

04-04.2019
Court No.3
Sh/37.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

C.O. 08 of 2019

In Re: Sri Krishna Sharma &
Anr..
Defendants/Petitioners.

Mr. Abhik Sarkar.
... For the Petitioners.

The petitioners are the defendant nos.1 and 2 in the Title Suit No.1 of 2018, wherein declaration is prayed for by the opposite party No.1, being the plaintiff, to the extent of declaring that the said land and structure standing thereon is in possession and occupation of the plaintiff and also prayed for declaration that the deed being No.581 of 2005 executed by the defendant no.3 in favour of the defendant Nos. 1 and 2 is void, ab initio and not binding upon the plaintiff.

In connection with the said title suit the defendant nos.1 and 2, being the petitioners herein, preferred one application under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint.

Learned Civil Judge (Junior Division), Siliguri, by passing the impugned order on 3rd January, 2019 rejected the said application under Order 7 Rule 11 on the ground that the Adjudicating Authority under the relevant Provisions of FEMA Act of 1999, hereinafter referred to as the said Act, is not empowered to declare a registered deed as void, as a result whereof Section 34 of the said Act is not attracted.

It was also rightly observed by the learned court below that the primary responsibility of the court is to see whether the relief prayed for by the plaintiff can also be granted by the Authority created under the said Act and in case of having such authority under the relevant Provisions of a particular Act the jurisdiction of the suit court is obviously barred.

I am in ad idem with the finding of the learned Civil Judge, (Junior Division), Siliguri as reflected from the impugned order dated 3rd January, 2019 and therefore, not inclined to interfere with the said order under challenge.

However, I request the learned Civil Judge, (Junior Division), Siliguri to expedite the hearing of the suit being Title Suit No.1 of 2018 and dispose

of the same as expeditiously as possible, preferably within a period of one year from date.

It is made clear that no unnecessary adjournments to be granted to either of parties while hearing the said suit and the learned advocate representing the petitioners is directed to communicate this order to the court below. In addition thereto Registry is also directed to communicate this order to the Civil Judge (Junior Division), Siliguri within ten days from date.

The revisional application, being C.O. 08 of 2019, is accordingly disposed of.

There shall, however, be no order as to costs.

Urgent Photostat Certified copy of this order, if applied for, be supplied to the learned advocate appearing for the parties expeditiously on compliance of all requisite formalities.

(SAUGATA BHATTACHARYYA, J.)