

Court No. 6
(265719)

11.06.2025
(AD 43)
(S. Banerjee)

CO 1957 of 2025

Prativa Rani Maiti & Ors.
Vs.
Urmila Maity & Ors.

Mr. Sudip Banerjee
Ms. Keya Nag
Mr. Sanjay Kumar Das

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against order being no. 242 dated March 28, 2025 passed by the learned Civil Judge (Jr. Division) 2nd Court at Tamruk in Title Suit No. 106 of 1997.

By the order impugned the local investigation report dated January 3, 2017 along with its annexures were accepted.

Learned advocate appearing for the petitioners submits that the petitioners filed an objection against the Commissioner's report and cross-examined the Commissioner. He submits that in spite of the fact that several irregularities in the Commission work were pointed out, the report was accepted.

Order 26 Rule 10(2) of the Code of Civil Procedure 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 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 manner in which he has made the investigation.

Upon reading Order 26 Rule 10(2) of the Code it is evident that the report of the Commissioner and the evidence taken by him shall be an evidence in the suit and shall form part of the record. A party to a suit may, with the permission of the court, 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 manner in which he has made the investigation. In the case on hand the petitioners have filed an objection to the Commissioner's report. The petitioners also were allowed to cross-examine the Commissioner.

It is also well-settled that a report of the Commissioner is only a piece of evidence which shall be considered along with other evidences at the time of final hearing of the suit. That apart, the learned trial judge have considered the points raised by the

petitioners in the objection against the Commissioner's report and has considered the same exhaustively and came to the finding that the fixed points were properly marked, checked and measured by the learned Commissioner. The learned trial judge was satisfied with the Commission's work undertaken by the learned Advocate Commissioner.

For such reasons, this court is not inclined to interfere with the order impugned.

Accordingly, CO 1957 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)