

Court No. 6
(265719)

09.06.2025
(A 43)
(S. Banerjee)

CO 1856 of 2024

Jyotirmoy Pandey
Vs.
Krishna Kanta Garai

Mr. Uttiya Ray
Mr. Ashutosh Pal

...for the petitioner

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 March 16, 2024 passed by the learned Civil Judge (Jr. Division), 2nd Court at Burdwan Title Suit No. 240 of 2014. By the order impugned the report filed by the Investigation Commissioner under the provisions of Order 26 Rule 10, was accepted.

Mr. Ray, learned advocate appearing for the petitioner vehemently submits that without giving an opportunity to the petitioner to complete the cross-examination of the Investigation Commissioner, the report of the Investigation Commissioner was accepted.

Order 26 Rule 10(2) of the 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 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.

Sub-Rule (3) of Rule 10 states that where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

A bare reading of Order 26 Rule 10(2) of the Code makes it evident that the report of the commissioner and the evidence taken by him, shall be an evidence in the suit and shall automatically form part of the record and a party to a suit has a right to cross-examine the commissioner.

Mr. Ray, learned advocate appearing for the petitioner vehemently submits that the petitioner was not allowed to complete the cross-examination.

Record reveals that the petitioner was granted an opportunity to cross-examine the Investigating Officer but the petitioner did not complete such cross-examination and on May 10, 2022, the court closed the cross-examination of the Survey Passed Advocate Commissioner and fixed the record for argument in

respect of acceptance of the commissioner's report. Thereafter, on and from May 10, 2022 to December 19, 2023, the record was fixed for acceptance in respect of the acceptance of the commissioner's report and finally on February 19, 2024, the argument was concluded. This revision application was filed only on May 16, 2024, i.e., after the closure of argument with regard to acceptance of the commissioner's report and almost after two years after closure of the cross-examination of the Investigation Commissioner by the petitioner. The order dated May 10, 2022 by which the cross-examination of the Investigation Commissioner by the petitioner stood closed, is also not under challenge in this civil revision application.

The learned trial judge after considering the commissioner's report arrived at a factual finding that the learned Advocate Commissioner has duly complied with the directions of the learned trial judge and has stated that the Schedule B suit property is part and parcel of Schedule A suit property as per RS Mouza map and the sale deed of the plaintiff. The said report has also reflected a blockage made by the defendant in respect of the Schedule B suit property. In the cross-examination, the Advocate Commissioner has stated that Chain Survey Method has been adopted for the investigation work.

The learned trial judge was satisfied with the method of conducting the investigation by the learned Advocate Commissioner and was, therefore, right in accepting the commissioner's report. That apart, the report of the commissioner shall be only a piece of evidence in the suit which shall be considered along with the other evidences.

For all the reasons as aforesaid, this court is not inclined to interfere with the order impugned. Accordingly, CO 1856 of 2024 stands dismissed.

(Hiranmay Bhattacharyya, J.)