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Ct. 19
13.08.2024

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

C.O. 2831 of 2024

Sri Lalit Mohan Ghosh & Ors.
Vs.
Sri Prdip Kumar Lala & Ors.

Mr. Probal Mukherjee, Sr. Adv.,
Mr. Susenjit Banik,
Mr. Amit Ranjan Roy,
Mr. Mrinal Saha ... For the petitioners.

Mr. Bhaskar Ghose, Sr. Adv.,
Mr. Siddhartha Paul ... For the opposite parties.

The petitioner no. 1 had purchased share of a co-sharer in joint properties of the opposite parties and had filed the *Title Suit No. 92 of 1977* for partition of his said purchased share. The defendant no.1 (since deceased) of the said suit had filed an application under Section 4 of the Partition Act, 1893 to preempt the said sale in favour of the petitioner no.1. The said application was registered as *Miscellaneous Case No. 39 of 1981*.

The said suit was dismissed and the said Misc. Case was allowed; the decree was affirmed up to the Hon'ble Supreme Court.

The commissioner was appointed to ascertain the value of the said share of the petitioner, such value was ascertained and the learned Trial Judge has accepted the same vide Order No. 152 dated May 06, 2022 and has disposed of the said Misc. Case.

Aggrieved thereby, the petitioners had preferred the connected *Title Appeal No. 37 of 2022*. The learned District Judge, Hooghly by the impugned judgment and order dated

April 01, 2024 has dismissed the said appeal holding that the order impugned is not open to appeal.

Mr. Probal Kumar Mukherjee, learned senior advocate for the petitioners submits that the learned Trial Judge by the order under challenge in the connected appeal had disposed of the Misc. Case under Section 4 of the said Act of 1893, as such, in terms of Section 8 thereof, the order of the learned Trial Judge shall be deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure, therefore, the dismissal order of the appeal as *not maintainable*, is not sustainable.

Mr. Bhaskar Ghose, learned senior advocate for the opposite parties submits that the right of the deceased defendant no.1 to preempt the sale in favour of the petitioner no.1 has been acknowledged up to the Hon'ble Supreme court and in fact, the deed has already been executed and registered in favour of the opposite parties, the successors-in-interest of the deceased defendant no.1; at this stage, there is no scope to reopen the issue of the value of the share of the petitioner no.1.

Heard the learned advocate for the parties, perused the materials-on-record.

The valuation of the share in the suit properties purchased by the petitioner no.1 was assessed way back on November 26, 2018 though there was an objection of the petitioners to such valuation with a prayer for appointment of a fresh commissioner, but such challenge was not sustained as the revisional application against the said order was dismissed; the assessment of the valuation of the share of the petitioner no.1 has therefore attained finality, besides, it appears from the valuation report that the value of the purchase deed of the petitioner no.1 was Rs. 19,000/- and the valuation of the share of the petitioner no.1 has been assessed at the said rate, therefore, though this Court does not approve the reasoning for dismissal of the said appeal, but conclusion being correct, is not inclined to interfere with the order impugned.

C.O. 2831 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.)