

12.12.2022
Item No.22
Ct. No.7
CHC
(disposed of)

C.O.3198 of 2022

**Jamuna Mitra & anr.
Vs.
Arif Hossain Molla & ors.**

Mr. Sounak Bhattacharya,
Mr. Abhirup Halder
...for the petitioners

Mr. Tarak Nath Halder
...for the opposite parties

While assailing the impugned order rejecting an application under Order 7 Rule 11 C.P.C., Mr. Bhattacharya submits that a personal property otherwise obtained by operation of law, may not be incorporated in the hotch pot of schedule requiring partition.

Mr. Halder, learned advocate appearing for the opposite parties drawing attention of this Court to page 24, submits that partition has been sought for with respect to a single plot of property.

Supporting the order of the court below, Mr. Halder submits that there is nothing to interfere with in the impugned order.

Admittedly, no written statement has been filed as yet by the petitioners/defendants in a suit for partition.

The grounds taken in support of the application under Order 7 Rule 11 C.P.C. may well be taken as one of the defence in the written statement, which is yet to be filed. After a full trial, if a property is found to be not necessary to bring into hotchpot of property for partition, the same will be automatically deleted by the court below, and as such, the revisional application is disposed of giving the petitioners liberty to take up the point, now raised, in the written statement, and the same may be filed doing adherence to Order 8 Rule 1 C.P.C. No further elaboration is necessary.

The issue may be framed subject to the pleading of the parties, in particular the defence to be set up in the written statement in accordance with law.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)