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C.O. 1361 of 2022

**Sri Trilochon Kundu & Anr
Vs
Smt. Umarani Shet & Ors**

Mr. Soumik Ganguli,
Ms. Anikita Pradhan, ... For the petitioners.

Liberty is given to the petitioners to correct the cause title.

The subject matter of challenge in this revisional application is against an order dated 21st April, 2022 passed by learned Civil Judge (Senior Division), Bankura-in-charge in Title Suit No. 172 of 2021, allowing local investigation under Order 26 Rule 9 of the CPC, thereby appointing learned Investigation Commissioner.

Mr. Soumik Ganguli, learned advocate appearing for the petitioners/defendants submits that there has been a previous amicable partition, covering the schedule of property, mentioned in the plaint of instant suit, and that amicable partition was followed by registration of a document in the year 1986. Subsequent to such partition, both the parties are in exclusive possession of the properties to the extent of their respective share.

It is contended by the learned advocate for the petitioners that in view of the previous partition followed by exclusive possession of the properties, there is no need of holding any further local

investigation, as proposed by the plaintiff.

Incidentally, it is proposed by the learned advocate for the petitioners that the present suit is also not maintainable.

Upon advertng to para 3 of the plaint, learned advocate for the petitioners submits that there is sufficient disclosure in the para 3 of the plaint about the previous partition held in the year 1986, in respect of the scheduled properties, and the entire purpose of opposite parties is to reopen the previous partition, which is contrary to law.

More so, the previous partition being followed by registration of a document, and subsequently accepted by the co-sharers, the same cannot be reopened once again disputing with the map enclosed with the registered deed of partition, Mr. Ganguly argues.

Having considered the submission of learned advocate for the petitioners, it appears that there has been a previous amicable partition followed by registration of document in the year 1986, and all the co-sharers were given possession to the extent of their shares in terms of the partition deed.

The dispute between the parties then subsequently arose, when the map appended to registered document was challenged by the plaintiff and for settling such controversy, a separate suit for

partition, like the instant one, has been filed.

When it is a definite place of the petitioners that there has been a previous partition, and parties are in exclusive possession of property, to the extent of their share, as per map appended to the registered deed of partition, in that event the petitioners/defendants cannot claim any prejudice by the commission work being held.

The local investigation commission, if held, would, however, enforce the alleged claim of exclusive possession of the petitioners, as proposed by the learned advocate for the petitioners.

However, the report of the investigation commissioner may not be accepted by the Court below, without providing the petitioners to challenge the same, and if any such point is raised against such report of the learned investigation commissioner, the same shall be resolved by the Court below in accordance with the provisions of law.

With this observation and direction, the revisional application stands disposed of.

The point regarding maintainability issue is, however, left to be decided by the Court below, if raised at all.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)