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Ct. 18
03.12.2021

**C.O. No. 1717 of 2021
(Via Video Conference)**

**Zahida Begum & Ors.
Vs.
Md. Yunous @ Md. Anas & Anr.**

Mr. Sourav Kumar Mukherjee,
Mr. Kaushik Chowdhury ... For the petitioners.

Affidavit-of-service filed on behalf of the petitioners
in Court today be kept with the record.

None appears on behalf of the opposite parties
either virtually or physically on call.

The petitioners are the defendant nos. 2, 3 and 4 of
the connected suit for partition. The said suit being
Title Suit No. 113 of 2015 was filed before the 5th
Court of learned Civil Judge, (Senior Division) at
Alipore, District – 24 Parganas (South).

The learned Trial Judge by the order impugned
being order dated March 08, 2021 has allowed the
plaintiff/opposite party no. 1 to withdraw the said suit
ex parte.

The plaintiff sought withdrawal of the said suit on
the ground that the disputes between the parties have
amicably been settled.

Learned advocate for the petitioners strongly
disputes that the dispute between the parties has
been settled. He further submits that the petitioners
had filed an application for their transposition into the

category of the plaintiff but the learned Trial Judge without disposing the said application has allowed the plaintiff to withdraw the suit.

The learned Trial Judge is not at all justified in allowing the plaintiff to withdraw the said suit without ascertaining the veracity of the claim of the plaintiff that the disputes between the parties have been amicably settled.

Moreover, keeping the aforesaid application filed by the defendants for their transposition into the category of plaintiff pending the suit should not have been allowed to be withdrawn, particularly when in a suit for partition all parties assume the character of plaintiff.

The order impugned for the aforesaid reasons is not sustainable and is accordingly set aside.

The Title Suit No. 113 of 2015 is restored to its original file and number.

The learned Trial Judge is directed to dispose of the application filed by the defendants for their transposition into the category of the plaintiff first and thereafter shall dispose of the application filed by the plaintiff seeking withdrawal of the said suit.

C.O. 1717 of 2021 is thus allowed 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.)