

(2011) 08 CAL CK 0094
In the Calcutta High Court

Case No : R.V.W. No. 3268 of 2006 and C.O. No. 850 of 2006

Smt. Kajol Rani Mullick

APPELLANT

Vs

Smt. Asalata Senapati and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 CAL CK 0094

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : S.P. Roychowdhury, Hiranmoy Bhattacharjee and Sudeshna Basu Thakur, for the Appellant; Jiban Ratan Chatterjee, Soumen Kr. Dutta and Subhas Jana, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application for review is directed against the judgment and order dated July 21, 2006 passed by the Hon'ble Mr. Justice Pranab Kumar Deb (as His Lordship then was) in C.O. No. 850 of 2006.

2. The applicant is the Plaintiff No. 3 of the Title Suit No. 36 of 1990 filed before the learned Civil Judge (Junior Division), 1st Court, Contai for declaration of title, recovery of possession and other reliefs. The Defendants / opposite parties are contesting the said suit. The applicant filed an application for local investigation on certain points in respect of the property as described in the Schedule "Ka" to the plaint and that prayer was allowed by the learned Trial Judge. The learned Commissioner held inspection in presence of both the sides and submitted his report against which an objection was raised by the Defendants. The learned Commissioner was examined in the Court. Upon consideration of the materials on record the learned Trial Judge had accepted the said report. Being aggrieved, the Defendants preferred a revisional application and the said revisional application was allowed by the impugned order. Thereafter, the applicant has filed this review application.

3. Now, the question is whether the impugned orders should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record I find that the local investigation was allowed on the following points:

1. To survey the "Ka" suit land as pegged out by the Plaintiff and to find out as to whether the same appertains to plot No. 391 of R.S. operation 1956-57 or not after relaying the corresponding settlement map of 195457;

2. To note and report and measure the length, breadth of the "Ka" suit land;

3. To note and report all local features in and around the suit land;

4. To draw an enlarged scale case map showing therein the suit land and to submit it along with report.

5. Under the above circumstances, in order to dispose of the application for review, this Bench is now to consider whether there is any apparent mistake or any other reason for entertaining the review. The Commissioner was examined in details. He has stated in details how he did the survey. It is his evidence that to the East side of the "Ka" suit land, there is a pucca wall of the Plaintiff and it is existing 9 to 4 chain lines. To the West of the "Ka" schedule property, there are tile shed varanda, house and privy of the Defendant. So, both the parties to the suit have admitted to the Commissioner that the "Ka" suit land is situated between the pucca house of the Plaintiff to the East and the house of the Defendant to the West. The learned Commissioner has surveyed the land by triangular survey method and he made the relay of the adjacent plots also. The report clearly indicates that the fixed points marked XYZ have been taken and settled on hearing both the sides and in presence of both the sides. Thereafter, the "Ka" suit land was pegged out on admission and the suit land was surveyed accordingly with reference to the R.S. Map and thus, he has concluded that the "Ka" suit land appertains to plot No. 391 of Mouja Monaharchak.

6. The Defendants have raised objection on the point that the concerned R.S. Map was old and in mutilated condition and as such, the survey was not properly done with reference to the map and as such, the investigation was wrong. The learned Commissioner in his deposition has denied such suggestion and it is his clear statement that at the time of investigation, the condition of the case map was good. It is his further statement that the condition of the map which he had seen on that day (on the day of examination) would have never been used in his work if it had been found so at that time.

7. Thus, from the deposition of the learned Commissioner, it appears that the investigation was done properly as per writ issued to him and he answered all the points he was to answer by the survey.

8. The Hon"ble Mr. Justice Deb (as His Lordship then was) did not accept that the report on the ground that the two plot Nos. , that is, plot No. 264 and plot No.

391 were not properly measured. But he has recorded that there was no irregularity in taking the fixed points when both the parties had admitted the fixed points and identified the "Ka" schedule land without any dispute and cross check measurement had been done for the purpose of survey. I am of the view that the learned Single Bench was not proper to reject the report submitted by the learned Commissioner. There is no apparent error on the face of the record in the impugned judgment. Whatever the discrepancy that surfaced at the time of deposition is because of the fact that the investigation was done for a long period in the period 1993-97 and the deposition of the learned Commissioner was recorded in 2000 and by the lapse of so many years, when the case map came to the hand of the learned Commissioner, at the time of deposition, the case map was in the mutilated condition. But it is his specific statement that the case map became mutilated by lapse of time and being kept with the record of the Court in folded condition and had this map been in the same position at the time of investigation, he would not have used the same. Such statement clearly indicates that the condition of the map was good as stated by the learned Commissioner at the time of his deposition. Therefore, on going through the entire materials as a whole, I am of the view that it was not proper to reject the report of the Commissioner which was done for a long period from 1993 to 1997.

9. So far as objection on the part of the Defendants, I find that those are most formal and the learned Commissioner has answered those points properly and upon scanning everything, I am of the view that the objections raised by the Defendants against the report of the Commissioner are not sustainable at all.

10. Accordingly, I find that there is an apparent error in the impugned judgment which calls for review of the same.

11. Accordingly, the review application succeeds. The application for review is, therefore, allowed. The impugned judgment is hereby set aside. The survey report stands accepted.

12. Considering the circumstances, there will be no order as to costs.

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