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**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 95 of 2023

**SMT. REBA NARAYAN & ORS.
-VERSUS-
KUMAR PRASANTA NARAYAN & ORS.**

**Mr. Amritam Mondal, Adv.
Mr. Debasish Mukhopadhyay, Adv.
Mr. Anirban Banerjee, Adv.
...For the Petitioners.**

**Mr. Arup Ratan Choudhury, Adv.
Mr. Rounak Paul, Adv.
....For the Opposite Party.**

This is an application under Article 227 of the Constitution of India has been preferred against the order being No.11 dated 13.03.2023 passed by the Learned Civil Judge, Senior Division at Jalpaiguri in T.S. (P.S.) No. 6 of 2022.

By the impugned order learned Court below was pleased to reject the application filed by the petitioners conjointly under Order VII Rule 11 read with Order XIV Rule 2 of the Code of Civil Procedure.

Petitioners' contention is that the opposite party herein as the plaintiffs filed aforesaid suit for partition for passing preliminary decree in favour of the plaintiffs in respect of the suit property and also for final decree in terms of the shares declared in the preliminary decree.

Petitioners herein as defendants appeared in the said suit and objected the allegations leveled against them in the plaint.

Mr. Amritam Mondal, learned Counsel appearing on behalf of the petitioners, through virtual mode, submits that predecessor of the plaintiffs had already transferred their shares in the suit property in favour of the predecessor of the defendants by way of two registered deeds dated 11.11.1963 and 16.12.1064 and delivered possession and accordingly, plaintiffs/opposite parties herein have no partitionable right or interest over the said land as claimed by them in the plaint.

In fact, plaintiffs on the basis of a false and fictitious LR recording have filed this suit against the petitioners defendants, which ought to have been rejected forthwith.

Mr. Mondal further submits that the petitioners filed conjoint application under Order VII Rule 11 read with Order XIV Rule 2 but the Court below without making any finding in respect of the prayer made under Order XIV Rule 2 has also dismissed the same along with petitioners' application under Order VII Rule 11.

In such view of the matter, Mr. Mondal, learned Counsel submits that the Court below should have fixed the suit for hearing on preliminary issue as to whether the suit is maintainable or not, in view of the fact that the plaintiffs have no partitionable interest in the suit property.

Learned Counsel appearing on behalf of the opposite party submits that they have no objection if the Court below frames a preliminary issue on the point

as to whether the suit is maintainable or not in its preset form and prayer and to hear the said issue after giving opportunity to both the parties to contest.

Considering the submissions made on behalf of both the parties and on perusal of the order impugned it is clear that in the order impugned, dated 13.03.2023, learned Court below did not make any finding as to the defendants' prayer under Order XIV Rule 2 and simply because the impugned application was a conjoint application, so while the learned Court rejected the defendants' application under Order VII Rule 11, he has also rejected the plaintiffs prayer under Order XIV Rule 2. The Court below ought to have made a specific finding as to why the defendants application under Order XIV Rule 2 of the Code is liable to be rejected.

In such view of the matter, C.O. No.95 of 2023 is disposed of with a direction upon the Court below to frame a preliminary issue whether the suit is maintainable or not in its present form and prayer and to dispose of the said issue after giving opportunity to both the parties to contest before deciding any other issues in the said suit.

The Court below will frame such issue and will dispose of the same preferably within a period of twelve (12) weeks from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)