accepted as a part of the record of the cause. The court may also invite the objections and offer the Commissioner for cross-examination for the purpose of accepting the report for making it part of the record. However, final evaluation regarding the evidentiary value of the report shall be done by the court at the final stage along with all other evidence on the record. Thus, in the present case, even if the

report has been accepted, it does not mean that it will not have to further pass the acid test regarding its evidentiary value. The evidentiary value of such report has to be assessed along with the other issues. However, in any case, the impugned order having been suffering from inherent contradictions is liable to be set aside.

6. In the circumstances, present impugned order cannot be sustained in the eyes of law and the same is set aside. The learned trial court shall appreciate the testimony of the local Commissioner and the report afresh along with the appreciation of the other evidence on record without being influenced by the impugned order and shall give a comprehensive finding in the form of the final judgment to be delivered expeditiously, in accordance with the law.

7. Parties shall be at liberty to raise all the contentions before the learned trial court in accordance with the law.

8. Accordingly, the petition stands disposed of.

9. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)