

Court No. 6
(265719)

18.08.2025
(AD 32)
(S. Banerjee)

CO 2989 of 2025

Sri Mahadeb Bhandary & Ors.
Vs.
Smt. Rupali Bhanja

Mr. Narayan Chandra Bhandary
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against order no. 20 dated April 28, 2025 passed by the learned Civil Judge (Jr. Division) 1st Court, Diamond Harbour in Title Suit No. 118 of 2024. By the order impugned the application filed by the petitioner praying for framing a preliminary issue on the maintainability of the suit, stood rejected.

Learned advocate appearing for the petitioner submits that the opposite parties filed a suit claiming an easementary right of access over a property. He submits that the Indian Easement Act, 1882 is not applicable to the State of West Bengal and, therefore, the instant suit is not maintainable. He thus submits that since the same is a point of law, the learned trial judge ought to have framed a preliminary issue and the suit could have been disposed on a decision on

such preliminary issue only. In support of such contention he places reliance upon a decision of a coordinate bench in the case of *ITC Limited -Vs.- Chowringhee Residency Private Limited*, reported in AIR 2015 Cal 37. He further submits that since there was no grant, there cannot be any right of easement in the case on hand. In support of such contention he places reliance upon a decision of the Hon'ble Division Bench in the case of *Baidyanath Dutta & Ors. -Vs.- Radheshyam Dutta & Ors.*, reported in AIR 1979 Cal 97. He further submits that the suit property is a Sali land and also no Commissioner was appointed for the purpose of ascertaining as to whether there is any right of way over the property in question. He further submits that without such local inspection the opposite parties could not have claimed any right of easement over the suit property.

The opposite parties herein filed a suit for declaration that they have a right of easement over the property mentioned in the schedule of plaint and for permanent injunction.

It is not in dispute that the Indian Easement Act has no application in the State of West Bengal but the principles laid down therein are very much applicable to the State of West Bengal.

As to whether there was any grant or not, cannot be decided by way of framing a preliminary issue under Order 14 Rule 2(2) of the Civil Procedure Code as the same has to be decided by trial on evidence. Whether the suit property is a Sali land or whether there exists a right of way over the property in question, also cannot be decided by framing a preliminary issue as the same has to be decided by trial on evidence. To the mind of this court, the learned trial judge was right in holding that since issues of fact and law are both involved in the instant suit, the same cannot be disposed of only by framing a preliminary issue.

There is no quarrel to the proposition of law laid down in *ITC Limited (supra)* that the Easement Act do not have any application in the State of West Bengal and it is also well-settled that the principles of Indian Easement Act applies to the state of West Bengal as observed in *ITC Limited (supra)*.

In *Baidyanath Dutta (supra)* the Hon'ble Division Bench held that since there was no grant, there cannot be right of any support for the hut standing on the land and also that the respondents therein did not make out a case of lateral support. The Hon'ble Division Bench further pointed out that the case of easement of necessity was not made out in the plaint

or argued before the learned trial judge. Therefore, the said decision cannot come to the aid of the petitioner at this stage.

The learned trial judge assigned cogent reasons for rejecting the said application and for such reason this court is not inclined to interfere with the same. Accordingly, CO 2989 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)