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91 CWN 383

Calcutta High Court

Case No: None

In Re: Sachindra Krishna Dutta and Another — APPELLANT

Vs

RESPONDENT

Date of Decision: July 9, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 10, Order 26 Rule 14, Order 26 Rule 9

Citation: 91 CWN 383

Hon'ble Judges: S.C. Chatterjee, J; Mookerjee, J

Bench: Division Bench

Advocate: R.N. Mitra and Indranath Mukherjee, for the Appellant; T. Chatterjee and B. Dutt, for the Respondent

Judgement

Mookerjee, J.
The petitioners are plaintiffs in Title Suit No. 161 of 1954 of the (sic) of the Asstt. District Judge, Alipore which has been already decreed in preliminary form. A learned advocate of Alipore court was.appointed as Commissioner for making allotment in favour of the parties. The learned Commissioner submitted his report and transmitted the same to the trial court. The court below then took up the hearing of the suit. The learned advocate who was appointed as the Commissioner, was examined m chief but before he could be cross-examined on behalf of the present petitioner, the learned Commissioner unfortunately died. At this stage the plaintiff petitioners had prayed for examining a survey passed advocate with reference to the report submitted by the learned commissioner who has since died. By the order complained of the learned asstt. District Judge rejected the petitioners'' prayer in this behalf. The learned asstt. District Judge was right when he observed that at that stage, prayer, if any, for appointment of a second Commissioner could not be entertained. The trial court had not yet disposed of the objections or decided whether the report submitted by the Commissioner should be confirmed, varied or set

aside.

2. We are however unable to uphold the extreme contention made on behalf of the opposite parties that at the stage of hearing of objections to the report of a Commissioner appointed under rule 14 of the Order 26 of the CPC apart from examining or cross-examining the Commissioner the parties cannot be allowed to adduce any oral or documentary evidence. The court below relied upon the decision of the Division Bench in the case of Gourhari Das and Another Vs. Jaharlal Seal and Another, . The said decision itself is an authority for the proposition that if the court finds it necessary that further materials should be made available, it may in an exceptional case allow fresh evidence as to the valuation being put before the court. Therefore, it would depend upon the nature and facts and circumstances of each particular case as to whether at the stage of hearing of objection to the Commissioner''s report made under Order 26 Rule 14 of the Code, the court would permit parties to adduce further evidence. The observations made in the concluding lines of paragraph 8 of the Division Bench decision in the case of Gourhari Das v. Jaharlal Seal (supra), do not militate against the view taken by us. There is a basic difference between Rule 10 and Rule 14 of Order 26 of the Code regarding the procedure to be followed for consideration of the report submitted by a Commissioner appointed by the court. When the court disposes of objections and accepts the Commissioner''s report appointed under Order 26 Rule 9 of the Code, the said report forms part of the record of the case and becomes a piece of evidence in the case and the report''s probative value is to be considered along with other evidence, if any, which may be adduced by the parties at the final hearing of the suit. But under sub-rules (2) and (3) of rule 14 of the Order 26 of the Code when the court confirms or varies the report of the Commissioner it shall pass a decree in accordance with the same as confirmed or varied. In the circumstances, we are of the view that the court below committed jurisdictional error by refusing the prayer of the plaintiff-petitioners for examination of a witness in support of their claim that the measurements made by the late Commissioner were not correct.

3. Mr. Chatterjee, appearing on behalf of the opposite parties, drew our attention to the fact that the suit has been pending since 1954 and according to him the plaintiffs are now trying to further delay the disposal of the suit. Therefore, steps should be taken for expeditious disposal of the suit. We accordingly dispose of the application by setting aside the order complained of. We dispose of the plaintiff''s prayer by directing the court below to fix a date, preferably within one month from this day, for recording evidence which may be adduced by the parties. If, on the said date, evidence is not concluded the court will take the rest of the evidence on the day following. But in case the petitioners fails to produce their witness on the said date the court below will not give any further opportunity for adducing evidence. After disposal of the objections to the Commissioner''s report the court below will expeditiously dispose of the suit in accordance with law.

Let a copy of this order be communicated to the trial court by special messenger, if the cost be put in, immediately.

Susanta Chatterji, J.

I agree.