

22-01-2020
Court No.3
(AJ/SM)
SI/11.

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

C.O. 88 OF 2019

**Smt. Manju Ghosh & Ors.
Vs.
Sri Pradip Ghosh & Ors.**

Mr. Tapas Kumar Sinha,
Mr. Rupan Biswas.
. . .For the Petitioners.

Ms. Suman Sehanabis (Mondal).
. . .For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration and is directed against an order dated August 21, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court at Jalpaiguri in Title Suit No. 29 of 2019.

The petitioners have filed the said Title Suit No. 29 of 2019 seeking a decree of declaration of their right, title and interest over 6 decimal of land in L.R. Plot No. 811 under Panchayet holding no. 17/36 of Maynaguri Gram Panchayet of Mouza Maynaguri, P.S.– Maynaguri, district Jalpaiguri.

The defendants of the said suit, the opposite parties herein have filed a suit being Title Suit No. 77 of 2015 pending before the learned Civil Judge (Senior Division) at Jalpaiguri seeking *inter alia* decree of partition in respect of the joint properties of the

parties to the said suit which includes the aforesaid property involved in Title Suit No.29 of 2019.

The father of the petitioners is one of the party defendant in the said partition suit, who during the pendency of the said suit transferred the suit property of Title Suit No.29 of 2019 in favour of his sons, the petitioners herein.

The petitioners are tracing title over the suit property of the said Title Suit No. 29 of 2019 on the basis of the said deed of transfer.

The opposite parties in the aforesaid backdrop of fact applied before the 2nd Court of the learned Civil Judge (Junior Division), Jalpaiguri under Section 10 of the Code of Civil Procedure for stay of all further proceedings of the said Title Suit No. 29 of 2019 pending disposal of the said Title Suit (Partition) No. 77 of 2015.

The said learned Court by the order impugned has allowed the said application.

Mr. Sinha, learned advocate appearing on behalf of the petitioners submits that the parties and the issues to be decided in the said two suits are different, therefore, the provision of Section 10 of the Code is not applicable in the facts and circumstances of the present case.

The petitioners are claiming title over the subject matter of Title Suit No. 29 of 2019 through their father who is a party to the suit for partition. As such, I am unable to accept the contention of Mr. Sinha that the parties of the said two suits are different.

There is no dispute that the subject matter of Title Suit No. 29 of 2019 is one of the subject matters of the said partition suit.

Preliminary decree of partition declares the right, title and interest of the co-sharers in joint properties and their extent of share thereof.

Therefore, the preliminary decree declaring the share of the co-sharers in joint property of the parties to a suit for partition will certainly operate as *res judicata* in respect of the issue to be in the said suit for declaration of title.

That being the position, the learned Trial Judge is absolutely justified in allowing the said application filed by the opposite parties under Section 10 of the Code.

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

C.O. 88 of 2019 is dismissed.

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.)