

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 2813 of 2023

With

IA NO: CAN 1 OF 2024

With

IA NO: CAN 2 of 2024

Sri Jibananda Pal & Anr

VERSUS

Sanjukta Biswas

For the petitioner:

Mr. Sounak Bhattacharya, Adv.

Mr. Sounak Mandal, Adv.

For the opposite party:

Ms. Bipasha Bhattacharyya, Adv.

Mr. Dyutimoy Pal, Adv.

Mr. Debabrata Das, Adv.

Mr. Debdatta Saha, Adv.

Ms. Mayuri Sil, Adv.

Mr. Tirthankar Nandi, Adv.

Last Heard on: January 05, 2026

Judgment on: January 15, 2026

Biswaroop Chowdhury,J:

This application under Articles 227 of the Constitution of India is directed against Order dated 30-05-2023 passed by Learned Civil Judge (Junior Division) 1st Court Katwa, District Purba Bardhaman in Title Suit No-78 of 2015.

The ground on which the order of the Learned Trial Court dated 30-05-2023 is assailed before this Court is that the Learned Court without considering the objection filed by the petitioner/defendant and without applying the mind accepted the Inspection Report submitted by the Commissioner.

The points of objection of the petitioner/defendant with regard to the Commissioner's Report may be summed up thus:

- A. Ld. Advocate Commissioner has not relayed C.S. settlement map in either field book or case map.
- B. The Ld. Advocate Commissioner has not measured the total area of the disputed plots either in C.S. settlement map or L.R. settlement map.
- C. The field book measurements are not accurate as taken during field work of the Ld. Advocate commissioner.
- D. The notations in the case map as filed by the Ld. Advocate Commissioner do not mention the disputed property which in turn renders the report incomplete.

E. The Ld. Advocate Commissioner has taken plot no. 1027 as a verified plot. However it can be found that there is no such permanent Landmarks in Plot no. 1027. On the contrary there are permanent landmarks in plot no. 580 and 581. However the same have not been taken as fixed points. As such the selection of fixed points by the Ld. Advocate Commissioner is erroneous.

The Learned Trial Court while accepting the report of Learned Commissioner was pleased to observe and direct as follows:

‘What the Ld. Advocate finally arrived at was based on scientific survey methods and measurements taken by him and calculated on accepted formula. Accordingly the presumption of correctness will be tilting towards the commission report which is a work of expert.

Thus summing it up, I do not find a single glaring error on the face of the report save mere non fatal and trivial technicalities, which can render the report untenable in the Court of law. In view of the above discussions, I am inclined to accept the report.

Hence, it is ORDERED that the instant report of the local investigations dated 12-06-2019 along with the case map, field book and other enclosures be and the same are accepted and made a part of the record.

Nonetheless both sides are at liberty to raise their averments if any against the commission report at the time of argument. Suit returns to P. Board.’

Heard Learned Advocate for the petitioner/defendant and Learned Advocate for the opposite party/plaintiff. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the plaintiff/opposite party in the plaint itself had referred to plots of land involved in the suit as C.S. Dag No. 404, corresponding LR. Dag No. 404/994-3 decimal, LR Dag No. 404/6499-4 decimal and LR. Dag No. 404/6531-1 Dec. Therefore from the plaint itself it is crystal clear that the opposite party herein had identified the suit property in C.S. Dag and its corresponding L.R. Dag. However there is no reference to the R.S. Dag in the schedule of the plaint. Learned Advocate further submits that the opposite party in her application under Order 26 Rule 9 of Code of Civil Procedure had specifically, stated in the first point of local inspection that C.S. and R.S. Map of Mouza Katwa is to be relayed and the placement of the schedule 'Ka', 'Kha' and 'GA' of the plaint is to be shown in a scale drawn map. However from the report of the Learned Survey passed Advocate Commissioner it appears that the said Learned Advocate had only relayed R.S. Map with schedule 'Ka', 'Kha' and 'Ga' of the plaint. The said Learned Survey passed Advocate Commissioner further in his report had stated that he had enlarged the corresponding portion of the suit plot as per R.S. Map. Learned Advocate also submits that from the report itself it is very clear that the Learned Advocate Commissioner had not adapted the appropriate way to conduct

inspection work as per points mentioned in the application under Order 26 Rule 9 of Code of Civil Procedure. The said Learned Survey passed Advocate Commissioner had proceeded to do the Commission work by relying upon the R.S. Map, when the schedule of the plaint refer to C.S. and L.R. Record of Rights. There is no finding in the report what is corresponding R.S. Dag No. to. C.S. Dag No. 404 in his report. It is submitted that the Learned Survey passed Advocate Commissioner was put to cross-examination by the petitioner before acceptance of the report and in the cross-examination the Learned Survey passed Advocate Commissioner had stated that he had not considered any C.S. settlement map or L.R. Settlement map while conducting investigation. Further the Learned Commissioner have not enlarged any C.S. as L.R. map as well as he has not prepared any comparative map from the settlement records. The commissioner stated that the field book prepared by him does not contain any note with respect to C.S. plot No. 404 and L.R. plot No-404/994, 404/6499, and 404/6531.

