

**0110
2024**

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

CO 1634 of 2024

Court : 08
Item : 09
Matter : CO
Status : DISMISSED
Bench ID : 265762
Transcriber : NANDY

**JAGDISH PRASAD SAHA
Vs.
ABDUL SALAM & ORS.**

**MR. BAIDURYA GHOSAL, ADVOCATE
MR. SAIKAT MUKHERJEE, ADVOCATE
MS. ANUPAMA BISWAS, ADVOCATE**

.....for the Petitioner

1. This revisional application is directed against an order no. 8 dated 20.03.2024 passed by the First Court of Civil Judge (Senior Division), Malda in Partition Suit No. 281 of 2022, by which an application under Order VII Rule 11 of the Code of Civil Procedure is rejected on contest.
2. The plaintiff/opposite party filed a Suit for partition and separation of the shares along with the decree for declaration that certain deeds executed by the mother as a natural guardian to be declared void as the mother cannot act as a natural guardian under the Muhammadan Law. It is averred in the said plaint that the property of the minor cannot be sold and the minor after attaining the majority after 18 years, can institute a suit in this regard.
3. In substance, as discerned from the record, it is a composite suit for declaration of certain deeds to be void and the property being joint property to be divided amongst the co-sharers in commensurate with the shares they hold therein.

4. An application Order VII Rule 11 of the Code of Civil Procedure was filed asserting that there was a Partition Suit instituted in the year 1967 and, according to the plaintiff himself, the decree passed therein, is in force. A further plea was taken that the suit is barred by the provisions of the Limitation Act. The Court rejected the said application holding that all such points if taken in the written-statement, can be decided after a full-fledged trial and it do not come within the purview Order VII Rule 11 of the Code.
5. The Counsel for the petitioner vociferously submits that once the decree passed in the Partition Suit is in force, it bars the subsequent Suit.
6. The plea is founded upon the principle of *res judicata* envisaged under Section 11 of the Code of Civil Procedure. The principle of *res judicata* is founded upon a public policy with an avowed object of bringing the litigation to its logical end. It further aimed to bring quietus to a cause of action and the issue involved in the earlier proceedings having decided finally shall not be reopened in a subsequent proceeding. In order to ascertain the issue having directly and substantially an issue in an earlier suit, the relevant pleadings as well as the judgments are required to be brought in evidence and cannot be decided on a stray fact that there was an earlier suit and the decree passed therein is still in force.
7. It is thus essentially a question of facts and then

the question of law. Order VII Rule 11 of the Code of Civil Procedure does not invite a mini trial where the defendant can produce the documents in support of the averments made in the application filed under Order VII Rule 11 of the Code. The Court must confine its scrutiny on the averments made in the plaint and, in the event, it is found that the ingredients engrafted under Order VII Rule 11 are imminently found present, there is no fetter on the part of the Court to reject the application. The moment the Court finds that the issues so raised require an evidence to be adduced in this regard, it takes such issue outside the peripheral of Order VII Rule 11 of the Code. Whether the decree passed in an earlier suit shall operate as *res judicata* or not is to be decided on the evidence to be brought in this regard and, therefore, I do not find any incongruity in the decision of the Trial Court in rejecting such point being outside the purview of Order VII Rule 11 of the Code.

8. So far as Section 21A of the Code of Civil Procedure is concerned, this Court does not find that it has any manner of application in the instant case. It prohibits any suit challenging the decree passed by the Court on the ground of territorial jurisdiction. Section 21 of the Code of Civil Procedure, in unequivocal terms postulates that, in the event, no objection is raised as to the place of suing or as to the pecuniary limit of any Court at the first instance or at the earliest opportunity, it

cannot be raised on a subsequent stage, more particularly, at the appellate stage.

9. This Court thus does not find that the order passed by the Trial Court warrants any interference.
10. The revisional application sans merit. **CO 1634 of 2024 is dismissed.** No order as to costs.

(HARISH TANDON, J)