

C.O. 644 of 2025

Asit Ghosh
-versus-
Anandamohan Ghosh & Ors.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee
Mr. Samrat Chakraborty
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for partition and for other consequential reliefs and is directed against an order being no. 46 dated February 13, 2025 passed by the learned Civil Judge, (Senior Division), 3rd Court at Krishnanagar, Nadia in Title Suit No. 01 of 2021. By the order impugned the application filed by the petitioner herein under Section 151 praying for including certain plots in the schedule of the writ to be issued to the receiver stood rejected. Record reveals that by an order dated November 29, 2022 the petition for appointment of the receiver was considered and allowed on consent.

Mr. Roy, learned advocate appearing for the petitioner submits that since a receiver was appointed in respect of some of the plots as

mentioned in the schedule of the plaint and the other plots were also incorporated in the schedule of the plaint by way of amendment, the writ already issued to the receiver requires an amendment by incorporating the plots which were introduced by way of amendment of plaint.

After going through the record this Court finds that the receiver was appointed by the order dated November 29, 2022 on consent and such appointment was not in respect of all the plots which forms the subject matter of the suit. Presently the petitioner herein has sought for incorporation of the plots in the writ which has already been issued to the receiver.

After hearing Mr. Roy, learned advocate appearing for the petitioner, this Court is of the considered view that the receiver was appointed on the earlier occasion on consent. The present application was hotly contested by the opposite parties herein before the learned trial judge and the learned trial judge after hearing the respective parties has rejected such prayer by assigning certain reasons in support of the ultimate conclusion.

On a perusal of the impugned order, this Court finds that there was an adjudication as to whether receiver is to be appointed in respect of

the plots which were incorporated by way of amendment of plaint. Though the application was captioned as one under Section 151, it is well settled that the substance and not the caption should be the criteria for deciding as to whether the order impugned is an appealable one or not.

After going through the statements made in the application together with the prayer, this Court is of the considered view that the same squarely falls within the scope of Order XL Rule 1 of the Code of Civil Procedure and the impugned order was passed in exercise of power under the said provision. Order XLIII deals with appeals from orders. Order XLIII Rule 1(s) provides that an appeal shall lie from an order under Rule 1 or Rule 4 of Order XL.

Since this Court has already held that the order impugned was passed in exercise of the powers under Order XL Rule 1 of the Code, this Court is of the considered view that the impugned order is an appealable one. At this stage Mr. Roy, learned advocate appearing for the petitioner prays for withdrawal of this application with liberty to approach the appropriate forum.

As prayed for by Mr. Roy, C.O. 644 of 2025 stands dismissed as withdrawn with liberty

to the petitioner to approach the appropriate forum in accordance with law.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)