

C.O. 326 of 2014

In the matter of : Dipak Kumar Yaduka & Anr.

1. None appears on behalf of the petitioners.
2. The matter is appearing almost after nine years.
3. The conduct of the petitioners demonstrates lack of interest to proceed with the lis.
4. In view of the Hon'ble Supreme Court in the case of **Robin Thapa vs. Rohit Dora** reported in **AIR 2019 SCC 3225** held that ;

“8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

5. Therefore, I am inclined to dispose of the application on merit based on materials available with the record.
6. This application under Article 227 of the Constitution of India impeaches the Order No. 10 dated 04.12.2013 passed by learned 1st Civil Judge, Junior Division, Sealdah.
7. By the order impugned, learned Trial Court was pleased to reject the application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant.

8. Briefly stated, the plaintiff filed a suit for declaration and permanent injunction claiming title by way of adverse possession.
9. The defendant by filing the application under Order VII Rule 11 of the Code of Civil Procedure prayed for rejection of the plaint on the ground that in a suit for title based on adverse possession the ancillary relief in the form of monetary injunction cannot be granted.
10. Hence, the plaint is liable to be rejected.
11. Learned Trial Court returned the issue with observation that Court cannot go beyond what has been stated in the plaint and in this case the plaint does not indicate anything to justify an order of rejection of the plaint.
12. The order impugned does not suffer from any perversity and there is nothing to hold that the order was passed in exercise of erroneous jurisdiction by the learned Trial Court.
13. The revisional application does not merit any consideration and is dismissed, however, without any order as to costs.

(Siddhartha Roy Chowdhury, J.)