Sl. 16
17.07.2025
Court No.6
BP

C.O. 2507 of 2025

Sk. Mafijul Hossain
-versus-
Sk. Abdul Samad & Ors.

Mr. Sukumar Ghosh
Ms. Moumita Ghosh
..for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant no.1 and is directed against an order no. 189 dated 6th May, 2025 passed by the learned Civil Judge (Junior Division), Additional Court, Tamluk, Purba Medinipur in Title Suit No. 58 of 2016.

By the order impugned the report of the learned Advocate Commissioner was accepted.

The learned advocate appearing for the petitioner submits that the learned trial judge accepted the Commissioner's report without considering the points raised by the petitioner in the objection to such report. He submits that the Commissioner did not undertake the work of local investigation as per the writ issued by the learned trial judge. He further submits that the work of investigation was undertaken without following the principles for such investigation.

The opposite parties herein filed a suit for declaration of title, permanent injunction and mandatory injunction. In such a suit survey passed Commissioner was appointed under the provisions of Order 26 Rule 9 of the Code of Civil Procedure. 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. Thus on a bare reading of the provisions laid down under Order 26 Rule 10(2) of the Code of Civil Procedure 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. However, a party to the suit has a right to 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 the manner in which he has made the investigation.

In the case on hand the petitioner filed the written objection against the Commissioner's report and was also allowed to cross-examine the Commissioner. The learned trial judge after considering the Commissioner's report and the materials on record arrived at a factual finding that the learned Commissioner has performed the investigation work on the basis of the R.S. mouza map and then superimposed the map on the basis of fixed points. The learned trial judge noted that the Commissioner has taken three fixed points near the vicinity of the locale. It has been further recorded that the survey work was performed by chain survey adopting triangulation method as well as compass survey by using prismatic compass for angular measurements.

That apart, there is no provision for expunging the report of the Commissioner which forms part of the record. It is also well settled that the report of the Commissioner is only a piece of evidence which will be considered along with other evidence on record by the learned trial judge at the time of final hearing of the suit.

The learned trial judge has extensively gone into the Commissioner's report, the objection raised against such report and the evidence of the Commissioner and thereafter concluded that the Commissioner has prepared his report on the basis of the directions contained in the writ and there is no gross error or mistake in the report which impinges upon the accuracy of such report. The learned trial judge has assigned cogent reasons for accepting such report.

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

Accordingly, C.O. 2507 of 2025 stands dismissed.

There shall be, however, 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.)**