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SK
Ct. No. 18
12.03.2021

**C.O. No. 556 of 2021
(Via Video Conference)**

**Smt. Tapati Kumar (Samanta)
Vs.
Raj Kumar Jana & Anr.**

Mr. Joy Gupta,
Mr. Souvik Maji ... For the petitioner.

Mr. Meghajit Mukherjee,
Ms. Priyanka Sharma ... For the opposite party no. 1.

Affidavit of service filed in Court today be kept with
the record.

The opposite party no. 2 has suffered a decree of
eviction. The said decree when was put into execution
gives rise to Ejectment Execution Case No. 156 of
2013 before the learned Judge, 5th Bench, Presidency
Small Causes Court at Calcutta.

The petitioner in the said execution case has filed
an application for determination of her independent
right, title and interest over the suit property under
Rule 101 of Order XXI of the Code of Civil Procedure.
The said application has been registered before the
said executing Court as Miscellaneous Case No. 164 of
2016.

The opposite party no. 1/decree-holder filed an
application under Order XIV Rule 2 of the Code of
Civil Procedure in the said Misc. case for framing of

the preliminary issue regarding maintainability of the said Misc. case.

The learned executing Court by the order impugned being Order No. 93 dated January 22, 2021 has allowed the said application and has decided to frame the said preliminary issue.

The petitioner is aggrieved by the said order.

The executing Court has only decided to hear the said Misc. case on the preliminary issue of maintainability. Such an order is not open to challenge in revision under Article 227 of the Constitution of India. However, some observations in the order impugned may be prejudicial for the petitioner in the final decision on the said issue. Therefore, the executing Court is directed to dispose of the said preliminary issue in accordance with law without being influenced by any of the observations of the order impugned.

C.O. 556 of 2021 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.)