

27.08.2024
Item No.6,
DL, Ct.19
A.J.

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

C.O. 2963 of 2024

Sukla Kar

-Vs-

Arindam Kar & Ors.

Mr. Dhananjay Nayek,
Mr. Shib Shankar Banerjee.
.....for the petitioner.

Mr. Surajit Karmakar.
.....for the O.P. Nos. 5 to 7.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for partition and is directed against the part of the order dated June 25, 2024 passed by the 5th Court of the learned Civil Judge (Senior Division) at Alipore, District : 24-Parganas (South) in the said suit being *Title Suit No. 48 of 2016*.

The defendant nos. 5 to 7 in their written statement had disclosed that the admitted owner of the suit property, i.e. the mother of the plaintiff during her lifetime had bequeathed the suit property in their favour in exclusion of her other heirs and legal representatives.

The plaintiff by the proposed amendment has thrown a challenge to the legality and validity of the said deed of gift and has brought pleadings in support thereof.

The learned Trial Judge by the order impugned has dismissed the said application holding that the said challenge is time-barred inasmuch as the same has not been made within the period of three years from the said date of such disclosure.

The plaintiff has alleged that her erstwhile learned advocate did not communicate the said disclosure of the said defendants to her however, being aware of the said deed, she promptly applied for amendment of the plaint.

The suit is at the pre-trial stage, besides to set the dispute between the parties at rest, the legality and propriety of the said deed of gift is required to be decided as the decision on the said issue shall decide the fate of the connected partition suit.

The order impugned, for the aforesaid reasons, is set aside, the application for amendment of the plaint is allowed.

The plaintiff is required to file amended plaint within a period of two weeks from date, the defendants are at liberty to file additional written statement within two weeks from the date of service of the copy of the amended plaint.

The plaintiff is required to take steps for effecting service of summons upon the non-appearing defendants within this week, if not already taken.

C.O. 2963 of 2024 is disposed of with the above terms without any order as to costs.

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.)