

D/L- 12
07/08/2025
Ct. No.-6
Aritra

C.O. 2795 of 2025

**Kalpana Senapati
Vs.
Swapan Kumar Roy**

Mr. Tanmoy Mukherjee
Mr. Monoranjan Jana
Mr. Souvik Das
Mr. Rudranil Das

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being No.171 dated June 9, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Additional Court, Contai, District-Purba Medinipur in Title Suit No. 47 of 2015.

By the order impugned, the report of the survey passed Commissioner was accepted on contest.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the petitioner filed a written objection to the Commissioner's report but the points raised therein were not considered by the learned trial judge while accepting the Commissioner's report.

The petitioner filed a suit for declaration of title, confirmation of possession and for mandatory injunction directing removal of the construction on the encroached portion which has been described in Ka schedule of the plaint.

Petitioner filed an application for local investigation which was allowed and the Commissioner submitted the report. The said report was not accepted by the learned trial judge and on a fresh application for appointment of a local investigation Commissioner being filed, the learned trial judge appointed the present advocate Commissioner to conduct the work of local investigation on the points mentioned in the schedule of such application. The Commissioner after holding the commission work submitted his report. The petitioner filed the written objection to such report. The Commissioner was also cross-examined by the petitioner herein.

The learned trial judge after hearing the respective parties and perusing the entire report, the objection to such report as well as the deposition of the learned Commissioner observed that the petitioner failed to establish or prove any irregularities regarding the measurement as indicated in the report of the survey work. The learned trial judge further opined that the commission work was conducted after complying with legal formalities and as per the direction of the writ and following the survey science and that there is no anomaly or irregularities in the process of conducting survey work.

By drawing the attention of the Court to a portion of the Commissioner's report, Mr. Mukherjee submitted that the observation made by the Commissioner that Ka

schedule land is not part and parcel of Ka/1 shedule land as well as Kha schedule land is without any basis.

It is not in dispute that the 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. The petitioner filed the objection to the Commissioner's report specifically raising certain grounds. 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 as per the provision laid down under Order 26 Rule 10(2) of the Code of Civil Procedure and the petitioner also cross-examined the Commissioner.

It is well-settled that the 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.

Mr. Mukherjee would contend that the Commissioner did not follow the writ issued to him while holding the commission work and submitting the report.

By drawing the attention of the Court to the point raised by the defendant as has been reflected in the Commissioner's report under point No.(A) that the defendant also wanted the Commissioner to survey the Kha schedule sabek Plot No.1279, Hal Plot No.1399 and find out whether Ka schedule property is part of Kha schedule property or not by relaying the settlement map of 1954-56, Mr. Mukherjee would contend that the work of commission cannot be said to be as per the writ issued by the learned trial judge.

As observed hereinbefore that the report of the Commissioner is only a piece of evidence. That apart, Order 26 Rule 10(3) of the Code of Civil Procedure 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.

Thus, this Court finds that the Code of Civil Procedure provides adequate remedies in case the Court is for any reason dissatisfied with the proceedings of the Commissioner.

With the above observation CO 2795 of 2025 stands disposed of without interfering with the order impugned.

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.)