

S/L 36
20.02.2023
Court. No. 12
Suwayan

CO 1179 of 2022

**Chakari Majhi & Anr.
Vs.
Durga Ghosh & Ors.**

*Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee
Mr. Devdutta Pathak*

...for the petitioners.

*Mr. Bidyut Kumar Banerjee
Mr. Uttam Kr. Ghosh*

...for the opposite parties.

Both the revisionists/defendants and the opposite parties/plaintiffs are represented by their respective learned Advocates.

The instant revisional application is now taken up for hearing.

Heard Mr. Rwitendra Banerjee, learned Advocate for the revisionists/defendants and Mr. Bidyut Kumar Banerjee, learned Advocate for the plaintiffs/opposite parties at length.

In this revisional application as filed under Article 227 of the Constitution of India the Order No. 7 dated April 26, 2022 as passed by the learned Civil Judge (Junior Division), 1st Court, Jangipur, Murshidabad in Title Suit No. 22 of 2022 has been assailed.

By the impugned order learned Trial Court in the aforementioned suit has been pleased to dismiss the defendants' application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint. The

defendants felt aggrieved and, thus, preferred the instant revisional application.

In course of hearing, Mr. Banerjee, learned Advocate for the revisionists/defendants at the very outset draws attention of this Court to the photocopy of the plaint and the photocopy of the petition under Order 7 Rule 11 of the Code of Civil Procedure as filed before the learned Trial Court. It is contended that on bare perusal of the plaint it would reveal that the plaintiff is only a patta holder and, therefore, he cannot claim his title over the suit property and, thus, the learned Trial Court while passing the impugned order ought to have come to a finding that the Title Suit No. 22 of 2022 is barred by law. It is further contended that learned Trial Court while passing the impugned order failed to visualise that there is no cause of action for instituting the said Title Suit No. 22 of 2022 in view of the fact that in between the present two parties one annulment proceeding is going on.

Mr. Banerjee, learned Advocate for the opposite parties/plaintiffs, however, opposes the contention as raised on behalf of the revisionists/defendants.

On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for both sides it appears to this Court that the point as raised by Mr. Banerjee, learned Advocate for the defendants/opposite parties that is as to whether Title Suit No. 22 of 2022 as pending before the learned Trial Court is either barred by any law or the said suit at all

discloses any cause of action or not shall have to be decided only by trial on evidence.

In view of such, this Court finds no merit in the instant revisional application and accordingly the instant revisional application being CO 1179 of 2022 is dismissed.

As a result the impugned Order No. 7 dated April 26, 2022 as passed by learned Civil Judge (Junior Division), 1st Court, Jangipur, Murshidabat in Title Suit No. 22 of 2022 is hereby affirmed.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)