

January 2, 2024
Sl. No.4
Court No.19
s.biswas

CO 3524 of 2023

Sri Dipu Dhara and others
vs.
Sri Phulal Se and others

Mr. Gourav Banerji

... for the petitioners

This court does not find any reason to interfere with the orders dated May 16, 2023 and July 7, 2023, passed by the learned Civil Judge (Senior Division), 10th Court, Alipore, South 24 Parganas.

The petitioners contend that the learned court below proceeded with material irregularity in fixing a date for cross-examination of DW1. It appears that the preliminary decree was passed ex parte. Thereafter, one of the co-sharers was allowed to contest the suit and the learned court proceeded with the evidence with regard to the portion claimed by the added co-sharer. The plaintiff filed an application under Section 151 of the Code of Civil Procedure later, raising certain objections. The said application has been kept on record.

The cross-evidence of DW1 has been fixed. The plaintiff submits that the question of recording evidence and cross-examination of DW1 would not arise as the preliminary decree had not been set aside by any competent court.

The law is well-settled. There can be multiple preliminary decrees and the court can modify,

change and rectify any preliminary decree. However, if the application of the petitioner is on record, it is for the petitioners to approach the learned court below seeking disposal of the application.

This court does not find that the said application had been either heard or rejected. Under such circumstances, there is no scope to entertain the revisional application.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)