Learned Advocate for the opposite party/plaintiff submits that this application under Article 227 of the Constitution is not maintainable, as the order merely accepts a Survey Commissioner's report and is not conclusive evidence and is subject to determination at the final hearing of the suit.

Learned Advocate further submits that C.S. plot being 404 was a large plot. This plot was later on sub-divided into several plots under the

R.S. settlement. The petitioners/defendants themselves objected to the use of C.S. map in their written objection. Moreover the petitioners have suppressed this document in their petition. The petitioners have not acted in good faith and on this ground alone the petition should be dismissed. Learned Advocate also submits that the petitioners failed to provide the C.S. Map when the Learned Advocate. Commissioner had sought for it while making the local inspection.

Learned Advocate submits that the Learned Commissioner used the report while the 'Ka', 'Kha', 'Ga' schedule properties are described using L.R. map in the plaint, hence any measurement done of 'Ka', 'Kha', 'Ga' schedule properties using R.S. map would lead to error. It is further submitted certified copies of the R.S. and L.R. records are before this Court and upon comparison it is seen as follows:

- i) R.S. plot no. 404/994 (ad measuring 0.13 Acres) was converted into L.R. plot no. 404/904 (ad. Measuring. 13 Acres).
- ii) R.S. plot no. 404/6499 (ad measuring. 13 Acres) was converted into LR. Plot no. 404/6499 (ad measuring 0.04 Acres)
- iii) R.S. Plots no-404/6501 (ad measuring 0.03 Acres) was converted into LR. Plot Plot no-404/6501-(ad measuring .03 Acres).

Learned Advocate further submits that the certified copies of the R.S. and LR records submitted before this Hon'ble Court by the opposite party/plaintiff conclusively demonstrate that the R.S. and L.R. plots corresponding to the suit property are identical in both plot number and area. Since the specific R.S. plot numbers and their respective areas were carried forward exactly into the L.R. records, the use of the R.S. Map for demarcation and measurement could not have and did not lead to any error in the dimensions or location of the properties.

Learned Advocate also submits that the objections with regard to the fixed points taken by the Commissioner should have been raised at the time of Commission itself and now the petitioner's objection is barred by waiver.

Learned Advocate relies upon the following judicial decisions:-

Rabindra Nath Mondal VS Gopal Krishna Mondal and ors.

Reported in 2024 SCC Online Cal-10032.

Tarak Saha VS Haripada Saha.

Reported in MANU/WB0202.2021 (CO. 12 of 2020)

Upon hearing the Learned Advocates and considering the facts of the case and the Judicial decisions relied upon at the outset it is to be remembered that High Courts exercising power under Article 227 of the Constitution is not a Court of Appeal. Thus the Order of the Trial Court can be set aside in the event the same is found to be perverse. It is also decided in different Judicial

decisions that the report of the Commissioner is only an evidence and no final view can be taken.

Now the point for consideration is whether the petitioner/defendant has made out any exceptional case for interference by this Court.

In the suit for declaration and mandatory injunction filed by the plaintiff/opposite party an application under Order XXVI. Rule 9 was filed by the plaintiff/opposite party. The Learned Trial Court upon considering the petition was pleased to allow the same by observing as follows:

Hence it is ORDERED that the petition under Order 26 Rule 9 CPC dated 16-02-07 filed by the plaintiff is thus disposed of and allowed on contest.

Let Sri Tanmoy Majumder the Ld. Advocate be appointed as an Investigating Advocate Commissioner for conducting the Local investigation commission work in the suit property mentioned in the schedule of the plaint as per the points mentioned in the petition dated 16-02-2017 in order to bring clear picture in regard to the suit property mentioned in the schedule of the plaint as per the points mentioned in the petition dated 16-02-2017, in order to bring clear picture in regard to the suit property before this court. The plaintiff is hereby directed to pay Rs. 1,500/- hand to hand at once along with the settlement Map (R.S.) in original to the Ld. Advocate Commissioner. The D/A is hereby directed to take necessary action.

Issue Writ accordingly after the payment of Commission Fee and the submission of the original R.S. settlement Map.

