

18.04.2022  
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**CIRCUIT BENCH OF CALCUTTA HIGH  
COURT AT JALPAIGURI**

**CO No. 15 of 2022**

**Tapan Ghosh  
-versus-  
Smt. Astha Ghosh Maity**

Mr. Nabankur Paul,  
... for the petitioner.

Ms. S Chowdhury,  
Ms. Priyanka Dey,  
... for the opposite party.

Mr. Gobinda Saha files Vakalatnama on behalf of the opposite party. Let it be retained in the record.

Revisional application is taken up for hearing.

Present revisional application under Article 227 of the Constitution of India, is at the instance of husband/ Tapan Ghosh being aggrieved by the order of rejection of his application under Order 14 Rule 2 of C.P.C. by learned Additional District Judge, 3<sup>rd</sup> Court, Jalpaiguri in Matrimonial Suit No. 327 of 2020 on 9<sup>th</sup> August, 2021 where he has challenged the maintainability of the Matrimonial Suit in

the Court of learned Additional District Judge, Jalpaiguri, 3<sup>rd</sup> Court for want of territorial jurisdiction.

It has been contended that marriage between the parties was solemnized at the paternal house of the opposite party situated at Raja Ram Mohan Roy Road, Ward No. 15, Siliguri Municipal Corporation, Dist- Darjeeling. After marriage they live together as a husband and wife within Siliguri at Ashram Para.

After marriage differences and disputes arose between the parties and as such the opposite party left the matrimonial home voluntarily. Then she filed a case under Section 498A/ 323 of I.P.C. read with Sections 3 and 4 of the Dowry Prohibition Act, against the petitioner and his family members before the Siliguri Women Police on 16.08.2019. She has also filed another case under Domestic Violence Act, 2005 against the petitioner and his family members before the learned ACJM Siliguri and being Misc. Case No. 39 of 2020 and which is pending before the learned Judicial Magistrate, 1<sup>st</sup> Court, Siliguri for trial.

Surprisingly, opposite party/wife filed a suit for dissolution of marriage being

Matrimonial Suit No. 327 of 2020 in the District of Jalpaiguri claiming that the party lastly residing together as a husband and wife within Bhaktinagar P.S., Dist- Jalpaiguri.

It has been alleged by the petitioner that no cause of action arose within the jurisdiction of the District of Jalpaiguri as party never resided in any place under Police Station Bhaktinagar. Thus by filing the impugned application under Order 14 Rule 2 of C.P.C the husband/petitioner has prayed for hearing the case on the point of jurisdiction. However, learned Additional District Judge, 3<sup>rd</sup> Court, Jalpaiguri held the question of jurisdiction involves mixed question of law and fact and as such rejected the application.

Now, let see whether the order impugned suffers from illegality as alleged?

In the present case it is admitted fact that marriage between the parties took place in Siliguri, in the district of Darjeeling. The opposite party has filed criminal cases under Section 498A of I.P.C. and under Domestic Violence Act, 2005 against the petitioner and his family members and which are pending in Siliguri Sub-divisional Court. However, she has

filed suit for divorce in the district Court of Jalpaiguri on the ground that she and petitioner resided together as husband and wife in a rented house belonging to Prasun Sinha at ward no. 33, SMC but under P.S. Bhaktinagar in the district of Jalpaiguri till May 2020.

It is settled principle of law that a question relating to jurisdiction may be a pure question of law or a mixed question of law and fact. If an issue involves only question of law and if such issue dispose of the suit, then such issue must be tried as a preliminary issue, but if the issue though relates to jurisdiction and involves both question of law and fact then such issue cannot be tried as a preliminary issue.

In the present case the opposite party/wife has alleged that she lastly resided with the petitioner in a rented house situated under jurisdiction of Bhaktinagar P.S. under district Jalpaiguri. Thus such fact can be determined only after considering the evidence that would be adduced by the parties at the time of trial by examining the alleged landlord and other neighbours or producing rent receipts etc.

Therefore, this Court is of view question as to parties last resided as husband and wife at a

particular place is a mixed question of law and fact and which cannot be decided as a preliminary issue as prayed by the husband.

Hence, this Court does not find any illegality or material irregularity in the order impugned.

Accordingly, **C.O. 15 of 2022** is dismissed.

Interim order, if any, stands vacated. Connected application, if any, also stands disposed of.

There shall be no order as to costs.

Parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, be applied for, be given to the parties, upon compliance of all formalities.

**(Kesang Doma Bhutia, J.)**