

Sl. 34
05.05.2025
Court No.6
BP

C.O. 1133 of 2025

Biva Sarkar & Anr.
-versus-
Dipannita Mondal(Dutta) & Anr.

Mr. Dyutiman Banerjee
Mr. Nirmalya Dutta
..for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order dated 24th September, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court at Serampore, Hooghly in Title Suit No. 162 of 2013.

By the order impugned the report filed by the Commissioner stood accepted.

The learned advocate appearing for the petitioners submits that the learned trial judge without considering the points raised by the petitioners in the written objection as well as the inconsistencies pointed out by the petitioners in course of evidence of the Commissioner accepted the report.

This Court finds that the opposite parties herein filed an application for appointment of an investigating Commissioner under Order 26 Rule 9 of the Code of Civil Procedure. After holding local investigation the learned Commissioner submitted his report before the

learned trial judge. Both the parties have also examined the Commissioner whose evidence have been recorded as P.W.-1. The learned trial judge framed a specific question as to whether the report of the learned Survey Commissioner will be accepted or not.

After going through the impugned order this Court finds that the learned trial judge specifically took note of the objection raised by the petitioner against the Commissioner's report and after considering the evidence of the learned Commissioner recorded its finding that from the final report, field book and the case map it appears that the Commissioner has specifically mentioned that the dwelling house of the plaintiffs is located within the bound of the 'Ka' schedule property and also noted clearly the current scenario as to the entrance of such dwelling house. The learned trial judge also noted that the learned advocate for the defendant refrained to cross-examine the learned Commissioner specifically on such points. The learned trial judge after taking note of the decisions of this Hon'ble Court as well as the decisions of the Hon'ble Privy Council assigned cogent reasons for acceptance of the said report. It is well settled that the Commissioner's report is only a piece of evidence which will be considered along with other evidences at the time of final hearing of the suit.

For such reason, this Court is not inclined to interfere with the order accepting the Commissioner's report.

Accordingly, C.O. 1133 of 2025 stands dismissed.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)