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22.03.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 3422 of 2019

Shyam Sundar Kundu & anr.
-versus-
Sri Nikhil Ranjan Nayek

Mr. Tanmoy Mukherjee,
Mr. Amal Kumar Saha,
Mr. Iresh Paul,
Mr. Souvik Das,
Mr. Rudranil Das, ... for the petitioners.

Mr. Tanmoy Mukherjee, learned counsel for the petitioners submits that as directed by the order dated January 02, 2020 the notice of the present revisional application has been served upon the opposite party. He files affidavit of service which is taken on record.

Despite service, none appears on behalf of the opposite party.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for specific performance of an agreement for sale and is directed against the order no. 166 dated August 13, 2019 passed by the learned Civil Judge (Senior Division), Arambagh, District: Hooghly in the said suit being Title Suit No. 68 of 2000.

The petitioners in the connected suit is praying for a decree of specific performance of the agreement for sale dated June 21, 1998.

The defendant disputed his signature appearing in the said agreement. The plaintiffs to resolve the said dispute applied for appointment of a hand writing expert for comparison of the signature of the defendant appearing in the said agreement with that of his signature appearing in his Vakalatnama, Written Statement and in the Deposition Sheet.

The learned Trial Judge by the order no. 84 dated October 21, 2009 allowed the said application of the plaintiffs, consequent thereupon a hand writing expert was appointed. The expert has filed his report.

The plaintiffs filed an application under Section 151 of the Code of Civil Procedure for rejection of the said report on different grounds.

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

The grievance of the petitioners is that the learned Trial Judge has accepted the said report without affording an opportunity to the petitioners to cross-examine the said hand writing expert on the points of exception to it taken in the said application under Section 151 of the Code.

The petitioners are justified in raising their such grievance inasmuch as before acceptance of the said report the petitioners should have been given an opportunity to cross-examine the said

hand writing expert on the points of their objection to the said report.

In view of the aforesaid the order impugned is set aside. The learned Trial Judge is requested to reconsider the application filed by the petitioners for rejection of the report of the hand writing expert after giving the petitioners an opportunity to cross-examine the said expert.

CO 3422 of 2019 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 of all requisite formalities.

(Biswajit Basu, J.)