

S/L 51
30.01.2023
Court. No. 12
Suwayan

CO 1300 of 2021

**Kshitish Kumar Das & Anr.
Vs.
Kalinath Ghosh**

*Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty*

...for the petitioners.

Mr. Sanyal, learned Advocate for the petitioners is present and he files the affidavit-of-service and one supplementary affidavit today. Let the affidavit-of-service and the supplementary affidavit as filed today be taken on record.

None appears on behalf of the opposite party in spite of service.

Accordingly, this Court proposes to dispose of the instant revisional application in absence of the opposite party.

In the instant revisional application order dated 26.02.2020 as passed by learned Civil Judge (Junior Division), Lalbagh, Murshidabad in Miscellaneous Case No. 120 of 2009 has been assailed. By the impugned order learned Trial court though allowed the petitioners' prayer for recall of P.W. 1 and also allowed to tender certified copies of CSROR but did not allow to tender Deed Nos. 2505 and 4477 in evidence through P.W. 1. The petitioners, thus, felt aggrieved and preferred the instant revisional application.

Mr. Sanyal, learned Advocate for the petitioners/revisionists submits before this Court that learned Trial Court while passing the impugned order did not visualize the predicament of the petitioners to tender those two deeds, namely, deed Nos. 4477 and 2505 in evidence through P.W. 1 though in that regard appropriate explanation has been given in the application dated 19.06.2019 as filed before the learned Trial Court. It is, thus, submitted that the instant revisional application may be allowed with a liberty to the present petitioners to tender those two documents before the learned Trial Court through P.W. 1.

This Court has meticulously gone through the copy of the petition dated 19.06.2019 as filed before the learned Trial Court as well as the impugned order which is under challenge before this Court.

In considered view of this Court in their application dated 19.06.2019 the petitioners before the learned Trial Court have assigned sufficient reasons as to why they have been prevented in tendering two deed Nos. 4477 and 2505 in evidence through P.W. 1.

In view of such the instant revisional application is hereby allowed.

Learned Trial Court is hereby directed to allow the present petitioners to tender two deed Nos. 4477 and 2505 in evidence either through P.W. 1 or through any other petitioners' witnesses in Miscellaneous Preemption Case No. 120 of 2009 as pending before the learned Trial

Court for proper and effective adjudication of the said case.

With the aforementioned observation the impugned order No. 39 dated 26.02.2020 as passed in Miscellaneous Preemption Case No. 120 of 2009 by learned Civil Judge (Junior Division), Lalbagh, Murshidabad in Miscellaneous Case No. 120 of 2009 is hereby modified to the extent indicated hereinabove.

Accordingly, the instant revisional application being CO 1300 of 2021 is disposed of.

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.)