

ML 129
07.11.2024
Court. No. 5
GB

C.O. 952 of 2024

Chandan Dey & Ors.
Vs.
Sri Rabin Dey & Ors.

Mr. Prabir Adhya

...for the Petitioners.

*Mr. Meghnad Dutta,
Mr. Abhishek Shaw*

...for the Opposite Parties.

1. Challenging the order no.70 dated December 13, 2023, passed by the learned Civil Judge (Senior Division), Chandannagar, Hooghly in Misc. Judicial Case No.11 of 2023, arising out of Title Suit No.165 of 2019 (Old No.229 of 2008), whereby the application under Section 5 of the Limitation Act, 1963 and the application under Order IX Rule 13 of the Code of Civil Procedure had been dismissed, the instant revisional application has been filed.
2. The learned advocate appearing in support of the revisional application would submit that in the above suit for partition the preliminary decree passed on December 1, 2010 is erroneous. By drawing attention of this Court to the order impugned, it is submitted that although the original defendant, Netai Chandra Dey was the owner and in possession of half share in suit plot nos.261 and 262, but the preliminary decree had been passed erroneously, declaring the ownership in favour of the plaintiff no.3 in respect of the entire plot nos.261 and 262. He submit that unless the preliminary decree is set

aside, the petitioners, who are the substituted defendants on the death of the original defendant, Netai Chandra Dey, who died on January 18, 2018, shall suffer irreparable loss, injury and prejudice.

3. Although, there is no caveat, however since the petitioners have served a copy of the revisional application on Mr. Shaw, learned advocate representing the plaintiffs/opposite parties, the opposite parties are represented in Court today.
4. Having heard the learned advocates for the respective parties and having considered the materials on record, it would transpire that Netai Chandra Dey under whom the petitioners claim their interest, had duly participated in the survey proceedings conducted in the above suit. The learned Judge has clearly recorded in the order that the said Netai Chandra Dey during his lifetime had never took the plea that summons was not served on him or he was prevented by sufficient cause from appearing when the suit was called on for hearing.
5. I find from the arguments advanced in the instant case that the petitioners are aggrieved with the findings recorded in the preliminary decree. In my view, the petitioners cannot be permitted to challenge the preliminary decree in the guise of filing an application under Order IX Rule 13 of the Code of Civil Procedure. The learned Judge has elaborately discussed the circumstances under which an application under Order IX Rule 13 of the Code can be filed. Admittedly, in this

case the two several grounds for filing an application under Order IX Rule 13 of the Code, that is, satisfaction of the court that the summons was not duly served or that the defendants were prevented by sufficient cause from appearing when the suit was called on, does not stand satisfied. In fact, as noted hereinabove, the plaintiffs' predecessor-in-interest, the original defendant Netai Chandra Dey was not only aware of the suit but also had participated in the suit. His signature appears in the field note of the Commission proceeding.

6. Having regard thereto, I do not find any illegality farless any irregularity in the order passed by the learned Trial Judge. The learned Judge has further recorded in his order that the petitioners have failed to establish the grounds for condonation of delay in approaching belatedly. The learned advocate for the petitioners also could not canvas any ground to challenge any irregularity committed by the learned Judge in rejecting the application under Section 5 of the Limitation Act, 1963.
7. Having regard to the above, since no case for interference is made out, the revisional application stands dismissed.
8. However, there shall be no order as to costs.
9. Parties to act on the basis of the server copy of this order duly downloaded from the official website.

(Raja Basu Chowdhury, J.)