

S/L 16
13.06.2022
Court No.1
sourav

**IN THE HIGHCOUR AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION**

CO 35 of 2022

Sri Laxman Saha & Ors.

Vs.

Mahabbar Miah & Ors.

Mr. Subhasish Misra

Mr. Swarup Das

...for the Petitioner.

Mr. Hillol Saha Podder

Ms. Mousumi Das

...for the Opposite Party Nos. 1 and 2.

The revisional application is directed against the order dated December 23, 2021 passed by the Additional District Judge, Tufanganj, Cooch Behar, under Section 115 of the Code of Civil Procedure, 1908.

In a suit for declaration of title and permanent injunction, the defendants/petitioners filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 claiming that the suit was barred since the plaintiffs/opposite parties did not seek any consequential relief with regard to the possession of the immovable property concerned.

Such an application under Order 7 Rule 11 was rejected by an order dated March 8, 2018 passed by the learned trial judge. A revisional application was filed before the Additional District Judge, Tufanganj, Cooch Behar being Civil Revision No. 4 of 2019 which was

dismissed by the impugned order dated December 23, 2021.

The plaintiffs/opposite parties claimed that the defendants/petitioners entered into a fraudulent transaction and executed sale deeds in favour of the other defendants in the suit by practicing fraud. Consequently, the plaintiffs/opposite parties sought declaration that the sale deed dated May 5, 2015 executed by the defendants/petitioners herein is void, invalid and inoperative document and is liable to be set aside.

The plaintiffs are also seeking a decree for declaration that the State of West Bengal did not acquire any right, title and interest in respect of the immovable property of such fraudulent deed.

The application under Order 7 Rule 11 of the Code of Civil Procedure was rejected on the ground that an issue of fraud with regard to a document of title is involved. The learned Court also returned the finding that the relief of possession in the facts and circumstances of the present case is unnecessary.

The issue of title to the immovable property is involved in the suit. In the event, the issue of title to the immovable property is held in favour of the plaintiffs and it is held that the sale deed was entered into fraudulently, then the question of possession does not arise. Therefore, there is no material irregularity in the order impugned

rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

There is no material irregularity in the impugned order warranting interference under Article 227 of the Constitution of India.

CO 35 of 2022 is dismissed without any order as to costs.

(Debangsu Basak, J.)