

12.06.2023
Court No. 19
Item no.34
CP

C.O. 1635 of 2023

Apurbalal Biswas
Vs.
Sri Upendranath Biswas & ors.

Mr. Prantick Ghosh
Mr. Prasad Bhattacharyya
Mr. Bitan Das

.....for the petitioner.

The petitioner is aggrieved by the order passed by the learned District Judge (In-Charge), Nadia in Civil Revision No. 1 of 2023 as also the order dated November 29, 2022 passed by the learned Civil Judge (Senior Division), 3rd Court, Krishnagar, Nadia in Title Suit No. 96 of 2022. The learned Trial Judge rejected the application filed by the petitioner questioning the maintainability of the suit. According to the learned Trial Judge, the application was *mala fide* and motivated.

The contention of the petitioner that all the common properties were not brought within the purview of the partition suit, was not accepted by the learned Trial Judge on the ground that the suit was in respect of an undivided *ejmali*' property. Common interest and common possession and the plots owned by the third parties were not required to be incorporated as a subject matter of the suit.

According to the learned Trial Judge, the issue as to whether the suit was maintainable in its present form or there were any defects on the ground of mis-joinder or non-joinder of parties or on any other ground, would be decided on evidence at the stage of trial.

Such order was challenged by way of a revision and the learned District Judge upheld the order of the learned Trial Judge, inter alia, holding that there was no scope for interference in the order of the learned Trial Judge.

This court does not find any illegality or material irregularity in the order impugned. Whether the properties belonging to third parties should be brought within the purview of the suit or whether the parties to the suit had other common interests in immovable properties which were not brought within the purview of the partition suit, are matters to be decided on evidence, in the trial.

The revisional application is dismissed.

However, this order shall not preclude the learned court below from proceeding expeditiously by framing the issues including the issue of maintainability and proceed with the trial of the suit, in accordance with law.

This court has not expressed any opinion on the merits of the suit.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)