

Item- 04-09-2025
12.

sg Ct. 16

**FMA 1089 of 2024
CAN 1 of 2025**

Nityananda Hait & Ors.
Versus
Subhendu Shaw & Ors.

Mr. Q.A.M. Firoz
Ms. Torsa Min Bahar

...for the appellants

1. This appeal is directed against a judgment and decree on remand dated 10th May, 2024 passed by the learned Additional District and Sessions Judge, Fast Track Court no.3, Basirhat, North 24 Parganas in a suit for recovery of possession. In order to establish encroachment, a Pleader Commissioner was appointed and based on the report of the Pleader Commissioner as well as the evidence on record, initially the suit was decreed in favour of the plaintiffs.
2. The plaintiffs were aggrieved by the said judgment. In the appeal, the main contentious issues appear to be the report of the Advocate Commissioner.
3. The learned First Appellate Court has meticulously gone through the evidence as well as the report of the Advocate Commissioner and has specifically dealt with paragraphs 16 onward of the Commissioner's report. The learned First Appellate Court has found inaccuracy in the measurement. The map and technique applied by the Commissioner in measuring the plot in question appears that the Commissioner did not find any fixed pillar of District Settlement in the locale and so he tried to find

out the plot corners to be taken as fixed point. The field book does not record the fixing plot corners of plot nos. 268 and 270 as fixed points or fixing station "A" on the north-east corner of the plot no. 268, fixing station "B" on the north-west corner of the plot no. 270 or fixing station "C" on the south-west corner of the plot no. 270. The learned First Appellate Court was thus dissatisfied with the report of the Commissioner as it does not reveal which reliable point was tested or verified for taking fixed points in pot nos. 268 and 270 as this is vital in deciding the nature of the encroachment.

4. The learned First Appellate Court faced with a problem that there may be an issue whether there was no fixed pillar of District Settlement available. It is always a common practice. The Commissioner may take the point where four rectangular plot corners meet with each other, converge and can be considered as fixed point. The evidence on record shows that the mouza map that the alleged plot being nos. 268 and 270 do not meet with each other to form the point where four rectangular plot corners meet with each other and having regard to the fact that taking plot corners of plot nos. 268 and 270 as fixed point would be erroneous and contrary to the common practice. There is also discrepancy with regard to the field book and the composite map which has been elaborately discussed in the said judgment. The discrepancies noticed in the Commissioner's report would even create problem for the plaintiffs even after a decree is passed in favour of the plaintiffs in absence of a

proper measurement and identification of the plots which the defendants alleged to have encroached.

5. On such consideration we do not find any reason to interfere with the order passed by the learned First Appellate Court.
6. However, having regard to the fact that the parties have been litigating for almost 38 years and to expedite the matter, we refer the parties to mediation, though the respondents are not represented.
7. Accordingly, we appoint Hon'ble Justice Siddhartha Roy Chowdury, former Justice of this High Court, as Mediator.
8. Appropriate notices be served upon the parties by the Member Secretary, Mediation and Conciliation Centre, High Court at Calcutta in order to expedite process.
9. We direct the parties to actively participate in the mediation proceeding in terms of the direction passed by the learned Mediator and to attend each and every date of mediation to be fixed for learned Mediator and all attempts should be made to resolve the disputes and differences in mediation.
10. The learned Counsel for the appellants has submitted that the amendment petition was filed and it was allowed and the matter is otherwise ready for adjudication on the issues remanded for reconsideration, we would request the learned Civil Judge (Junior Division), 3rd Court, Basirhat, North 24 Parganas to fix this matter for re-adjudication of the issues mentioned in paragraph 28 by appointing a fresh Advocate Commissioner in December,

2025 and to proceed with the hearing of the suit on the issues remanded if possible on a day to day basis subject to the result of the mediation.

11. We expect and hope that before the matter is being taken up by the learned Trial Court, the parties would be in a position to settle their dispute in mediation.
12. This order shall be immediately communicated to the respondents by speed post with acknowledgement due and we direct the respondents to appear in the mediation proceedings.
13. This order shall be immediately communicated to the Member Secretary, Mediation and Conciliation Centre, High Court at Calcutta, to take further step in this regard.
14. The learned Mediator is requested to conclude the proceedings in the meantime and file a report on the adjourned date.
15. The Member Secretary, Mediation and Conciliation Centre, High Court at Calcutta shall forward the report of the learned Mediator to the Secretary, DLSA, North 24 Parganas to be placed before the learned Trial Court.
16. The parties shall be at liberty to mention before the learned Trial Judge in the event the parties have amicably settled their disputes in mediation prior to the date fixed before the learned Trial Court.
17. The learned Registrar Administration (L&OM) is directed to communicate this order to the learned Civil Judge (Junior Division), 3rd Court, Basirhat, North 24 Parganas for information and doing the needful.
18. With the aforesaid direction, the appeal and the

application are disposed of.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)