

(2010) 09 CAL CK 0078

Calcutta High Court

Case No: C.O. No. 1760 of 2008

Braja Krishna Mondal

APPELLANT

Vs

Jyotsna Pahari and Others

RESPONDENT

Date of Decision: Sept. 3, 2010**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Jiban Ratan Chatterjee and Hiranmoy Bhattacharya, for the Appellant;None Appears, for the Respondent**Final Decision:** Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the plaintiff and is directed against the order No. 169 dated May 9, 2008 passed by the learned Civil Judge (Junior Division), First Additional Court, Contai in Title Suit No. 11 of 2008. By the impugned order, the learned Trial Judge has accepted the learned commissioner's report.

2. The short fact of the case is that the plaintiff/petitioner instituted a suit for declaration of title and permanent injunction against the opposite parties. In that suit, the defendants filed a written statement and they have taken the defence stand that the suit properties as mentioned in schedules "ka", "kha", "ga" and "uma" of the plaint do not appertain to R.S. Dag No. 983, 987, 991 and 993 of Mouza: Depal Sasanbarh, under P.S. Ramnagar. Under such circumstances, the petitioner filed an application for appointment of a survey passed commissioner to hold investigation and submit reports on the points mentioned in the application. That application was allowed and upon holding investigation, the learned commissioner submitted reports along with the connected papers. The plaintiff/petitioner filed an objection against such reports and upon consideration of the objection and the deposition of the learned commissioner, the learned Trial Judge has accepted the reports. Being aggrieved, the plaintiff/petitioner has preferred this application.

3. Mr. Jiban Ratan Chatterjee, learned senior Advocate appearing on behalf of the petitioner, submits that the learned commissioner did not ascertain the fixed points as per R. S. map. Moreover, he did not survey the entire lands mentioned under different plots. The learned commissioner did not carry the work of the investigation as per terms of the deed issued to him and so the reports should have been rejected by the learned Trial Judge.

4. Now the point for consideration is whether the impugned order can be sustained.

5. Upon hearing the learned Advocate for the petitioner and on going through the materials on record, I find that the suit property comprises plot Nos. 983, 987, 991, and 993 and those have been described in schedules "ka", "kha", "ga" and "uma" in the plaint. On being challenged by the defendants as to the identity of the plots, a local investigation was directed to be held at the instance of the plaintiff/petitioner. The learned commissioner held investigation in presence of the plaintiff. The first point for investigation was whether the suit plots being numbered 983, 987, 991 and 993 appertained to the respective plots as described in the schedule of the plaint. In this regard, upon holding investigation in presence of the plaintiff, the learned commissioner held that "ka" schedule suit land does not appertain to plot No. 983 but to plot No. 957. Similarly, he held that "kha" schedule suit land does not appertain to 987 but it appertains to 989 and 990. The "ga" schedule suit land does not appertain to 991 but to plot No. 990. The "gha" schedule land does not appertain to plot No. 993 but to plot No. 990 and "uma" suit land does not appertain to plot No. 993 but to plot No. 994, 995 and 996 respectively. In order to ascertain such identification, the learned commissioner surveyed the said plots and also the adjacent plots with the help of the settlement map of 1954-1957. The suit properties were identified by the plaintiff. The plaintiff signed on the report of the learned commissioner to signify that he was very much present at the time of holding the survey. The survey was done as per directions of the Court with reference to the settlement map of 1954-1957 and he selected the fixed points, as noted in his report after verifying their fixities by check measurement.

6. The suit properties were identified by the plaintiff and accordingly survey was held and the learned commissioner came to a conclusion as per the said report and he gave answer to the point No. 1 accordingly. He has prepared a map according to the scale showing the location of the suit properties.

7. As regards the third point, that is, to report, as to how the old trees of different varieties are there on the suit lands, the contention of the plaintiff/petitioner is that the field book is lacking about the age of the trees and there is no evidence on it. This is not of much importance, I think, in consideration of the nature of the dispute between the parties and also on the fact of the findings by the learned commissioner on point number 1.

8. Moreover, the learned Trial Judge has rightly observed that the reports of the learned commissioner are not sacrosanct and the plaintiff is at liberty to adduce evidence. The reports of the learned commissioner shall be considered along with other evidence. Under the circumstances, I do not find any scope of interference with the report of the learned commissioner. Therefore, this application fails to succeed.

9. The application is, therefore, dismissed.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.