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June 2024
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Ct. 19
19.06.2024

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

C.O. 595 of 2024

Amin Rahaman & Ors.

Vs.

Shree Ganeshaya Infra Project Private Limited & Anr.

Mr. Satyam Mukherjee,
Mrs. Sayani Ahmed,
Mr. Purnendu Shekhar Ghosh ... For the petitioners.

The instant 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 No. 09 dated February 01, 2024 passed by the 1st Court of learned Civil Judge(Junior Division), at Barasat, District – 24 Parganas(North) in the said suit being Title Suit No. 1209 of 2022.

The petitioners questioned the maintainability of the suit alleging that the suit is under-valued, the learned Trial Judge, by the order impugned, has overruled the said objection.

The petitioners are alleging that the plaintiff is the stranger-purchaser, as such has been excluded from the joint possession of the suit property, which forms part of their dwelling house, as such, in terms of Section 7(viii) of the West Bengal Court-fees Act, 1970, the suit is required to be valued according to the market value of the suit property.

To succeed in such plea, the petitioners are required to prove the nature of the suit property as their joint dwelling-house and exclusion of the possession of the plaintiff in it, which can only be done by trial on evidence.

The challenge to the maintainability of the suit therefore, is pre-matured.

In view of such position of the matter, this Court is not inclined to interfere with the order impugned, however, the defendants, at the appropriate stage, shall be entitled to canvass the said issue irrespective of the observations made in the order impugned.

C.O. 595 of 2024 is disposed of with the above observations 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.

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

(Biswajit Basu, J.)