

20.12.2024  
Court No. 652  
S/L. No. 25  
AD/Dd/CHC/SD

**CO 2008 of 2019**

**Smt. Sarmila Ghosh (Kumar)**  
**vs**  
**Sri Swapan Ghosh & Anr.**

Mr. Rudrajyoti Bhattacharjee,  
Ms. Debjani Ghoshal, Advocates  
,,, ,,For the defendant/petitioner

Mr. Arijit Bardhan,  
Ms. Pampa Dey (Dhabal), Advocates  
.. ...For the opposite parties

1. Petitioner and opposite parties are represented.
2. The instant revisional application is directed against an order dated November 13, 2018 passed in Title Suit No. 112 of 2008.
3. By such order, the learned trial Court allowed an application filed on behalf of plaintiff (opposite party nos. 1 and 2 herein) in such title suit under Order 26 Rule 10 of the Code of Civil Procedure directing an Investigation Commission by way of handwriting expert for comparing the signature of Sri Joytirmoy Ghosh in original deed of Bantannama dated October 9, 1964 with that on the purported deed of sale dated December 19, 1973. Such petition was allowed by the learned trial Court.
4. The petitioner has come up challenging the aforesaid order.

5. The opposite parties herein filed Title Suit No. 112 of 2008 claiming partition of the joint properties.
6. The petitioner herein, as defendant, appeared in the title suit disclosing that a portion of the alleged joint properties was sold in favour of the mother of the defendant in 1973. The plaintiff/opposite parties challenged the aforesaid deed to be forged by way of amendment incorporated in the plaint. The plaintiff also filed an application under Order 26 Rule 10 of the Code of Civil Procedure praying for an investigation for comparing the admitted signature of the executant of the sale deed Sri Joytirmoy Ghosh with that appearing in the original deed of Bantannama dated October 9, 1964.
7. Such application filed on behalf of the plaintiff was allowed by the learned trial Court directing an investigation by Government handwriting expert.
8. By filing the instant revisional application, the petitioner/defendant has challenged the propriety of such order. It is submitted on behalf of the learned advocate for the petitioner/defendant that the opposite parties filed the suit for partition of joint properties. In

the said suit, the deed executed in favour of the mother of the defendant was challenged as being forged. The plaintiff ought to have filed a separate suit seeking declaration of the sale deed in favour of the mother of the petitioner/defendant as forged.

9. Learned advocate for the opposite parties/plaintiff have supported the impugned order.

10. Admittedly, the opposite parties/plaintiff filed partition suit seeking partition. Later on, the defendant/petitioner entered appearance and disclosed that a portion of the joint properties have already been sold to his mother and as such, said properties cannot be brought into the hotchpotch of partition.

11. It is settled proposition that in a suit for partition the Court has to determine unity of title over the suit properties among all the co-sharers. In the present case, a portion of that property has been claimed by the defendant to be his personal property, being purchased by her mother. In order to bring or discard the said properties from the hotchpotch of partition, an investigation regarding the genuineness of the said deed of sale dated December 19, 1973, has necessitated. In order to decide the jointness

and unity of title over the properties brought into the hotchpotch of partition, the partition Court would surely require to determine if the properties claimed to be personal properties of the defendant are actually personal or can be brought into the hotchpotch of the petitioner. For such determination, an investigation with regard to the execution of the said deed has been directed by the impugned order.

12. There is no law that prohibits such investigation in a suit for partition.
13. Under such circumstances, I find no reason to interfere with the impugned order dated November 13, 2018 passed in Title Suit No. 112 of 2008. The same stands affirmed.
14. Accordingly, CO 2008 of 2019 is disposed of.
15. Interim order, if any, shall stand vacated.

**(Md. Shabbar Rashidi, J.)**