

23.6.2023

ct. 236

sk,sl.9

C.O. 1671 of 2014

In the matter of: Abdul Mannan

None appears on behalf of the petitioner.

The matter was earlier adjourned on 7.6.2023 and 14.6.2023.

The Hon'ble Supreme Court in Robin Thapa Vs Rohit Dora, reported in AIR 2019 S.C.C. 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”.

This revisional application challenges the judgment and order dated 22nd December, 2013 passed by learned Additional District & Sessions Judge, Fast Track Court, Cooch Behar Sadar affirming thereby the order passed by learned trial court on 29th April, 2011.

From the attending facts, it appears that in Title Suit No. 1 of 2007, a suit for partition was decreed in the preliminary form by the learned trial court on 28th September, 2010. An application under Section 152 of the Code of Civil Procedure was filed by the predecessor-in-interest of the petitioner which was considered and rejected by the learned trial court as the so called error sought to be rectified by the defendant was not clerical error. It was the share of the parties declared by the learned trial court. Challenging the said order, a petition under Section 115A of the Code of Civil Procedure was filed and learned Additional

District & Sessions Judge, Fast Track Court, Cooch Behar Sadar refused to accept the plea of the petitioner.

In paragraph 3 of the petition under consideration, it is contended that “there occurred some mistakes apparently in the face of the judgment”. If such averment is correct then the petitioner ought to have filed an application under Order 47 Rule 1 C.P.Code before the learned trial court and not under Section 115A of the Code of Civil Procedure. A preliminary decree is amenable to appeal the petitioner could have challenged the same.

There is nothing to indicate that the learned Additional District & Sessions Judge, Cooch Behar Sadar failed to exercise the jurisdiction vested in it while disposing of the application for civil revision under Section 115A of the Code of Civil Procedure.

This application under consideration is devoid of merit and is dismissed, however, without cost.

Let a copy of the order along with lower court record be sent down to the learned trial court forthwith.

(Siddhartha Roy Chowdhury, J)