

S/L 3
02.04.2025
Court No.17
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2758 of 2024
[Assigned]

Jnanbhusan Saha & Anr.

Vs.

Muslam Sk. & Ors.

Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Mrinal Kanti Ghosh
Mr. Sounak Bhattacharya

... for the Petitioners.

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Pinaki Dhole
Mr. Rabindra Kumar Pathak

... for the Opposite Parties.

The plaintiffs, in a suit for declaration, are the petitioners of the instant application under Article 227 of the Constitution of India which is directed against Order No.51 dated July 8, 2024 passed by the 1st Court of learned Civil Judge (Senior Division) at Malda in the said suit being *Title Suit No.7 of 2020*.

The defendants are tracing their title over the suit property through a deed of purchase executed by the plaintiffs. The said deed is the subject matter of challenge in the said suit, the plaintiffs are praying for a decree of cancellation of the said deed, alleging *inter alia* that they *never* intended to execute the said deed, but a *binanama*. The plaintiffs are alleging that they had recorded their telephonic conversation with the defendants in their mobile phone wherefrom it would appear that there was a talk of execution of an *agreement for sale* only.

The plaintiffs are claiming that such conversation has been stored in a pen-drive and by an application under Order XXVI Rule 10A of the Code of Civil Procedure, they had prayed for scientific investigation of the said pen-drive *inter alia* for *voice analysis* of the defendant no.1 recorded in the said pen-drive and scientific investigation of the deed to ascertain the interpolations therein, etc.

The learned Trial Judge by the order impugned has dismissed the said application holding that the plaintiffs are yet to adduce evidence; therefore, the stage of corroboration of the case has not yet arisen; besides, there are no averments in the plaint regarding recording of the conversation between the

parties; the prayer for scientific investigation is an afterthought to delay the proceeding.

The scientific investigation of the alleged recording of conversation between the parties and sending the impugned deed for investigation depend upon the quality of evidence the plaintiffs would bring on record, but such stage has not yet reached as the plaintiffs have not yet adduced their evidence. That apart, the information contained in an electronic record is required to be proved in accordance with the provision of Section 63 of the *Bharatiya Sakshya Adhiniyam, 2023* which cannot be substituted by taking recourse of Order XXVI Rule 10A of the Code of Civil Procedure.

This Court therefore, does not find any illegality and/or infirmity in the order impugned warranting interference.

CO 2758 of 2024 is dismissed 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 of all requisite formalities.

(Biswajit Basu, J.)