

Title Suit no. 31 of 2015 (Reg. 173 of 2015)
CNRWBSP07-002070-2015
J.O.Code No. WB01066

Order dtd. 19/12/2025.

Today is fixed for hearing of the petition dated 26.11.2025 filed by the decree holder/plaintiff of the suit with a prayer for a direction upon the Advocate Commissioner to supply copy of the proceeding and field note made ex parte prior to 28.10.2025 at the decretal property.

Both the parties are represented by their respective Ld. Advocate.

Now the petition dated 26.11.2025 is taken up for hearing.

Heard both sides.

Ld. Advocate for the plaintiff in his argument submits before the Court that the Advocate Commissioner did not issue any notice to him and did the survey work in absence of the plaintiff and/or his representative in collusion with the defendant.

In support of her contention Ld. Advocate for the plaintiff cited two Judgments, one of Hon'ble Orissa High Court passed in Civil Revision no. 461 of 1983 wherein the Hon'ble Court has been pleased to set aside the commission report on the ground that no notice was served on the parties to the suit to appear before the Survey knowing Commissioner; And the second Judgment was passed by Hon'ble Kerela High Court in Maroli Achuthan (AIR 1968 KER 28) wherein the Hon'ble Court has been pleased to set aside the commission report on the ground that the order issuing the commission and the investigation by the commissioner without giving notice to the defendant.

Upon careful perusal of both the judgments cited herein above by the plaintiff, the Court has found that in both the cases commission has been done and commission report had already been submitted before the Court.

In the instant case the commission work is on progress and commissioner's report is yet to be submitted therefore, in my considered opinion both the citations are not relevant in the scenario of the present suit.

Ld. Advocate for the defendant submits before the Court that the plaintiff takes a dilatory tactics by filing several petitions objecting the commission work with malafide intention.

It is further submitted that the notice has duly been served upon the plaintiff by Ld. Survey Commissioner but the plaintiff and his representative even having knowledge of the date of Survey Commission refrained themselves from attending the commission work.

Ld. Advocate for the defendant prays before the Court to reject the petition with costs.

The Survey Passed Commissioner namely Smt. Debjani Roy Chowdhury is physically present before the Court under order of the Court and has filed xerox copy of the adjournment application filed by Ld. Advocate of the plaintiff on 20.08.2025 seeking adjournment of the survey work and copy of the notice dated 28.08.2025 issued by the Ld. Survey Passed Commissioner to both the parties to the suit intimating the date of Survey commission fixed on 10.09.2025 and copy of postal receipt dated 28.08.2025 addressed to the plaintiff "Sri Gautam Chakraborty Seal Para, Tangra, Kolkata – 700 015" and attached

A/D Card showing name of the addressee as “Gautam Chakraborty, S/O Late Gajendra Chakraborty, 15 C/104 Seal Lane, P.S Tangra, Kolkata – 700 015” and copy of postal envelope returned unserved with endorsement “No such person in this address” showing the address of the addressee as “Gautam Chakraborty, S/O of Late Gajendra Chakraborty, 15 C/104 Seal Lane, P.S Tangra, Kolkata – 700 015”.

Ld. Advocate Commissioner submits before the Court that the notice was sent to the registered address of the plaintiff as per cause title of the plaint and decree and the same was returned unserved with endorsement that ‘no such person in the address’. It is submitted by Ld. Commissioner that if the plaintiff is not residing in his registered address then it is the duty of the plaintiff to inform the Court about his present address by way of amending the cause title of the plaint. It is further contended by the Ld. Commission that she discharged her duty by issuing notice upon the plaintiff to the address which is available on record as per plaint and decree.

It is further submitted by Ld. Commissioner that on 20.08.2025 during commission work the plaintiff submitted one adjournment petition before her. Ld. Advocate Commissioner on the spot in writing on the margin of said adjournment application fixed a further date on 10.09.2025 in presence of both the parties, and as such, the plaintiff had the knowledge of the fixed date but he did not appear on the date fixed for attending commission work.

Now on perusal of the original plaint filed on 29.05.2013 and the amended plaint filed on 27.04.2016 and the decree dated 08.12.2016 it is found that the address as given by the plaintiff is “Gautam Chakraborty, S/O Late Gajendra Chakraborty, 15 C/104 Seal Lane, P.S Tangra, Kolkata – 700 015”.

Ld. Advocate for the plaintiff while arguing the matter submitted before the Court that the registered address was the rental house of the plaintiff and he is not residing in that house. In the supported affidavit of the petition in hand address of the plaintiff is mentioned as “19/1A/73A, Seal Lane, P.S Tangra, Kolkata – 700 015”. The copy of notice dated 28.08.2025 issued by Ld. Survey Commissioner and the postal receipt dated 28.08.2025 and postal envelope returned unserved and the annexed A/D Card clearly shows the postal address of the plaintiff as Gautam Chakraborty S/O of Late Gajendra Chakraborty, 15 C/104 Seal Lane, P.S Tangra, Kolkata – 700 015 which is identical with the cause title of the plaint and decree.

Therefore, there is no doubt that Ld. Survey Commissioner had discharged her duty to issue notice to the plaintiff informing him the date and time of this Survey Commission work in advance under prevailing provisions of law.

The copy of the postal envelope reflects the endorsement of the Postal Department as “no such person in this address” which tallies with the submission of the plaintiff that he is not residing in his registered address. Now, it is the duty of the parties to the suit to inform the Court about change of their registered address by way of necessary amendment so that necessary communication can be made properly.

The plaintiff being fully aware that Ld. Survey Commissioner would send the notice in his registered address, culpably neglected to inform the Court about change of his postal address. Conduct of the plaintiff seems to be malafide with intention to hamper the Survey Commission.

In the premise of above discussion I am to hold that Ld. Survey Commission duly sent notice to the plaintiff and discharged her duty. Thus, the blame given by the plaintiff upon Ld. Survey Commissioner does not sustain.

Moreover, the commission work is under process and yet not completed. On submission of the commission report along with its annexures by the commissioner in the suit, both the parties will get opportunity to raise objection against commission report before its acceptance.

The avenue of raising objection is still open to the plaintiff against the commission report to be submitted.

With this I hold my hand.

The petition dated 26.11.2025 filed by the plaintiff is hereby rejected on contest without any order as to cost.

Fixing 06.03.2026 for commissioner report.

D/C by me,

Sd/-
Civil Judge (Sr. Divn.)
Small Causes Court, Sealdah

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Civil Judge (Sr. Divn.),
Small Causes Court, Sealdah