

C.O. 2488 of 2014
CAN 1 of 2016

In the matter of : Bombhola @ Bholanath Mukhopadhyay
(since deceased) & Anr.

The application being CAN 1 of 2016 (Old 10626 of 2016) has been disposed of and cause title has also been duly amended.

Therefore, CAN 1 of 2016 should not appear as pending.

Department is directed to take note of that and act accordingly.

As usual, none is appearing on behalf of the petitioners.

In view of the mandate of Hon'ble Supreme Court given in the case of **Robin Thapa vs. Rohit Dora** reported in **AIR 2019 SCC 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.”

Under such circumstances, I am inclined to dispose of the application on merit.

This revisional application challenges the order dated 18.3.2013 passed by learned Civil Judge (Senior Division), 1st Court, Purulia in T.S. No. 3 of 2003. By the impugned order learned Trial Court was pleased to accept the report of the Partition Commissioner filed in the suit for partition on 29.01.2013. On the date of hearing the defendant by filing fresh

Vakalatnama prayed for time to file written objection to the report of the learned Partition Commissioner but none was there to move the application for adjournment.

Learned Trial Court, therefore, accepted the report *ex parte*. In absence of any of the parties, learned Trial Court has the jurisdiction to pass order *ex parte*. The impugned order in that event cannot be said to be perverse or suffers from jurisdictional error. It is contended by the petitioners that they were not given an opportunity of hearing which is far from being correct. It is further contended that some of the suit plots were sold by Satish Chandra Mukhopadhyay to other person which was not considered by the learned Trial Court. There is nothing to show that preliminary decree passed by the learned Trial Court was challenged in any appeal. Moreover, in a suit for partition multiple preliminary decrees can be passed. Therefore, if there is any change in the share, the petitioners shall have the opportunity to approach the learned Trial Court to modify the preliminary decree till the final decree is passed.

The order impugned does not call for any interference.

The revisional application is dismissed along with application being CAN 1 of 2016 however, without any order as to costs.

Interim order of stay, if any, stands vacated.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)