

30.07.2024
Item No.28, DL
Ct.19
A.J.

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

C.O. 1765 of 2023

**I.A. No. CAN 1 of 2023
CAN 2 of 2023**

Sourav Ghosh

-Vs-

Ajoy Kumar Ghosh @ Ajoy Ghosh & Ors.

Mr. Santi Ranjan Das,
Mr. Sayantan Rakshit,
Mr. K.P. Mukhopadhyay.
.....for the petitioners.

The defendant no.1 in a suit for partition is the petitioner of the instant application under Article 227 of the Constitution of India.

The petitioner questioned the maintainability of the suit on the ground that the suit plot no.357 is his exclusive property, as such, the suit for partition being Partition Suit No. 23 of 2020 before the Court of learned Civil Judge (Senior Division), Balurghat, District: Dakshin Dinajpur is not maintainable in respect of the said plot.

A preliminary issue regarding the maintainability of the suit on the said ground was framed; the learned Trial Judge by the Order No.12 dated September 28, 2021 had answered the said issue in favour of the plaintiffs, the said order was challenged by the petitioner in an application under section 115A of the Code of Civil Procedure in *Civil Revision Case No.6 of 2021*.

The learned Additional District Judge, Special Court at Balurghat, District: Dakshin Dinajpur by the

order impugned dated February 16, 2023 has dismissed the said revisional application.

Inclusion of the alleged exclusive property in the suit for partition does not affect the maintainability of the suit. It is always open for the petitioner to pray for exclusion of the said property from the category of properties involved in the suit upon demonstration of his exclusive title over it.

The order impugned therefore, does not call for any interference.

C.O. 1765 of 2023 is disposed of with the above observations without any order as to costs.

In view of the disposal of the revisional application, the connected applications being CAN 1 of 2023 and CAN 2 of 2023 have become infructuous and are disposed of accordingly.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)