

(03)
13.09.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO No. 373 of 2020

Sri Sujit Dey & anr.
-versus-
Sri Rabindralal Chowdhury & ors.

Mr. Arup Krishna Das,
Mr. Sanjoy Ghosh ... for the petitioners.

Ms. Shila Sarkar, ... for the respondents.

The petitioners are the heirs and legal representatives
of the original defendant no. 3 in a suit for partition.

The petitioners are challenging the order no. 104 dated
August 28, 2019 passed by the learned Civil Judge (Senior
Division) at Purba Burdwan in the said suit being Title Suit
No. 118 of 2009.

The plaintiffs are tracing their title over a portion of
the suit property on the basis of a deed of gift executed on
June 30, 1988 by the original patta holder of the suit property.
The petitioners filed additional written statement with a
counter-claim under Order VIII Rule 6A of the Code of Civil
Procedure for a decree of declaration that the said deed of gift
is illegal and invalid.

The learned Trial Judge by the order impugned has
refused to accept the said additional written statement with
counter-claim on the ground that the said counter-claim is
barred by limitation.

Occasion arose for filing the said additional written statement owing to amendment of the plaint being carried out by the plaintiffs.

The original defendant no. 3(since deceased) filed written statement long back. The cause of action of the proposed counter-claim accrued in favour of the deceased defendant no. 3 before he delivered his defence but the said defendant chose not to challenge the said deed of gift by way of counter-claim although in the said written statement he had alleged that the said deed of gift is not valid. Therefore, the counter claim of the legal heirs and representatives of the said deceased defendant no. 3, the petitioners herein is barred by limitation as rightly held by the learned Trial Judge.

The order impugned, for the aforesaid reasons, does not call for any interference.

C.O. 373 of 2020 is dismissed without any order as to costs.

This order however will not prevent the petitioners from filing additional written statement against the amended portion of the plaint within two weeks from date.

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

(Biswajit Basu, J.)