

D/L- 12
24/06/2025
Ct. No.-6
Aritra

C.O. 2166 of 2025

**Ram Chandra Mondal
Vs.
Firoj Sardar & Ors.**

Mr. Tanmoy Mukherjee
Ms. Sarmistha China
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.16 dated April 10, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Court at Howrah in Title Suit No.1224 of 2023.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that prior to the institution of the suit, the petitioner filed a suit for eviction of a licensee. The said suit was decreed by the learned trial judge. The opposite party herein preferred a title appeal against such decree which was stood dismissed. Thereafter, the opposite party preferred a second appeal before this Hon'ble Court which is a defective one. He submits that subsequently the opposite party filed the suit for declaration of title and permanent injunction. Mr. Mukherjee further submits that in such a suit, the petitioner filed an application for framing of a preliminary issue that the suit is barred by the

principles of *res judicata*. He submits that it appears from the statements made in the plaint that the opposite party has specifically admitted that the similar and identical issues were in issue in the earlier suit.

After going through the plaint, this Court finds that the plaintiff has stated that the defendant No.1 has filed the civil suit against the plaintiff being Title Suit No.86 of 2008 and has also stated that the plaintiff has filed a second appeal which is pending for disposal.

Since the second appeal is pending for disposal, this Court is of the considered view that the learned trial judge was right in holding that at this stage the issue of *res judicata* cannot be decided by framing a preliminary issue. The petitioner herein has already filed a written statement taking a specific defence that the present suit is barred by the provisions of *res judicata* and also barred by the Specific Relief Act.

On a query of the Court, Mr. Mukherjee, learned advocate appearing for the petitioner submits that only a preliminary issue with regard to the maintainability of the suit has been framed but the other issues in the suit are yet to be framed. Petitioner will be at liberty to approach the learned trial judge at the appropriate stage for framing of an issue with regard to bar of the suit on the principles of *res judicata*.

At this stage, Mr. Mukherjee, learned advocate appearing for the petitioner submits that a direction be

passed upon the learned trial to dispose of Title Suit No.1224 of 2022 expeditiously.

In the light of the submissions made by Mr. Mukherjee, CO 2166 of 2025 stands disposed of by requesting the learned Civil Judge (Jr. Div.), 1st Court at Howrah to make an endeavour to see that the Title Suit No.1224 of 2022 is disposed of as expeditiously as possible without grating any unnecessary adjournments to either of the parties.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)