

28-01-2020
Court No.3
(Susanta)
SI/02.

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

C.O. 03 OF 2020

**Sankar Paswan
Vs.
Maya Chowdhury & Anr.**

Mr. Deborshi Dhar.

. . . For the Petitioner.

Mr. Subhankar Dutta.

. . . For the Opposite Parties

The defendants in a suit for partition are the petitioners in the instant application under Article 227 of the Constitution of India.

The defendants in the suit took out an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the said suit on the ground that the "A" schedule property being vested under the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975, (hereinafter referred to as "the said Act" in short) the Civil Court has no jurisdiction over the subject matter of the said suit.

The learned Trial Judge by the order No. 7 dated April 12, 2018 dismissed the said application.

The petitioners assailed the said order in revision under Section 115A of the Code, registered as Civil Revision Case no. 12 of 2018 before the Learned District Judge Cooch Behar.

The learned District Judge Cooch-Bihar by the judgment and order dated September 24, 2019 has dismissed the said revisional application thereby affirmed the order of the learned Trial Judge.

The petitioners are challenging the said judgment and order of the learned District Judge in the present revisional application.

On perusal of the averments of the plaint of the said suit being Title Suit No. 64 of 2017 pending before the learned Civil Judge (Senior Division) Sadar Cooch-Bihar it does not appear that the said suit is barred under Section 12 of the said Act, inasmuch as the plaintiff is only admitting that two decimal out of entire five decimal of land comprised in the suit Dag was declared vested and Patta thereof has been issued in favour of the petitioners but unless the entire land described under schedule "A" appended to the plaint is proved as vested under Section 4 of the said Act the bar under Section 12 thereof does not get attracted.

Order VII Rule 11 of the Code does not permit such investigation.

The order impugned, therefore, does not call for any interference.

However, the said issue is left open to be decided by the learned Trial Judge in accordance with law at the time of trial of the said suit.

C.O. 03 of 2020 is disposed of with the above terms. No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)