

C.O. 773 of 2020
(Via Video Conference)

Sultan Mahmud Molla
-Vs-
Aman Samity Club & Anr.

Mr. Asit Kumar Bhattacharyya.
....for the petitioner.

The defendant in a suit for declaration of title and injunction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against order dated January 13, 2020 passed by the 3rd Court of the learned Civil Judge (Junior Division) at Alipore, District 24-Parganas (South) in the said suit being Title Suit No. 18929 of 2012.

The petitioner in the said suit filed an application for framing a preliminary issue on the maintainability of the said suit alleging that the oral Hiba not being a registered instrument, the plaintiffs are not entitled to trace their title over the suit property through the said Hiba, consequently not entitled to the declaration as prayed for in the said suit.

The learned Trial Judge by the order impugned has dismissed the said application holding that said Hiba, subsequently on September 01, 2004 was reduced in writing, as such, the issue of maintainability of the suit is the subject-matter of trial.

The issue raised by the petitioner regarding maintainability of the said suit is found by the learned Trial Judge as a mixed question of law and fact and has deferred the said issue to be decided in course of the trial of the said suit.

This Court does not find any illegality and/or infirmity in the said course adopted by the learned Trial Judge.

The order impugned, therefore, does not call for any interference. C.O. 773 of 2020 is dismissed without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit.

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.)