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26.03.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
(Via Video Conference)**

CO No. 374 of 2016

**Sri Jagadish Prasad Agarwal & ors.
-versus-
M/s. Auto Distributors Ltd. & ors.**

Mr. Tapas Kr. Bhattacharyya,
Mr. Aviroop Bhattacharyya,
Mr. Bishnu Prosad Singh Roy, ... for the petitioners.

Mr. Amales Roy,
Ms. Mousumi Bhowal, ... for the O.P. No. 10.

The present application under Article 227 of the Constitution of India is directed against the part of the order no. 58 dated January 18, 2016 passed by the 1st Court of learned Additional District Judge at Jalpaiguri, in Partition Appeal No. 3 of 2008.

The appeal Court below by a part of the order impugned has dismissed an application filed by the petitioners for their addition in the connected appeal on the ground that they have not produced any document justifying their claim of acquisition of right, title and interest over the suit property during the pendency of the lis.

Mr. Bhattacharyya files a deed by a supplementary affidavit which is taken on record. Mr. Bhattacharyya submits that through the said deed his clients have acquired right, title and interest over a portion of the suit property.

Be that as it may, the application of the petitioners under Order I Rule 10(2) of the Code of Civil Procedure was dismissed for lack of supporting document.

The petitioners are now praying reconsideration of their said application on the basis of the aforementioned deed. To enable the petitioners to establish their claim the order impugned whereby the application of the petitioners under Order I Rule 10(2) was dismissed is set aside.

The appeal Court below is requested to decide the application of the petitioners under Order I Rule 10(2) of the Code afresh.

The petitioners are at liberty to produce documents in support of their claim.

It is made clear that this Court has not gone into the merit of the claim of the petitioners that by virtue of the deed annexed to the aforementioned supplementary affidavit executed by one Paritosh Ghosh in favour of Smt. Bidya Devi Agarwal dated August 14, 2001, they have acquired title over a portion of the suit property.

CO 374 of 2016 is thus 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 upon compliance with all requisite formalities.

(Biswajit Basu, J.)