

AD-02
Ct No.01
Jalpaiguri
09.02.2023
TN

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

CO 151 of 2022

Kasiruddin Md. and others
Vs.
Kazimuddin Md.

Mr. Anirban Banerjee,
Mr. Debasish Mukhopadhyay,
Ms. Sriya Basu

....for the petitioners

Learned counsel for the petitioners submits the printout of a communication by the Senior Postmaster of the Jalpaiguri Head Post Office which indicates that the service sought to be effected on the opposite parties has been duly effected.

Such printout of communication be kept on record.

As the opposite party chooses not to appear at the time of call despite service, the matter is taken up *ex parte* for hearing in the absence of the opposite party.

The short case made out by the petitioners is that, by the impugned order, the Trial Judge

refused the prayer of the defendants/petitioners to refer the matter to the appropriate authority for an adjudication as to the dispute of bargadarship regarding the suit property within the contemplation of Section 21(3) of the West Bengal Land Reforms Act, 1955.

Learned counsel, by placing reliance on the impugned order, submits that the learned Trial Judge practically pre-decided the issue involved, which was to be referred to the appropriate authority (that is, the concerned BL & LRO).

Upon a perusal of the pleadings and the impugned order, it is clear that the Trial Judge proceeded on the premise that even if reliance be placed on the documents filed by the defendants themselves, it cannot be seen that the names of the defendants were recorded as bargadar. The barga certificate filed by the defendants, it is observed, does not disclose the name of the defendants anywhere.

Proceeding on such premise, the Trial Judge held that there was no need for reference of the dispute to the B.L.& L.R.O.

However, the petitioners have produced documents to show that the property stood in the name of the petitioners' father as bargadar. That apart, since a dispute has been raised by the

defendants specifically on the question as to bargadarship, it was beyond the jurisdiction of the Trial Judge to pre-determine such issue at the stage when reference of the matter was sought to the B.L.& L.R.O and to come to a final conclusion as regards the dispute itself.

Hence, the impugned order dated August 31, 2019 is vitiated, having been passed without jurisdiction. Inasmuch as the delay in filing the present application under Article 227 is concerned, in view of the cause shown in the present application under Article 227, this court is satisfied that there were sufficient reasons, due to the pandemic which intervened, for the delay being occasioned in preferring the revisional application. That apart, it is evident from the materials on record and the affidavit affirmed in support of the revisional application that the present petitioner no.1 is illiterate and is a cultivator by profession, which indicates that there might have been sufficient probability of paucity of funds being one of the reasons for the petitioners being delayed in preferring the present revisional application.

Hence, in the light of the above observations, CO 151 of 2022 is allowed, thereby setting aside the Order No.11 dated August 31, 2019 passed by the Civil Judge (Junior Division) at Jalpaiguri in

Title Suit No. 386 of 2018, whereby the Trial Judge refused to refer the dispute as to bargadarship under Section 21(3) of the West Bengal Land Reforms Act to the concerned B.L.& L.R.O. The trial court is directed to immediately pass appropriate orders for referring the dispute to the B.L.& L.R.O for adjudication of the issue of bargadarship raised by the defendants/petitioners.

It is expected that the Trial Judge shall pass such necessary orders for reference of the matter to the B.L.& L.R.O as expeditiously as possible, positively within three weeks from the date of communication of this order to the trial court.

The Trial Judge shall act on the written communication of the learned Advocate for the petitioners, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof, for the purpose of compliance.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)