

S/L 1
07.8.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 559 of 2023

Pradip Gayen
Vs.
Swapan Gayen & Ors.

Mr. Anirban Mitra
Mr. Amit Halder

...for the Petitioner.

Mr. Sudip Sarkar
Mr. Anindya Sundar Das

...for the Opposite Party.

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

The matter has been brought to the list on
mentioning of Mr. Anirban Mitra, learned advocate for the
petitioner, for release as he was praying for immediate
hearing, however, now he prays that the matter may be
heard on merit.

Prayer is allowed.

The defendant in a suit for partition is the
petitioner of the instant application under Article 227 of
the Constitution of India and is directed against the order
dated December 16, 2022 passed by the 1st Court of
learned Civil Judge (Senior Division) at Basirhat, District
24 Parganas (North) in *Misc. Case No.11 of 2022* arising
out of *Title Execution No.3 of 2020*.

Mr. Mitra submits that the suit was decreed *ex*
parte in preliminary form, so also in the final form. The
petitioner came to learn about the said decree only when it
was put into execution, as such, by an application under

Section 47 of the Code of Civil Procedure has questioned the execution and satisfaction of the said final decree on the ground that the original map of the suit property was changed by the *Partition Commissioner*.

It appears from the record that the said application was registered in the said Execution Case as the *Misc. Case No.11 of 2022* and the Executing Court by the order impugned has dismissed the said Misc. Case.

The grounds on which the petitioner has questioned the executability of the said final decree of partition do not come within the purview of Section 47 of the Code; therefore the order impugned does not call for any interference.

However, it is always open for the petitioner to assail the final decree of partition on appeal, subject to condonation of the delay.

CO 559 of 2023 is disposed of with the above observations without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Biswajit Basu, J.)