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

**C.O. No. 1517 of 2024
With
C.O. No. 1519 of 2024**

**Mahadeb Samanta
Vs.**

Madan Mohan Samanta & Ors.

Mr. Sounak Bhattacharya,
Mr. Sandip Das,
Mr. Sounak Mondal ... For the petitioner.

Mr. Tapas Bhattacharya,
Mr. Diptyendu Kr. Pal... For the opposite party no. 1.

These two applications under Article 227 of the Constitution of India are arising out of the selfsame suit, as such are taken up for analogous hearing and disposal.

The defendant no. 2 in a suit for declaration and injunction is the petitioner in both the revisional applications.

The Order No. 145 dated July 14, 2022 passed by the learned Civil Judge, (Junior Division) at Kakdwip, District – 24 Parganas (South) in Title Suit No. 23 of 2014 is the subject matter of challenge in C.O. 1519 of 2024, whereas the Order No. 162 dated September 19, 2023 is the subject matter of challenge in the other revisional application being C.O. 1517 of 2024.

The learned Trial Judge by the order dated July 14, 2022 has refused the prayer of the petitioner to take the suit off from the peremptory hearing Board and has dismissed the application filed by him for deciding the point of maintainability of the suit first on the ground that the suit has reached to a very matured stage and by the order dated September 19, 2023 has dismissed an application filed by the petitioner praying recalling of the said order dated July 14, 2022.

The petitioner had questioned the maintainability of the suit on the ground that it is barred under Order XXIII Rule 3A of the Code of Civil Procedure.

The bar of limitation though has not been specifically taken in the application questioning the maintainability of the suit but taking into consideration of the provision of Section 3 of The Limitation Act, 1963, Mr. Sounak Bhattacharya, learned advocate for the petitioner is permitted to argue on the said point.

Mr. Bhattacharya submits that the challenge to the compromise decree is on the ground that such compromise was entered into on behalf of the plaintiff by taking advantage of his minority but such challenge is required to be thrown within a period of three years from the date when the plaintiff has attained majority but in the plaint, there is no whisper as to when he had attained such majority, however from the records, it can be ascertained that suit has been filed long after the expiry of the said period of limitation.

To decide the maintainability of the said suit on the said two grounds, some evidences need to be brought on record, in view of the stage of the suit, this Court is not inclined to disturb the further course of it, as such, the orders impugned are not interfered with, however, the learned Trial Judge shall decide the issue of maintainability of the suit on the aforementioned two grounds on the basis of the evidences-on-record and shall also expedite the disposal of the suit.

C.O. 1517 of 2024 and C.O. 1519 of 2024 are thus 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.

(Biswajit Basu, J.)