

D/L- 7
28/02/2025
Ct. No.-6
Aritra

C.O. 660 of 2025

**Biswajit Mitra
Versus
Rekha Rani Maity & Ors.**

Mr. Gouranga Kumar Das
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of defendant No.1 (Ka) (1) and is directed against an order dated October 7, 2024 passed by the learned Civil Judge (Jr. Divn.), Kakdwip, South 24-Parganas in Title Suit No.32 of 2006.

By the order impugned, the report of the Investigation Commissioner was accepted. It appears from the record that on an application under Order 26 Rule 9 of the Code of Civil Procedure filed by the plaintiff/defendant No.1 herein, the Investigation Commissioner was appointed. After completion of the commission work the Investigation Commissioner submitted his final report along with field book and sketch map on July 25, 1994. The defendant filed written objection against the said report. The Commissioner was cross-examined extensively before the open Court on various dates on and from April 4, 2006 to July 31, 2009.

It appears from the record that the petitioner raised several objections against the Commissioner's report. The

learned Trial Judge took into consideration each of the objections taken by the petitioner against the Commissioner's report and the evidence given by the Commissioner and observed that during the cross-examination of the Commissioner the defendant failed to bring anything contradictory with that of the report as submitted by the Investigation Commissioner.

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

It is not in dispute that the petitioner filed the written objection to the Commissioner's report. The Commissioner was also examined personally in open Court touching upon the matters referred to him and mentioned in the report.

It is well-settled that the report of the Investigation Commissioner is only a piece of evidence which will be considered along with other evidence by the learned Trial Judge while deciding the suit.

For the reasons as aforesaid this Court is not inclined to interfere with the order impugned.

CO 660 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)