

08.11.2023

Sl. 24
Ct.No. 5
K.B/Amalranjan

C.O. 4020 of 2023

Bijal Biswas & Ors.

Vs

Mita Biswas & Ors.

Mr. Shibaji Kumar Das

Mr. Anit De

...for the petitioners

The instant application under Article 227 of the Constitution of India is directed against the order No. 66 dated October 7, 2023 passed by the learned Civil Judge (Senior Division), Ranaghat, District -Nadia in Title Execution Case No. 05 of 2016.

A final decree of partition passed in Title Suit No. 14 of 2009 has been put into execution, giving rise to the connected Execution Case.

The petitioners are claiming to have purchased share of a co-sharer of the suit property, the opposite party no. 2 herein and on the strength of such purchase, have applied for their addition in the Execution case.

The executing court, by the order impugned has rejected the said application holding inter alia that the vendor of the petitioners had suffered the ex-parte decree and was unsuccessful in dislodging the same under Order IX Rule 13 of the Code of Civil Procedure.

The share of the vendor of the petitioners, if was declared in the preliminary decree, the petitioners are at liberty to apply for a final decree on it, if not, they can apply for a second preliminary decree of their share in the joint property subject to proof of purchase of share of a co-sharer.

However, the scope of the Execution case being limited only to the extent of giving possession to the decree-holder to her allotted portion in the suit property, the presence of the petitioners in the said Execution case is not necessary.

This court, therefore does not find any reason to interfere with the order impugned.

C.O. 4020 of 2023 is dismissed with the above terms without any order as to costs.

Urgent certified photo copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Biswajit Basu, J.**)