

25.9.2023

ct. 236

sk,sl. 3

**C.O. 2790 of 2012**

**CAN 1/2013**

Kanak Lata Barui & Ors.-vs-Ashok Dhara & Ors.

Mr. Bhudeb Bhattacharyya

.....for the petitioners.

Mr.Asoke Basu

Ms. Kaniz Kulsum

...for the opposite parties.

1. This application under Article 227 of the Constitution of India impeaches the order passed by the learned Civil Judge (Junior Division), Amta, Howrah in a proceeding under Section 4 of the Partition Act.
2. By the order impugned learned trial court was pleased to dismiss the petition under Section 4 of the Partition Act filed by Kanak Lata Barui and others to exercise the right of preemption.
3. Heard Mr. Bhattacharyya, learned counsel for the petitioners and Mr. Asoke Basu, learned counsel for the opposite party nos. 1 to 5.
4. It is contended by Mr. Bhattacharyya that the portion of dwelling house since has been transferred by one of the co-owners in order to maintain the sanctity and privacy of the family. The petitioners may be allowed to exercise their preemption.
5. Mr. Basu, learned counsel representing the opposite parties submits that this identical issue was raised by the petitioners at least thrice in different proceedings and on every occasion the prayer was refused.
6. According to Mr. Basu, this revisional application cannot be entertained being barred by limitation of Section 11 of the Code of Civil Procedure.

7. In course of hearing Mr. Bhattacharyya with all fairness submits that Title Suit No. 188 of 1993 was filed by Nemai Barui one of the co-owners who transferred the share to Basudeb Dhara since deceased and predecessor-in-interest of the opposite parties.
8. Under such circumstances, this application under Section 4 of the Partition Act is not maintainable inasmuch as this provision can only be pressed into service in a suit for partition filed by the transferee.
9. Here the transferee is not the plaintiff. That apart from the order impugned I find that this issue was earlier decided. Therefore, there is no room to circumvent the rigor of Section 11 of the Code of Civil Procedure.
10. Under such circumstances, this revisional application appears to be devoid of merit and is dismissed, however, without cost.
11. Let a copy of this order be sent down to the learned trial court for information and necessary action.
12. The interim order, if any, stands vacated.

**(Siddhartha Roy Chowdhury,J)**