To 27-10-2017 for steps positively. The Ld. Advocate Commissioner is hereby requested to communicate the Ld. Court in the event of non-availability of settlement Map any other inconvenience in submitting the report by the date mentioned above.'

A Commission is to be done on the basis of Writ issued but neither of the parties could submit the Writ which was issued, for the purpose of commission. However as the order dated 22/08/2017 directed the commissioner to conduct Commission work as per points mentioned in the petition dated 16-02-2017 it is necessary to see that such compliance was made.

According to the petitioner/defendant the Commissioner did not relay the suit property with the C.S. map although he was required to do and as per report the Commissioner had not measured Dag No. 404/994, 404/6499, and 404/6531 and the defendant/petitioner objected to the fixed points taken by the Commissioner, but on the other hand the opposite party/plaintiff contended that the Advocate Commissioner deposed that he verified the selected fixed points, and objection with regard to the fixed points should have been raised at the time of Commission itself. It is also contended that the petitioners themselves failed to provide the C.S. Map when the Learned Advocate Commissioner had sought for it while making the local inspection.

The instant suit for permanent injunction and mandatory injunction is filed by the plaintiff with a prayer to restrain the defendants from disturbing possession of the plaintiff in the property mentioned in. Schedule Ka-1 and Ka-2 of the plaint and for a mandatory injunction directing the defendant no-1 to remove the construction made on property Schedule Ka-2. Upon plain reading of the plaint it will appear that the defendant no-1 is the owner of Kha schedule property and defendant no-2 is the owner of Ga schedule property. Hence it is a dispute with regard to use of property and interference in the right to use and occupy property.

Right to property although not a Fundamental right but is a Constitutional Right. A person has right to use and enjoy property lawfully occupied by him without interference by others. Hence when a dispute arises with regard to encroachment of property and interference in the peaceful use and occupation of such property and adjudication of such dispute depends upon measurement of suit property and the report of the commissioner, such report should be clear and specific so that it becomes easy for the Court to arrive at a decision upon considering the said report.

In the instant matter although the Learned Commissioner has deposed that he had verified the selected fixed points but it is not the case that fixed points were selected after discussion with the parties and their Learned Advocate. Further the plea of the opposite party that the petitioners failed to provide C.S. Map when the Learned Advocate Commissioner had sought for it

while making the local inspection, cannot be sustained. When commission work is to be done on the basis of both C.S. map and R.S. map as was prayed for by the plaintiff and directed by the Learned Trial Court it was incumbent upon the plaintiff/opposite party to furnish the C.S. Map.

In the facts and circumstances this Court is of the view that in the interest of justice there should be a commission once again under a special officer to be appointed.

Thus Mr. Raja Ghosh Advocate Ph:- 9830867279 is appointed as special officer to carry out the Investigation under his supervision once again in terms of Order no. 24 dated 22/08/2017 passed by Learned Civil Judge (Junior Division) 1st Court Katwa in T.S. 78/2015. Learned Special Officer in terms of Order dated 22-08-2017 shall prior to conducting investigation upon holding meeting with parties and their Learned Advocates appoint a surveyor/Survey passed Advocate Commissioner. Learned Special Officer shall thereafter upon notice fix a date for local investigation. The survey and measurement work shall be under the supervision of the Learned Special Officer. The parties shall furnish the C.S. map and R.S. map before the Special Officer for doing the needful. It is hereby clarified that the issue with regard to the fixed points shall be taken upon discussion with the parties and their, Learned Advocates or an amin from office of BLLRO may be engaged for the purpose of taking fixed points with identification mark or otherwise.

The Learned Special Officer upon perusing the survey report of the surveyor/survey passed Advocate if satisfied shall enclose the same in his report and submit the same before Learned Trial Court.

The Local investigation work should be completed by the special Officer within 4 weeks from date of communication of this Order, and the report to be submitted within two weeks from date of Local investigation.

The Learned Special Officer shall be entitled to a remuneration of Rs. 8,000/- (Rupees eight thousand) to be shared equally by the parties. Costs of the local investigation shall also be borne by the parties equally.

Upon considering the report of the Learned Special Officer if the Learned Court accepts the same the Special Officer shall be discharged. On being discharged the Special Officer will be entitled to a remuneration of Rs. 2,000/- to be shared by the parties. However if the Learned Trial Court thinks further investigation is necessary the Learned Special Officer may be engaged for further investigation with further remuneration which the Court thinks fit Thus this application under Article 227 of the Constitution of India stands disposed by directing fresh local investigation by Special Officer in terms of the above observation.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)