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Ct. 18
01.03.2022

**C.O. No. 4367 of 2019
(Via Video Conference)**

**Sri Tapan Hati @ Haripada Hati
Vs.
Sri Gopal Chandra Jana & Ors.**

Mr. Tanmoy Mukherjee,
Mr. Kamal Mishra,
Mr. Souvik Das,
Mr. Rudranil Das ... For the petitioner.

Mrs. Sharmistha Ghosh Sharma ... For the opposite parties.

Affidavit-of-service filed in Court today be kept
with the record.

The defendant no. 1 in a suit for declaration of
title and injunction is the petitioner of the present
application under Article 227 of the Constitution of
India, which is directed against Order No. 75 dated July
30, 2019 passed by the learned Civil Judge, (Junior
Division), Kakdwip, District – 24 Parganas (South) in the
said suit being Title Suit No. 121 of 2010.

The plaintiff has disputed the claim of the
defendant no. 1 that his father was the recorded
Bargadar in respect of the suit land.

To resolve the said dispute, the petitioner prayed
for reference of the issue to the B.L. & L.R.O, Kakdwip
under Section 21(3) of the West Bengal Land Reforms
Act, 1955.

The learned Trial Judge, by the order impugned,
has refused the said prayer of the petitioner on the
ground that it would be amounting to allow the
petitioner to collect evidence.

Section 21(3) of the said Act of 1955 mandates that if any question as to whether a person is or is not a Bargadar arises in the course of any suit, case, appeal or other proceedings before any Civil or Criminal Court, the Court shall refer it to the officer or authority mentioned in sub-section (1) of Section 18 for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by such officer or authority.

In the present case, the issue of Bargadarship of the petitioner since is in dispute in the suit, the learned Trial Judge is obliged to refer the said dispute to the concerned authority under the said provision of the said Act of 1955.

The order impugned, therefore, suffers from material irregularity and is accordingly set aside.

The learned Trial Judge is requested to refer the issue to the concerned B.L. & L.R.O., Kakdwip for determination.

The B.L. & L.R.O., Kakdwip is directed to dispose of the said issue and communicate his decisions to the learned Trial Judge within three months from the date of reference, positively.

C.O. 4367 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 with all requisite formalities.

(Biswajit Basu, J.)