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08.03.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 2662 of 2019
(IA No: CAN 1/2021)
Ilyas Molla & ors.
-versus-
Golam Rab Molla & ors.

Mr. Partha Pratim Roy,
Mr. Sounak Bhattacharya,
Mr. Chandra Nath Sarkar, ... for the petitioners.
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das, ... for the O.P. Nos. 1-15.

The defendants in a suit for declaration and partition are the petitioners of the present application under Article 227 of the Constitution of India which is directed against the order dated June 29, 2019 passed by the 1st Court of learned Civil Judge (Senior Division) at Baruipur, District : 24 Parganas (South) in the said suit being Title Suit No. 17 of 2018.

The plaintiffs/opposite parties in the said suit prayed inter alia for a preliminary decree of partition of the suit properties upon a declaration that a compromise decree passed in the Title Suit No. 142 of 1998 by the 3rd Court of learned Civil Judge (Junior Division), Baruipur is void and is not binding upon them.

The petitioners in the said suit filed an application under Order VII Rule 11 of the Code of Civil Procedure praying rejection of the plaint of the said suit on the ground that a separate suit to set aside a compromise decree is not maintainable, for the said purpose the plaintiffs are required to approach the Court which passed the said compromise decree.

The learned Trial Judge by the order impugned has dismissed the said application.

Mr. Partha Pratim Roy, learned counsel appearing on behalf of the petitioners, submits that the learned Trial Judge has failed to appreciate that Order XXIII Rule 3A of the Code puts a bar to the said suit, as such, has acted with material irregularity in dismissing the application of the petitioner under Order VII Rule 11 of the Code.

Mr. Tanmoy Mukherjee, learned counsel appearing on behalf of the plaintiffs/opposite parties, submits that the plaintiffs have challenged the validity and legality of the said compromise decree not on the ground that the compromise on which the decree is based was not lawful but on the ground that the said decree is vitiated for want of registration inasmuch as new interest in respect of the properties not involved in the said suit has been created by the said compromise decree in favour of some of the parties to the said suit, the said decree by its nature requires registration.

Heard the learned advocate for the parties, perused the materials-on-record.

It appears that in the present suit the validity and legality of the said compromise decree has been challenged, inter alia, on the ground that nature of the said decree demands registration of it. In fact, the said decree also stipulates so, such being the challenge to the said decree, Order XXIII Rule 3A of the Code is no fetter to the maintainability of the said suit. Investigation of the ground on which the petitioner sought rejection of the plaint of the said suit does not

come within the purview of Order VII Rule 11 of the Code.

This Court, therefore, does not find any reason to interfere with the order impugned.

It is however made clear that notwithstanding the dismissal of the application of the petitioners under Order VII Rule 11 of the Code, the issue of maintainability of the said suit is kept open and the defendants are free to agitate the point of maintainability of it on all grounds available to them including the ground taken in their application under Order VII Rule 11 of the Code.

C.O. 2662 of 2019 is disposed of with the above terms without any order as to costs.

The application being IA No: CAN 1 of 2021 for vacating the interim order has become infructuous and is also disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)