

30.06.2025
Item no. 41.
Court No.6.
AB

C. O. 2222 of 2025

Mukhtar Ehsan Khan
Vs
Sk. Akhtar Hossain & Anr.

Mr. Surendra Kr. Sharmafor the Petitioner.

Mr. Tarak Nath Halder,
Mr. Abdul Alimfor the Opp. Parties.

This application under Article 227 of the Constitution of India is at the instance of the first defendant and is directed against an order dated May 8, 2025, passed by the learned Civil Judge (Junior Division), 3rd Court, Howrah in T.S. No.49 of 2009.

By the order impugned, the application filed by the petitioner herein challenging the maintainability of the suit stood rejected.

The learned advocate appearing for the petitioner submits that the Hon'ble Division Bench in WPLRT 61 of 2022 refused to interfere with the order passed by the learned Tribunal in remanding the matter to the Thika Controller for deciding the status of the private respondents on the property as tenants by overlooking the decree of the competent Civil Court.

The petitioner herein filed a Title Suit No.7 of 1991 before the learned Civil Judge (Junior Division), 3rd Court at Howrah against Rasulan Bibi & Others

praying for a declaration that the plaintiff therein and the proforma defendant nos.2 and 3 were the absolute and exclusive owners and occupiers in respect of the scheduled property and for mandatory injunction.

The said suit was decreed ex parte by an order dated July 15, 1994 thereby declaring that the plaintiff and the proforma defendant nos.2 and 3 are the absolute owners and occupiers in respect of the suit property and a decree for mandatory injunction was passed against the defendant no.4 directing him to remove the name of the defendant no.1 from the office record of the defendant within the time limit indicated in the said decree.

Learned advocate appearing for the petitioner submits that in terms of the said decree, the name of Rasulan Bibi was deleted from the records of the Thika Controller.

Learned advocate for the petitioner submits that the opposite party got his name recorded in the office of the Thika Controller. Challenging the said recording, the petitioner approached before the Tribunal and the learned Tribunal remanded the matter back to the Thika Controller. The Hon'ble Division Bench refused to interfere with the order passed by the learned Tribunal in WPLRT 61 of 2022.

The opposite parties herein, claiming to be the heirs of Rasulan Bibi, filed a Title Suit No. 49 of 2009

praying for a declaration that the decree passed in Title Suit no.9 of 1991 is fraudulent, illegal and void and for a permanent injunction restraining the defendant no.1, that is the petitioner herein, from claiming any advantage and/or giving effect to the said impugned decree.

In the said suit, the petitioner filed an application challenging the maintainability of the suit. It has been stated in the said application that the petitioner herein is not the legal heir of Rasulan Bibi. It has also been stated in the said application that since Rasulan Bibi has not challenged the judgment and decree dated July 15, 1994 within the prescribed period of limitation, the instant suit is barred by the laws of limitation.

After going through the application challenging the maintainability of the suit and after considering the averments made in the plaint, this Court is of the considered view that the issue of limitation being a mixed question of law and fact cannot be decided at this stage. That apart whether the petitioner is an heir of Rasulan Bibi cannot also be decided at this stage.

The propriety of the order of remand passed by the Learned Tribunal was the issue before the Hon'ble Division Bench in WPLRT 61 of 2022.

The Hon'ble Division Bench in WPLRT 61 of 2022 held that the Tribunal committed no error in

remanding the matter to the Thika Controller for deciding the status of the proforma respondent on the property as tenant by overlooking the decree of the competent Civil Court. The issue of maintainability of the present suit did not fall for consideration before the Hon'ble Division Bench.

Since other disputed questions of law and fact were raised in the impugned application, this Court is of the considered view that the learned Trial Judge was right in holding that the points raised by the defendant no.1 are mixed questions of law and fact which need to be adjudicated.

For such reasons, this Court is not inclined to interfere with the order impugned.

It appears that a date has been fixed for framing of issues. Learned Civil Judge (Jr. Division), 3rd Court, Howrah is requested to dispose of T.S. No.49 of 2009 as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

It is, however, made clear that all points including the point of maintainability of the suit are kept open to be decided at the time of trial.

C. O. No.2222 of 2025 stands dismissed accordingly.

(Hiranmay Bhattacharyya, J.)

