

10.03.2025
Item No.13
DL, Ct.19
A.J.

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O.2546 of 2022

Phoenix Enclaves Pvt. Ltd.

-Vs-

Sri Bankim Das & Ors.

Mr. Aniruddha Chatterjee,
Mr. Sudhasatva Banerjee,
Ms. Rituparna Chatterjee,
Ms. Khushboo Choudhary,
Ms. Sadia Sultana.

....for the petitioner.

Mr. Jishnu Choudhury, Ld. Sr. Advocate,
Ms. Ujjaini Chatterjee,
Ms. Pratiti Das.

....for the opposite party no.1.

The defendant no. 4 in a suit for declaration of title and injunction is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against the order dated March 31, 2022 passed by the 2nd Court of the learned Civil Judge (Senior Division) at Barasat, District: 24 Parganas (North) in the said suit being *Title Suit No. 127 of 2014*.

The petitioner had filed an application under Order VII Rule 11 of the Code of Civil Procedure praying rejection of the plaint of the said suit on the ground that the title of the plaintiff over the suit property cannot be declared as the sale deed dated November 09, 1975 through which the plaintiff is tracing his such title is a forged document, particularly when the same has been observed by the learned Single Judge of this Court while disposing of *C.O. 1519 of 2016*.

The learned Trial Judge has dismissed the said application holding *inter alia* that the Hon'ble High Court had been pleased to make certain observations while disposing of the revisional application but at the same time, dispute was left open to be decided by the Trial Court and had quoted the following observation of the learned Single Judge:-

“However, before departure learned Trial Court is prevented from being swayed by or influenced with any observation made by the Court in disposing of this revisional application and all points are left open which shall be adjudicated independently by the learned Trial Court upon the available legal evidence.”

The enquiry which is required to be carried out to ascertain the genuinity of the said title deed dated November 09, 1975 is beyond the scope of Order VII Rule 11 of the Code of Civil Procedure inasmuch as it cannot be done without trial on evidence. The issue may be raised for a decision as a preliminary one at the appropriate time; therefore, the order impugned does not call for any interference.

C.O. 2546 of 2022 is dismissed without any order as to costs.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)