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Ct. 18
23.06.2022

C.O. No. 1148 of 2018

**Ranjit Middya & Ors.
Vs.
Sri Pulak Mishra & Ors.**

Mr. Sharanya Chatterjee .. For the petitioners.

Mr. Uttiya Ray,
Mr. Arnab Mandal ... For the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for declaration of title and permanent injunction, which is directed against Order No. 66 dated January 16, 2018 passed by the 1st Court of learned Civil Judge (Junior Division) at Durgapur, District – Paschim Burdwan in the said suit being Title Suit No. 237 of 2011.

The petitioners prayed rejection of the plaint of the said suit under Order VII Rule 11 of the Code of Civil Procedure on the ground that since an earlier suit filed by the plaintiff was dismissed for default, the present suit is barred under Order IX Rule 9 of the Code.

The learned trial Judge on the basis of the said application framed a preliminary issue regarding maintainability of the suit and by the order impugned has answered it in favour of the plaintiff.

Mr. Sharanya Chatterjee, learned advocate for the petitioners submits that the petitioners prayed rejection of the said suit on the ground that it is barred under Order IX Rule 9 of the Code but the learned Trial Judge while

deciding the said issue has also held that the suit is not barred by limitation.

On perusal of the order of dismissal of the earlier suit, it appears that the said suit was not dismissed under Order IX Rule 8 of the Code as such the bar under Order IX Rule 9 thereof cannot affect the maintainability of the present suit.

However, the learned Trial Judge while deciding the said issue has gone into the investigation as to the maintainability of the said suit on the ground of limitation and answered it also in favour of the plaintiff.

In view of the scope of the preliminary issue framed to determine the maintainability of the said suit, the findings of the learned Trial Judge as to the maintainability on the said suit on the ground of limitation are unwarranted as such set aside.

The petitioners since in their written statement have challenged the maintainability of the said suit on the ground of limitation, issue of maintainability of the said suit on the said ground would be an issue in the suit and shall be decided along with other issues to be framed.

The order impugned is modified to the extent indicated above.

C.O. 1148 of 2018 is thus disposed of with the above observation 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.)

