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Ct. 19
11.06.2024

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

C.O. 1962 of 2024

**Sri Bimal Kumar Sen
Vs.
Sri Sanat Kumar Sen**

Ms. Aishwarya P. Ganguly,
Md. Ayaan ... For the petitioner.

The defendant in a suit for partition is the petitioner of the instant application under Article 227 of the Constitution of India, which is directed against the Order No. 160 dated March 15, 2024 passed by the learned Judge, VIIIth Bench, City Civil Court at Calcutta being Title Suit No. 677 of 1998.

On the consent of the parties, the suit has been decreed in the preliminary form. The Partition Commissioner has been appointed to finalise the preliminary decree, at this stage, the petitioner had filed an application report under Section 151 of the Code of Civil Procedure praying dismissal of the suit for non-payment of *ad valorem* Court Fees alleging that since the defendant is out of possession of the suit property, he is required to pay Court Fees in terms of Section 7 (viii) of the West Bengal Court Fees Act, 1970.

The learned Trial Judge by the order impugned has dismissed the said application holding that the

possession of one co-sharer is the possession of all other co-sharers.

To attract the provision of Section 7 (viii) of the said Act of 1970, exclusion of the possession of the co-sharer is necessary, mere fact that one of the co-sharers is residing away from the suit property cannot attract the aforementioned provision of the said Act of 1970.

The order impugned does not call for any interference; C.O. 1962 of 2024 is therefore dismissed 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.)