

11.04.2025
(D/L-06)
Ct.-17
(Susanta
Samar)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 1123 of 2025

Sukhbindar Singh & Anr.

-Vs-

Prasanta Maji & Ors.

Mr. Asish Chandra Bagchi, Sr. Adv.,
Ms. Malyasree Maity
Mr. Fardeen Hossain,
Mr. Nishant Kumar,

...For the Petitioners.

Mr. Kushal Chatterjee,
Mr. Maroof Zahedi,

.... For the O.P. No. 20.

Mr. Iftekar Munshi,

.... For the O.P. Nos. 1-4, 6-8, 9(a),
9 (b) & 10-14

The defendant nos. 1 and 3 in a suit for partition are the petitioners of the instant application under Article 227 of the Constitution of India which is directed against the order no. 187 dated March 10, 2025 passed by the 1st Court of learned Civil Judge (Senior Division), Tamluk, District-Purba Medinipur in the said suit being Title Suit no. 82 of 2019.

The defendant no. 8, the opposite party no. 20 herein, has purchased a portion of the share of the plaintiffs in the joint property and has been added in the suit as such. He is praying for a preliminary decree of partition in respect of his such purchased share. The petitioners, after completion of the plaintiffs' witness had prayed that the defendant no. 8 be directed to adduce evidence before they are asked to adduce evidence.

The learned Trial Judge by the order impugned has rejected the said prayer of the petitioners on the ground that it offends the mandate of Order XVIII Rule 1 of the Code of Civil Procedure.

Mr. Asish Chandra Bagchi, learned Senior advocate for the petitioners submits that Order XVIII Rule 1 of the Code provides that the plaintiff has the right to begin but the said provision does not regulate the sequence of the witness of the defendants. The defendant no. 8 since has purchased a share of the plaintiffs and is praying a decree of partition of his such purchased share, he has assumed the character of the plaintiff, therefore, he must adduce evidence before the defendants.

Mr. Kushal Chatterjee, learned advocate for the defendant no. 8, submits that the defendants are challenging the title of the plaintiffs, therefore, if his client is directed to adduce evidence before the other defendants, his client would be seriously prejudiced.

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

Order XVIII Rule 1 of the Code prescribes that the plaintiff has a right to begin, unless the defendant admits the facts alleged by the plaintiffs and contends that either in the point of law, or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks and in which case, the defendant has a right to begin.

In the present case, the evidence from the side of the plaintiffs is over. In terms of Section 140 of the

Bharatiya Sakshya Adhiniyam, 2023, the order in which the witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively and in the absence of such law, by the discretion of the Court. The Code of Civil Procedure does not prescribe the order of production and examination of the witness amongst the defendants, in the absence of such prescription, the learned Trial Judge should have exercised his discretion in directing the defendant no. 8 to adduce evidence first in the backdrop of the fact that he is praying partition of the joint property as much as the plaintiffs.

In view of the aforesaid, the order impugned is set aside. The defendant no. 8 is directed to adduce evidence before the recording of evidence of the witnesses of the other defendants in the suit.

C.O. 1123 of 2025 is disposed of with the above terms without any order as to costs.

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

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.)