

5.4.2024
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Ct. no. 652
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CO 167 of 2021

Jaharlal Koley
Vs.
Mainul Mandal & Ors.

Mr. Joyita Ray ...for the Petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Lal Ratan Mondal
Mr. Anirban Saha Roy

.....for the O.P. no. 1

Both the parties are represented.

Order no. 48 dated 18.2.2020 passed by the learned Civil Judge (Junior Division), 2nd Court, Hooghly has been assailed in the present application in connection with the Misc. Case no. 60 of 2017 arising out of Title Suit no. 363 of 2016, wherein the petitioner prayed for preemption under Section 4 of the Partition Act, 1893.

Mr. Bhattacharya, learned counsel for the opposite parties raised preliminary objection about the maintainability of the application contending that against the order impugned, Misc. appeal lies. Without exhausting said forum, the present application filed under Article 227 of the Constitution of India is an attempt to misuse this Courts Jurisdiction.

Ms. Ray, learned counsel for the petitioner submits that from the entries in Record of Rights annexed with the supplementary affidavit, it appears that there are three rooms in the suit property in a dilapidated condition, but the learned court below rejected his prayer for pre-emption, observing that the land is a vacant one and in absence of any dwelling house over the suit property, the case under section 4 is not maintainable.

In reply, learned counsel for the opposite parties submits that the concerned Record of Rights filed by way of supplementary affidavit is not part of the exhibited documents before the Trial court.

Having considered the facts and circumstances of the case, it appears that the petitioner has efficacious remedy before the appropriate forum.

In such view of the matter, C.O. 167 of 2021 is dismissed. However, this order will not preclude the petitioner from challenging the impugned order before appropriate forum subject to other provisions of law, including the law of limitation.

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

(Ajoy Kumar Mukherjee, J.)