Aparna Pal and Others Vs Anil Kumar Giri and Others

C.O. No. 994 of 2006

Court: Calcutta High Court

Date of Decision: Sept. 27, 2006

Acts Referred:
Constitution of India, 1950 â€" Article 227

Citation: (2007) 4 CHN 213

Hon'ble Judges: Pranab Kumar Deb, J

Bench: Single Bench

Advocate: Jiban Ratan Chatterjee and S. Dutta, for the Appellant;Ashoke Chakraborty and P.R. Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

Pranab Kumar Deb, J.
This instant revisional application has been directed against the order dated 01.03.06, whereby the report of the

learned Commissioner was accepted.

2. In moving the revisional application, the learned Counsel for the petitioner has submitted that in accepting the report of the Commissioner, the

learned Trial Court was oblivious of the fact that the points sought by the petitioner to be determined on commission were not answered. In view

of the categorical admission made by the Commissioner that he did not mention "Ka" scheduled in the field book, it cannot be assumed that the

land as referred to in "Ka" schedule was actually surveyed.

3. Defending the order of the Trial Court, the learned Counsel representing the opposite party has submitted that all points raised by the petitioners

and the opposite party in their respective applications were answered by the Commissioner. Thorough investigation of "Ka" and "Ka 1" scheduled

lands having been made, the Trial Court rightly accepted the report. Links were properly measured, so was also the relay of the sketch map. Fixed

points were also taken for the purpose of measurement of the lands. The report based on proper survey should not be rejected, as contended by

the learned Counsel for the opposite party. Referring to the case of Sri Balai Chandra Kundu and Another Vs. Radharani De and Others, , it is

submitted that when the Trial Court decides the matter even wrongly, no interference in revision is called for. It is contended the report should not

be rejected simply because of the evidence that local witnesses was not taken by the Commissioner. The finding of the Trial Court should not be

interfered with even if it is found that there is discrepancy in the aforesaid report. Reliance has also been placed on the case of Mohd. Yunus Vs.

Mohd. Mustaqim and Others, , to substantiate the view that mere wrong decision without anything more is not enough to attract the jurisdiction of

the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the-Constitution is limited ""to

seeing that an inferior Court or Tribunal functions within the limits of its authority"" and not to correct an error apparent on the face of the record

much less an error.

4. In a dispute over the alleged encroachment of the land, the report of the Commissioner assumes much importance. The lands of the petitioner

and the opposite party lie side by side. It is alleged that the petitioner overstepped his limit by encroaching upon the land of the opposite party. The

land alleged to have been encroached upon has been referred to in ''Ka 1'' schedule. The opposite party made a prayer before the Court for

appointment of a Commissioner for survey of the ''Ka'' scheduled land together with some other ancillary points. The petitioner, on the other hand,

also made a prayer for survey of their land as referred to in ''Ka'' schedule. True, the learned Counsel during the course of examination did

acknowledge that he did not note ''Ka'' scheduled land in his sketch map. The survey of ''Ka'' scheduled land was not noted in the field book also.

Elaborating the point in his report, the learned Commissioner has disclosed that he surveyed and relayed in ''Ka'' scheduled land with the help of

settlement map of the Dharmadasbar Mouza. The area of the plot had been detailed in the report. In surveying the lands, he took help of settlement

map. The learned Commissioner also used 100 link, still chain, tape, peg, jhandis for measurement. The Tri- Junction points of plot Nos. S/E of

916, S/W of 900 and northern side of plot 911 was selected as fixed points ''X'', the Tri-Junction of plot Nos. 1423,902 and 903 was selected as

fixed point ''Y'' and the tri-junction of plots of S-E of 899, S-W of 900 and northern side of plot No. 911 was selected as fixed point ''Z''.

5. The report of the Commissioner gives a fair indication that the measurement of the lands had been made on the basis of survey. Mere non-

mentioning of the plot in the field book or non-examination of witnesses should not be a ground for discarding the report. Anyway, the suit cannot

be disposed of on the basis of the survey report. The parties to the dispute would be entitled to adduce evidence to vindicate their stand. The

report was accepted on appreciation of facts. That finding based on evidence should not be interfered with revision.

6. In the result, the revisional application is dismissed, with a direction upon the Trial Court to proceed with the trial.

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