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*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. 385 of 2024

Pradip Das & Ors.

$$\mathbf{V_S}$$

Asoke Kumar Das & Ors.

Mr. Malay Kumar Das,
Mr. Sourav Chatterjee

... For the petitioners

The defendants in a suit for partition are the petitioners of the instant application under Article 227 of the Constitution of India. The said suit being Title Suit No. 66 of 1998 was dismissed, aggrieved thereby the plaintiffs have preferred the connected Title Appeal No. 77 of 2011.

The respondent no. 8 had died, the appellants took out an application under Order XXII Rule 4 (4) of the Code of Civil Procedure for dispensing with the necessity of substituting the heirs and legal representatives of the said deceased respondent in the said appeal.

The appeal Court below by the order impugned dated July 13, 2023 has dismissed the said application holding that in view of the nature of the suit, the prayer for such dispensation cannot be allowed.

The carriage of the proceedings is with the appellants, the petitioners, being the respondents cannot have any grievance for the dismissal of the said application.

Mr. Malay Kumar Das, learned advocate for the petitioners submits that the personal property of the petitioners has been included in the suit, therefore, the direction of the appeal Court below for taking steps to substitute the heirs and legal representatives of the said deceased respondent no. 8 since would delay the disposal of the appeal, the petitioners felt aggrieved.

The personal property of the petitioners, if has been included in the suit, they are free to approach the appeal Court below for exclusion of it.

C.O. 385 of 2024 is thus 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.)