

30.09.2021
(S/L-16)
Ct.-18
(Susanta)

(Via Video Conference)
C.O. 1707 of 2021

Dr. Satya Smaran Adhikary & Anr.
-Vs-
Sri Deb Kumar Ghosh & Ors.

Mr. Sourodipta Banerjee,
Mr. Arnab Roy,
.... For the Petitioners.

The defendant Nos. 2 & 3 in a suit for declaration are the petitioners of the present application under Article 227 of the Constitution of India which is directed against order No. 37 dated August 09, 2021 passed by the learned 10th Bench, City Civil Court at Calcutta in the said suit being Title Suit No. 79 of 2018.

The learned Trial Judge by the order impugned has dismissed an application filed by the defendants/petitioners under Order VII Rule 11 of the Code of Civil Procedure.

Mr. Souradipta Banerjee, learned counsel appearing on behalf of the petitioner strenuously argues that the said suit not being filed by the stranger purchaser of the suit property is barred under Section 4 of The Partition Act, 1893.

On perusal of the plaint and the relief claimed therein, this Court does not find any nexus with Section 4 of the said Act rendering the plaint of the said suit liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, the order impugned, therefore, does not call for any interference.

Mr. Banerjee submits that that a Co-ordinate Bench by the order dated February 25, 2021 passed in C.O 407 2021 had directed the learned Trial Judge to dispose of the application under Order VII Rule 11 of the Code and the application under Order XXXIX Rules 1& 2 of the Code within the time fixed by the said order but the learned Trial Judge, keeping the said application under Order XXXIX Rules 1& 2 of the Code pending, is fixing the date for hearing of the application under Order VI Rule 17 of the Code seeking amendment of the plaint filed by the plaintiff/opposite party. He prays expeditious disposal of the application under Order XXXIX Rules 1& 2 of the Code.

In view of the specific direction passed in C.O 407 2021, the learned Trial Judge is required to dispose of the said application under Order XXXIX Rules 1& 2 of the Code expeditiously irrespective of the pendency of other interlocutory applications filed in the said suit and in doing so, shall not grant any unnecessary adjournments to either of the parties.

C.O. 1707 of 2021 is disposed of with the above terms without any 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.)