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June, 2024
sandip
Ct. 19
10.06.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)*

**C.O. 337 of 2024
I.A. No : CAN 1 of 2024**

**Dipali Maity & Ors.
Vs.
Sri Sashanka Sekhar Maity & Ors.**

Mr. Piush Chaturvedi,
Ms. Debanwita Pramanik,
Mr. Gaurav Dutta ... For the petitioners.

Affidavit-of-service filed on behalf of the petitioners be
kept with the record.

In spite of service none appears on behalf of the opposite
parties.

The revisional application under Article 227 of the
Constitution of India is at the instance of the defendants in
a suit for partition and is directed against the order dated
August 16, 2023 passed by the 1st Court of learned Civil
Judge, (Senior Division), Paschim Medinipur, in said suit
being Title Suit No. 332 of 2003.

The petitioner by an application under Order VII Rule 11
of the Code of Civil Procedure had prayed for rejection of
the plaint of the suit on the ground that the plaintiffs
withdrew the earlier suit without obtaining leave to file a
fresh suit in respect of the self-same subject matter as
required under Order XXIII Rule 4(b) of the Code of Civil
Procedure.

The learned Trial Judge by the order impugned has
dismissed the said application.

The ground on which the petitioners are praying
rejection of the plaint of the suit does not come within the
purview of Order VII Rule 11(d) of the Code.

However, the petitioners are at liberty to question the maintainability of the suit on the said ground and in support thereof are free to adduce evidence.

C.O. 337 of 2024 is disposed of with the above observations without any order as to costs.

In view of the disposal of the revisional application, the connected application being CAN 1 of 2024 is also disposed of without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)