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**W.P.A. 23828 of 2019**  
**(Abu Horaira & Ors. vs. State of West Bengal & Ors.)**

**Mr. Samim Ahmed**  
**Mr. Arka Maiti**  
**Ms. G. Pervin**

**.... For the Petitioners**

**Mr. Chandi Charan De**  
**Ms. Chandana Ghosh**

**.... For the State**

**Mr. M. P. Gupta**  
**Mr. Ayan Mitra**  
**Ms. A. Panja**

**.... For the Private Respondent**

It is contended on behalf of the petitioners that despite there being a preliminary decree for partition of the property in question by a civil Court in a suit for partition by and between the parties, the Sub-Divisional Magistrate, on an application filed by the private respondent issued notice upon the petitioners on 16<sup>th</sup> October, 2019 for deciding the land dispute between the parties. Learned counsel has taken the Court to an order of the Sub-Divisional Magistrate and Sub-Divisional Officer, Basirhat, North 24 Parganas passed on 4<sup>th</sup> December, 2019 which suggests that it was

directed that a survey be conducted in respect of the plot in question mentioning the possession of the different possessors in the plot.

Learned counsel for the petitioners prays for an order in terms of prayer (a) of the petition and submits that the Sub-Divisional Officer has no authority to deal with the title and possession in respect of the property in view of the preliminary decree for partition granted by a competent civil Court.

It is submitted on behalf of the respondents that the writ petition is premature and the Sub-Divisional Officer has only served notice upon the parties fixing a date for hearing of the matter and the petitioners instead of placing all relevant documents before the Sub-Divisional Officer has approached this Court in the present writ petition which is not permissible in law. Respondents further submit that subsequent to filing of the writ petition, the petitioners filed an application before the Sub-Divisional Officer praying for supply of copy of the application filed by the private respondents before the Authority.

Admittedly, in the partition suit filed by and between the petitioners and the private respondent, a preliminary decree has been granted by a competent

civil Court. It is trite law that the Sub-Divisional Officer has no authority to decide the right, title, interest and possession in respect of any property, more so when a preliminary decree for partition of the property exists.

In view of the same, the order impugned dated 4<sup>th</sup> December, 2019 passed by the Sub-Divisional Magistrate and Sub-Divisional Officer, Basirhat (annexure P/7 to the writ petition) be quashed.

The writ petition is disposed of with liberty to the parties to file all relevant documents pertaining to the judgment and decree passed by the civil Court within 7 days from date. The Sub-Divisional Officer, shall peruse such documents and dispose of the application pending before him within a fortnight thereof.

With such observations and directions, W.P.A. 23828 of 2019 is disposed of.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

**(Suvra Ghosh, J.)**