

20.12.2023
Sl. No.8(DL)
srm

C.O. No. 4023 of 2023
Sukur Ali Mondal @ Abdul Sukur Mondal
Versus
Asgar Mallick & Ors.

Mr. Prosenjit Mukherjee

...for the Petitioner.

The revisional application has been filed challenging an order dated September 29, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Uluberia, Howrah, in Title Suit No.403 of 2022. The petitioner is the defendant No.1 in the suit.

By the order impugned, the learned court rejected an application filed by the petitioner dated September 15, 2022, praying for dismissal of the suit on the ground of non-maintainability. The learned court held that without evidence as to the contentions of the said defendant that their rights in respect of the suit property had been declared in Title Suit No.11 of 1989 and the issues decided in the earlier suit were identical to the present suit, maintainability of the suit could not be decided. According to the court, it was too early to decide the issue of maintainability and no mini trial at the initial stage of the suit was permitted in law. The learned court

rejected the said application, *inter alia*, holding that the issue raised by the defendant No.1 would be decided on evidence.

Mr. Mukherjee, learned Advocate appearing on behalf of the defendant No.1 submits that the suit is barred by law, as the plaintiffs claim the property to be wakf property. Secondly, the issue of *res judicata* ought to have been gone into by the learned court on the basis of the document filed by the defendant No.1.

This Court is of the view that the application challenging the maintainability of the suit, does not disclose anything about the suit being barred under the Wakf Act. Secondly, the issue raised with regard to the suit being barred by the principles of *res judicata*, are matters of evidence. Thirdly, the issue of harassment, etc. are also matters which will be decided by the learned court below, while deciding the suit.

Under such circumstances, this Court does not find any material illegality or irregularity with the order impugned. The points raised in this revisional application were discussed by the learned court and the learned court had assigned adequate reasons for dismissal of the said application.

Accordingly, the revisional application is dismissed.

This dismissal shall not prevent the petitioner from availing of the appropriate remedies as would be permissible under law.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)